

MEMORANDUM

To: Mayor and City Council

From: David Elliott

Date: April 11, 2017

Subject: **Adoption of Stormwater Inspection and Maintenance Policy.**

BACKGROUND

The City's stormwater utility provides a variety of infrastructure management services related to drainage of city right of way and the surrounding areas. To best perform this service, the Public Works Department seeks a formal adoption of a Stormwater Inspection and Maintenance Policy. The goal of this policy is to define the stormwater infrastructure maintenance responsibilities of private property owners and the City.

Based on discussion on the proposed policy at the city council retreat, the policy has been written to be generally consistent with the level of stormwater service historically provided by the City's stormwater utility. The written policy serves as a memorialization of the current level of service and provides City staff with a guidance document for ongoing and future activities.

The proposed Stormwater Management System Inspection and Maintenance Policy is included in Attachment A.

City staff has performed a survey of several surrounding jurisdictions that compares stormwater maintenance responsibility policies. The results of this survey are presented in Attachment B.

When it is determined that a temporary construction or permanent maintenance agreement is required before performing a City funded repair, the City and private property owner must establish an easement containing the City's standard easement language. Example temporary construction and permanent maintenance easements are included as Attachment C and Attachment D, respectively.

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41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346
P (678) 382-6700 F (678) 382-6701
dunwoodyga.gov

RECOMMENDED ACTION

Staff recommends adoption of the Stormwater Inspection and Maintenance Policy.

Attachment A

Stormwater Inspection and Maintenance Policy

Attachment B

Table 1: Public Maintenance Responsibility of Surrounding Jurisdictions

Attachment C

Sample Temporary Construction Easement

Attachment D

Sample Temporary Construction Easement



Stormwater Management

Extent of Service

Infrastructure Repairs and Maintenance

March 17, 2017

City of Dunwoody

Stormwater Inspection and Maintenance Policy

1.0 Purpose and Authority

The goal of this Stormwater Management System Inspection and Maintenance Policy is to define the rights and responsibilities of the property owner(s) for maintaining the water quantity and quality functions of Stormwater Best Management Practices (BMPs), as well as provide for City guidance to ensure their proper functioning. This policy is based upon the City of Dunwoody's Stormwater Utility Ordinance (Article V, Chapter 32, Section 32-502 through Section 32-512).

The Metro North Georgia Water Planning District (MNGWPD) and the Georgia Environmental Protection Division's (EPD) Phase II National Pollutant Discharge Elimination System (NPDES) Permit requires municipalities to have fully implemented stormwater facility maintenance programs for public and private facilities. This Stormwater Inspection and Maintenance Policy is also implemented at the direction and requirement of BMP F-2 (MS4 Operation and Maintenance Program) in the City's NPDES Permit.

2.0 Definitions

Roadway - The paved portion of a street from back-of-curb to back-of-curb (or edge to edge of pavement for streets not having curbs) but excluding driveway aprons, bridges, and large single and multi-cell culverts which in a hydrologic sense can be considered to function as a bridge.

Stormwater Management System - Any one (1) or more of the various devices used in the collection, treatment, or movement of storm, flood or surface drainage waters, including all manmade structures or natural watercourses that convey or transport runoff. Such devices may include detention areas, berms, swales, improved watercourses, open channels, bridges, gulches, streams, gullies, flumes, culverts, gutters, pumping stations, pipes, ditches, siphons, catch basins, junction boxes and street facilities; all inlets; collection, drainage or disposal lines; intercepting sewers; disposal plants; outfall sewers; all pumping, power, and other equipment and appurtenances; all extension, improvements, additions, and alterations thereof; and any and all rights or interests in such stormwater facilities. Stormwater facilities expressly excludes any of the foregoing which exist for, or are used exclusively for the purpose of collection, treating, measuring, supplying, or distributing potable water within or as part of the County water supply and treatment system, or any of the foregoing which exist for or are used exclusively for the purpose of collecting, treating, or measuring effluent within or as part of the County sanitary sewer system.

Structural Stormwater Control - A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the direction, quantity, quality, period of release or velocity of flow of such runoff. Structural Stormwater Controls include but are not limited to junction boxes, headwalls, weirs, water quality devices, and outlet control devices.

