

**FLOODPLAIN AMENDMENT APPLICATION AND WAIVER OF
ASSESSMENT APPEAL AGREEMENT**

This Agreement to Pay the Special Assessment and Waiver of Assessment Appeal is entered into effective as of the date of execution by the last party to sign by and between the City of Jordan, Minnesota (hereinafter “City”), a Minnesota municipal corporation, and <PROPERTY OWNER NAME>, (hereinafter “Property Owner”). The City and Property Owner may be referred collectively herein as “the Parties.”

RECITALS

WHEREAS, Property Owner is the fee owner of certain real property located at <PROPERTY ADDRESS>, Jordan MN 55352 in the City of Jordan, PID No. <PID No>, (hereinafter the “Property”);

WHEREAS, the Property is currently located in the Special Flood Hazard Area (hereinafter “SFHA”) and is located in the City’s floodplain district and is designated as floodplain on the flood insurance rate map to become effective February, 2021, i.e. National Flood Insurance Program Map (hereinafter “NFIP”); and

WHEREAS, Property Owner believes the primary structure on the Property may be inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation; and

WHEREAS, Property Owner does not currently have a survey of the Property that meets the Federal Emergency Management Agency’s (hereinafter “FEMA”) requirements for a letter of map amendment or elevation certificate and shows the elevation of the primary structure on the Property; and

WHEREAS, the actual elevation of the primary structure on the Property will remain unknown until such time a survey is performed on the Property; and

WHEREAS, Property Owner acknowledges that there is a benefit to the Property Owner and the Property to have the City survey the Property to determine the primary structure’s elevation (“survey work”); and

WHEREAS, Property Owner is willing to grant the City and its engineers, surveyors, employees, agents and contractors access to the Property perform the survey

work contemplated by this Agreement; and

WHEREAS, if based on survey work on the Property the primary structure is found to be below, but less than three feet below, the base flood elevation, Property Owner requests to have the City prepare and submit a FEMA Elevation Certificate (“EC” application (“EC Application”) for the Property; and

WHEREAS, if based on the survey work of the Property the primary structure is found to be below the base flood elevation, and the Property Owner at its own expense chooses to make improvements to bring the Property’s elevation above the base flood elevation, Property Owner requests to have the City prepare and submit a FEMA Letter of Map Revision (LOMR-F) application (“LOMR-F Application”) for the Property; and

WHEREAS, if based on survey work of the Property the primary structure is found to be above the base flood elevation, Property Owner requests to have the City prepare and submit a FEMA Letter of Map Amendment (LOMA) application (“LOMA Application”) for the Property; and

WHEREAS, the City’s Engineer, at the direction of the City, will undertake survey work on behalf of Property Owner to identify which application, if any, is appropriate in the sole discretion of the City Engineer; and

WHEREAS, Property Owner acknowledges that there is a cost to the City to perform the survey work and prepare and submit the applicable application; and

WHEREAS, Property Owner acknowledges that there is a benefit to the Property Owner and the Property to have the City evaluate the survey data, determine if an application is appropriate, and potentially submit an application to FEMA; and

WHEREAS, Property Owner agrees to contribute monetarily towards those costs incurred by the City to perform the survey work and prepare the applicable application based on the applicable Table and terms set forth herein; and

WHEREAS, Property Owner acknowledges there is no guaranty that an application submitted regarding the Property will be approved by FEMA.

NOW, THEREFORE, pursuant to the foregoing recitals, which are hereby restated, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Property Owner hereby covenant, and agree as follows:

1. APPLICATION. The City’s Engineer, Bolton & Menk, Inc. (hereinafter “Engineer”), at the City’s direction shall perform all evaluations, surveys, site plans, or any other tasks the Engineer deems necessary to determine the applicability of the Property for a potential LOMA Application, LOMR-F Application, or EC Application. The Engineer, at its sole discretion, will determine which type of FEMA application, if any, and accompanying documentation is appropriate. The City or Engineer will draft and complete the applicable application if, in its sole discretion, it determines a LOMA, LOMR-F or EC

to be applicable. The City or Engineer shall submit the applicable application to FEMA and pay any applicable FEMA application submission fee, which are included in the Property Owner's contribution to the fees and expenses in accordance with Section 5 and the applicable Table therein. The amount owed by the Property Owner to the City in accordance with the applicable Table will be determined upon the Engineer's completion of all field survey work. The City does not guarantee that an application submitted regarding the Property will be approved by FEMA.