3.0 Inspection and Maintenance Responsibilities

For all existing and new developments the following inspection and maintenance responsibilities shall apply:

Private Stormwater Management Facilities

Private stormwater management facilities shall be privately owned and it shall be the responsibility of the owner(s) to ensure proper function of the stormwater management facilities located on their property. This shall be accomplished through periodic inspections and routine maintenance by the responsible party. The owner(s) shall maintain a perpetual, non-exclusive easement that allows access for inspection and emergency maintenance activities.

Public Stormwater Facilities

The City of Dunwoody is responsible for inspecting and maintaining stormwater management facilities located on municipal property and within the public right-of-way (ROW). This includes stormwater structural controls on properties owned by the City of Dunwoody and in the public ROW, as well as some pipes draining City streets. Pipes draining City streets are publically maintained in the upstream direction to the nearest stormwater structural control (typically junction box or headwall) from the public ROW. In the upstream direction, drainage infrastructure beyond the nearest stormwater structural control to the public ROW, shall be privately maintained. In the downstream direction, pipes draining City streets are maintained to the downstream headwall. Figure 1 and 2 provide a visual representation of the City's extent of service responsibility.

When a public drainage responsibility exist to a downstream headwall, the area just downstream of the headwall may be City maintained as necessary for 10 feet to ensure the free flow of water and prevent erosion around the headwall.

Figure 1. Aerial View of City's Stormwater Extent of Service

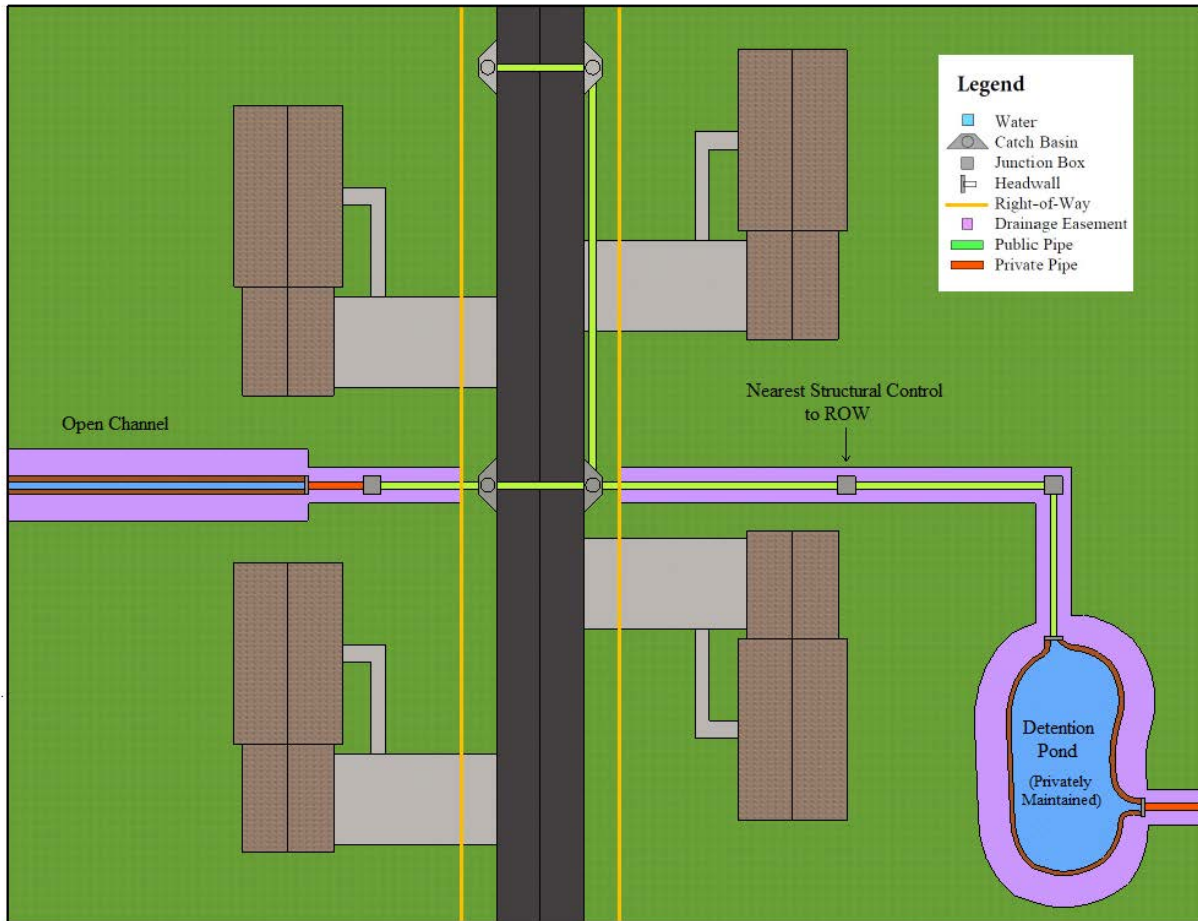
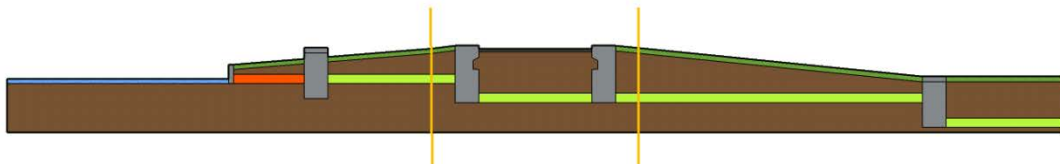


Figure 2. Cross Section View of City's Stormwater Extent of Service



Extensions to City Maintenance Responsibility

Extensions to the stated City maintenance responsibility shall only be made when one or both of the following criteria are met:

- A permanent maintenance agreement exists between the City of Dunwoody and a private property owner. If such an agreement exists, the stated responsibilities in the permanent maintenance agreement shall take precedent to the City's Extent of Service Policy. Maintenance agreements made prior to the existence of the City of Dunwoody or between parties that do not include City of Dunwoody do not meet this criteria.
- Specific field conditions are encountered where the City of Dunwoody has demonstrated legal drainage maintenance responsibility.

3.1 Detention / Retention Ponds and Underground Stormwater Storage Facilities

The following statements identify who will be responsible for structural stormwater controls on private property. All correspondence and violations will be addressed to the responsible party.

In subdivisions with an established homeowners association (HOA) - The HOA shall be the responsible party.

In subdivisions without an established HOA - The owner(s) of the property that the facility is on or serviced by shall be the responsible party. The City will only issue maintenance requests and violations to the responsible party. This in no way shall hinder the rights of the property owner(s) to involve the other property owners that the facility serves.

In commercial and industrial developments - The property owner(s) shall be the responsible party.

In properties with a Stormwater Management Inspection and Maintenance Agreement - The responsible party as well as the responsibilities shall be described in the agreement.

The City of Dunwoody has a maintenance responsibility only if the facility is located on property owned by the City of Dunwoody, is located on Public ROW, or an existing maintenance agreement has been established between the City of Dunwoody and the private property owner. Maintenance agreements made prior to the existence of the City of Dunwoody or between parties that do not include the City of Dunwoody do not apply to the City's maintenance responsibility.

3.2 Pipes

Residential - Pipes draining City streets are publically maintained in the upstream direction to the nearest stormwater structural control (typically junction box or headwall)

from the public ROW. In the upstream direction drainage infrastructure beyond the nearest stormwater structural control to the public ROW, shall be privately maintained. In the downstream direction, pipes draining City streets are maintained to the downstream headwall. See Figure 1 and 2 for a visual representation of the City's extent of service responsibility.

Stormwater Infrastructure not connected to pipes draining City Streets shall be privately maintained. Driveway pipes or pipes supporting the driveway apron to access residential property shall be privately maintained.

Commercial - The property owner(s) shall be responsible for any pipes that are located on private commercial property. For any pipe that crosses a property line between private and public property, the City will determine who is responsible for maintenance on a case-by-case basis. Driveway pipes or pipes supporting the driveway apron to access commercial property shall be privately maintained.