2. ACCESS. Property Owner shall allow the City and its engineers, surveyors, employees, agents and contractors access to the Property beginning on the effective date of this Agreement and thereafter for purposes of completing the Engineer's survey work and evaluation.

3. ASSESSMENT OF PARCEL. The City shall provide notice of the final cost/assessment amount to the Property Owner ("Notice") based upon the applicable Table (and column and row therein) set forth in Section 5 herein if an application is submitted to FEMA on behalf of the Property Owner, which the Property Owner by signing this Agreement agrees to pay to the City or have that amount assessed against the Property. Payment of the amount set forth in the Notice must be made by the Property Owner to the City within 30 days of the City mailing said Notice, or by May 1, 2021, whichever is later. If Property Owner does not make payment to the City by the applicable date, the City shall levy a special assessment on the Property for the amount set forth in the Notice. Property Owner and its successors and assigns of the Property shall pay the special assessment over a period of 5 years. Interest on special assessment shall be equal to 4.0%. The Property Owner shall not be responsible for the costs incurred by the City if the Engineer determines, in its sole discretion, that none of the applications are appropriate based upon the Engineer's evaluation.

4. ASSESSMENT; WAIVER OF OBJECTION OR APPEAL (MINN. STAT. § 429.081). Property Owner on behalf of itself and its successors and assigns hereby waives the right to object or appeal pursuant to Minn. Stat. § 429.081 the assessment that the City Council adopts to reimburse the City for the costs and fees incurred by the City based upon the applicable table (and column and row therein) set forth in Section 5 herein.

5. FEES AND EXPENSES. Property Owner acknowledges and agrees that the City is incurring fees and expenses for which the Property and Property Owner have benefited due to the Engineer's surveying, evaluation and application submittal, which includes engineering fees, FEMA application fees, and related expenses. The Property Owner agrees to contribute monetarily to those fees and expenses incurred by the City based on the number of other property participants in the City program and per the following tabulations. The Engineer shall be responsible for determining, at its sole discretion, which Table and tabulations therein is to be used for the Property based upon the number of participants, the results of survey work, and Engineer's evaluation of the data.

| Letter of Map Amendment (LOMA) & Letter of Map Amendment (LOMR-F) Properties | | |
|---|------------------------------|--------------------------------|
| Properties in this Category that Choose to Participate | Cost Per Property for a LOMA | Cost Per Property for a LOMR-F |
| 0 to 10 | \$ 1000 | \$ 1,500 |
| 11 to 20 | \$ 800 | \$ 1,300 |
| 21 to 30 | \$ 700 | \$ 1,200 |
| 31+ | \$ 600 | \$ 1,100 |

| Elevation Certificate (EC) Properties | |
|--|--|
| Properties in this Category that Choose to Participate | Cost Per Property for an Elevation Certificate |
| 0 to 10 | \$ 700 |
| 11 to 20 | \$ 650 |
| 21 to 30 | \$ 600 |
| 31+ | \$ 500 |

6. **AGREEMENT EFFECT.** The terms and conditions of this Agreement shall be binding on the Parties hereto, their respective successors and assigns and the benefits and burdens shall run with the Property.

7. **INDEMNIFICATION.** The Property Owner shall indemnify, hold harmless and defend the City, its elected officials, employees and agents against any and all claims that may arise as result of the Engineer’s evaluation and the applicable application being submitted to the FEMA as the application for the Property is being submitted for the sole benefit of the Property Owner.

8. **GOVERNING LAW.** This Agreement will be construed and enforced in accordance with the laws of the State of Minnesota.

9. **SEVERABILITY.** To the extent any provision or part of this Agreement is void or otherwise adjudicated to be void or contrary to the law, it is the intention of the Parties that the rest of the Agreement shall be effective and remain a binding agreement.

10. **WAIVER.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

[Signatures on the following pages]

IN WITNESS WHEREOF, the Parties agree to all the terms and provisions contained herein.

PROPERTY OWNER

Dated: _____

<Property Owner Name>

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared <PROPERTY OWNER NAME>, Owner of PID <PID No.>.

Notary Public

Dated: _____

CITY OF JORDAN

By: _____
Tanya Velishek, Mayor

Attest: _____
Tom Nikunen, City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

On this _____ day of _____, 2020, before me a Notary Public within and for said County, personally appeared Tanya Velishek, Mayor of City of Jordan, and Tom Nikunen, City Administrator, on behalf of the City of Jordan.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
DOUGHERTY, MOLENDIA, SOLFEST,
HILLS & BAUER P.A.
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