3.3 Driveway Aprons

Maintenance and repair of driveway aprons are the responsibility of the property owner in the City of Dunwoody. Drainage problems that arise from driveway aprons which were not constructed to the specifications of Dekalb County Standard Detail 709 and 710 are the responsibility of the private property owner.

3.4 Open Channels

Residential and commercial - The property owner(s) shall be responsible for maintaining normal unobstructed flow of any open channel(s) located on private property. This may include, but not be limited to ditches, swales, and creeks.

RipRap Program - The City has established a RipRap program to assist homeowners with erosion problems along open channels on their property. The City will deliver RipRap free of charge to the ROW adjoining the homeowner's property, if 1) the public works department confirms that a channel stability issue exists and 2) the property owner signs an Environmental Affidavit. Installation of the rip rap into the channel is the responsibility of the private property owner(s).

3.5 Records of Maintenance Activities

The responsible party shall keep documentation of all of their inspections and maintenance activities and provide this documentation to the Stormwater Division of the Department of Public Works upon request.

3.6 City Maintenance Activities not located on Public Right of Way

When it is determined that a City maintenance responsibility exists outside of the public right of way and a temporary or permanent maintenance easement is required before

performing a repair, the City and private property owner must establish a maintenance agreement containing the City's standard easement language, before City funded repairs occur. After City infrastructure repairs are completed, the City will establish groundcover consisting of grass, mulch or pine straw on areas disturbed by the maintenance activity. The City is not responsible for restoration or replacement of structures, hardscapes, landscaping or other private investments that were installed in existing drainage easements.

4.0 City Inspection Programs for Privately-Owned Facilities

The Stormwater Division of the Public Works Department has established an inspection and maintenance program, as required by the City's NPDES permit, for privately-owned structural stormwater controls. The inspection program includes routine inspections; random inspections; requested inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to: visual inspections; review of maintenance and repair records; sampling of discharges; and evaluating the condition of structural stormwater controls and practices.

- The City will not involve itself in private property disputes or other legal actions between property owner(s).
- The City may provide technical assistance and riprap to assist with the maintenance and stabilization of stormwater management facilities.
- The City inspection program has a goal of inspecting 20 Percent of all stormwater infrastructure per year.

4.1 Emergency Maintenance / Failure to Maintain

In accordance with Section 16-36 of the City's Stormwater Utility Ordinance, the Stormwater Division of the Department of Public Works may conduct emergency maintenance if the responsible party fails or refuses to maintain their stormwater management facility in proper working order. The City may correct a violation by performing the necessary work to place the facility in proper working condition. The City may assess the responsible party for the cost of the repair work that shall be a lien on the property, and may be placed on the ad valorem tax bill for such property and collected in the ordinary manner for such taxes.

5.0 Categorizing Project Request

The order of response to these projects will be determined by the category of the request. Requests for projects will be categorized as:

- Category I: Posing an immediate danger or threat to public safety,

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- Category II: Rapidly degrading to a dangerous condition, or
- Category III: Maintenance or cosmetic repair.

Projects in Category I will receive priority.

City Public Works staff will review project requests and will perform the initial project categorization. Public Works staff will periodically monitor the conditions at the project location prior to repair/maintenance and will modify the categorization when needed.

Table 1: Public Maintenance Responsibility of Surrounding Jurisdictions

Public Maintenance Responsibility	Right of Way	Upstream of Right of Way	Downstream of Right of Way
Fulton County	Yes	Yes	Yes
City of Sandy Springs	Yes	Review Required	Review Required
City of John's Creek	Yes	No	Only under limited condition
City of Alpharetta	Yes	No	Yes
City of Roswell	Yes	Limited to first Structure	Yes
DeKalb County	Yes	Yes	Yes
City of Brookhaven	Yes	Review Required	Yes
Cobb County	Yes	Yes	Yes
City of Marietta	Yes	No	No
Proposed City of Dunwoody	Yes	Limited to first Structure	Yes

*Information above was obtained from staff conversations with representatives of surrounding jurisdictions and/or review of Service Policies. Information above assumes that infrastructure was included on final plat and located within a drainage easement.

Recording Stamp:

**RIGHT OF ENTRY AND
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2017. By and Between XYZ (hereinafter referred to collectively as "Owner"), and the CITY OF DUNWOODY, GEORGIA.

WHEREAS, Owner holds title to certain real property located at (hereinafter referred to as the Property):

Mailing Address: _____
Legal Address: Tax Parcel: _____
Land Lot(s): XYZ, XYZ District
DeKalb County, City of Dunwoody, Georgia
Deed Book _____, Page _____
DeKalb County, Georgia Records

WHEREAS, the City of Dunwoody has determined that a XYZ easement area defined and delineated by the highlighted area on the plat attached as Exhibit "A" "Right of Entry and Temporary Construction Easement" is necessary for stormwater infrastructure maintenance.

NOW, THEREFORE, for and in consideration of One dollar (\$1.00) and other valuable consideration in hand paid by each party to the other, it is HEREBY AGREED as follows:

1. Right of Entry and Construction Easement: Owner grants a Right of Entry and Temporary Construction Easement to the City of Dunwoody, its agents, employees and contractors, to enter and use the Temporary Easement for the accommodation of construction equipment and materials necessary for completion of the City of Dunwoody's stormwater infrastructure, as described above and shown on the attached Exhibit "A".
2. Restoration: Upon completion of the construction project, the City of Dunwoody, or its agents shall return the Temporary Construction Easement area and all portions of the property affected by use of the easement to a condition reasonably comparable to the condition in which it existed prior to the City of Dunwoody's use of the easement area. Specific landscape items to be restored, re-planted, or replaced are as follows:
 - a. _____;
 - b. _____, and
 - c. _____.

Recording Stamp:

3. The Owner is prohibited from the following:
 - a. Importation of fill or debris into the easement area;
 - b. Any modifications to the structure(s) or any action which increases the volume of stormwater entering into the storm drain infrastructure without the City of Dunwoody's approval;
 - c. Performing any action violating a State or Federal Law or Local ordinance with respect to the detention facility or stormwater infrastructure.
4. The Owner understands and agrees that the City of Dunwoody has the right to remove any tree(s), landscaping, vegetation, or structures which obstruct access within the easement area or which impair or damage the stormwater infrastructure.
5. The Owner agrees that the City of Dunwoody can assign its rights and responsibilities under the agreement.
6. The Owner understands that this easement is contingent on applicable permits being issued, bids within the City of Dunwoody's budget for this project, and Final Approval by the City Council of the City of Dunwoody.
7. The Owner understands that this agreement may or may not be Recorded at the DeKalb County, Georgia Records.
8. All notices provided for or permitted to be given pursuant to this Agreement must be in writing and shall be deemed to have been properly given or served by deposit in the United States mail. The parties designate the following addresses as the respective places for giving such notice:

For the City of Dunwoody:
City of Dunwoody
Attn: City Manager
41 Perimeter Center East, Suite 250
Dunwoody, Georgia 30346

For the Owner:

9. This agreement shall be binding upon and endure to the benefit of the parties hereto and their respective executors, administrators, heirs, successors and successors-in-title, whether voluntary by action of the parties or involuntary by operation of law. IT IS HEREBY STIPULATED AND AGREED that this Agreement constitutes a covenant running with the land herein described for a duration of 6 months.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal as of the date of acceptance by Owner.

Recording Stamp:

OWNER(S):

Unofficial Witness

Grantor

Notary Public
(Seal)

Grantor (Printed Name)

CITY OF DUNWOODY:

CITY OF DUNWOODY, GEORGIA

By: _____
Mayor

Notary Public

Attest:

Approved as to Form:

City Clerk

Office of the City Attorney

Sample Easement

Recording Stamp:

PERMANENT DRAINAGE AND MAINTENANCE EASEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____, 2017. By and Between XYZ (hereinafter referred to collectively as "Owner"), and the CITY OF DUNWOODY, GEORGIA.

WHEREAS, Owner holds title to certain real property located at (hereinafter referred to as the Property”):

Mailing Address: XYZ
XYZ
Legal Address: Tax Parcel: XYZ
Land Lot(s): _____, 18th District
DeKalb County, City of Dunwoody, Georgia
Deed Book XYZ, page ,
DeKalb County, Georgia Records.

WHEREAS, the City of Dunwoody has determined that a _____ Permanent Drainage and Maintenance Easement area defined and delineated by the highlighted area on the attached Exhibit “A” is necessary for Maintenance and repair of stormwater infrastructure

Based upon the proposed construction the City of Dunwoody has agreed to accept maintenance responsibility for the stormwater infrastructure upon the terms and conditions set forth herein below.

NOW, THEREFORE, for and in consideration of One dollar (\$1.00) and other valuable consideration in hand paid by each party to the other, it is HEREBY AGREED as follows:

1. The City of Dunwoody agrees to maintain the stormwater infrastructure located within the Stormwater Drainage Easement Area, as defined and delineated by the highlighted area on the attached Exhibit “A”, in a structurally sound condition so that it satisfies the stormwater management function to protect the public health, safety, and welfare. The City of Dunwoody, however, has no obligation to otherwise maintain portions of the stormwater drainage easement area that do not include the stormwater infrastructure, including, without limitation, driveways, landscaping, walls, patios, and fences.
2. The City of Dunwoody, or its agents, shall return all portions of the property affected by use of the Permanent easement to a condition reasonably comparable to the condition existing prior to the City of Dunwoody’s activity under the easement agreement.
3. During and throughout the term hereof, the Owner hereby agrees to provide prompt notice to the City of Dunwoody of any maintenance issues regarding the Stormwater Infrastructure.
4. The Owner hereby grants to the City of Dunwoody a permanent stormwater drainage

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easement over and under that certain portion of the Property identified as the Permanent Stormwater Drainage and Maintenance Easement Area for the purposes of inspection, maintenance, and improvements to the stormwater infrastructure.

5. The Owner hereby grants the City of Dunwoody the right of entry in and upon the Property as necessary for the purpose of accessing the Permanent Stormwater Drainage and Maintenance Easement Area to perform any required maintenance or improvements.
6. The Owner is prohibited from the following:
 - a. Importation of fill or debris into the easement area;
 - b. Any modifications to the structure(s) or any action which increases the volume of stormwater entering into the storm drain infrastructure without the City of Dunwoody's approval.
 - c. Erecting or maintaining any building or structure of any nature whatsoever;
 - d. Installing any trees, which would obstruct the City of Dunwoody's ability to maintain the stormwater infrastructure or impair the stormwater infrastructure;
 - e. Performing any action violating a State or Federal Law or Local ordinance with respect to the detention facility or stormwater infrastructure.
7. The Owner understands and agrees that the City of Dunwoody has the right to remove any tree(s), landscaping, vegetation, or structures which obstruct access within the easement area or which impair or damage the stormwater infrastructure.
8. The Owner agrees that the City of Dunwoody can assign its rights and responsibilities under this agreement.
9. The Owner understands and agrees that this easement is contingent on any applicable permits being issued, bids within the City of Dunwoody's budget for this project, and Final Approval by the City Council of the City of Dunwoody.
10. The Owner understands that this agreement will be Recorded at the Dekalb County, Georgia Records.
11. All notices provided for or permitted to be given pursuant to this Agreement must be in writing and shall be deemed to have been properly given or served by deposit in the United States mail. The parties designate the following addresses as the respective places for giving such notice:

For the City of Dunwoody:

City of Dunwoody
 Attn: City Manager
 41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30346

For the Owner:

XYZ
 XYZ
 XYZ

Recording Stamp:

12. This agreement shall be binding upon and endure to the benefit of the parties hereto and their respective executors, administrators, heirs, successors and successors-in-title, whether voluntary by action of the parties or involuntary by operation of law. IT IS HEREBY STIPULATED AND AGREED that this Agreement constitutes a covenant running with the land herein described.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal as of the date of acceptance by Owner.

OWNER(S):

Unofficial Witness

Grantor

Notary Public
(Seal)

Grantor (Printed Name)

CITY OF DUNWOODY:

CITY OF DUNWOODY, GEORGIA

By: _____
Mayor

Notary Public

Attest:

City Clerk

Approved as to Form:

Office of the City Attorney