

Mediated Settlement Agreement

After mediation before Judge Mel Dickstein (ret'd), the parties agreed to settle as follows:

1. See Exhibits A and B, which are hereby expressly incorporated by reference.
2. The parties release each other from any and all claims, including but not limited to, any claims made, or that could have been made, in the Lawsuit of *Dana Taylor and Suzanne Taylor, husband and wife v. The City of St. Paul* (the "Lawsuit"). The Lawsuit has been served, but not filed, in Ramsey County District Court. Within a reasonable timeframe following the City's payment made pursuant to Exhibit A, Plaintiffs Dana Taylor and Suzanne Taylor (the "Taylors") shall formally notify Defendant City of Saint Paul (the "City" or "Saint Paul") of the dismissal of the Lawsuit in writing.
3. Neither the Mediated Settlement Agreement, nor the terms of this Agreement, shall be deemed to be an admission of liability for any claims asserted in the Lawsuit. All such liability is expressly denied by the parties.
4. Pursuant to the Minnesota Mediation Act, the parties are advised that: (a) the mediator has no duty to protect the parties' interests or provide them with information about their legal rights; (b) signing the mediated agreement may adversely affect the parties' legal rights; and (c) the parties should consult an attorney before signing a mediated settlement agreement parties if they are uncertain of their legal rights.
5. The Agreement to Mediate is incorporated herein.
6. The Mediated Settlement Agreement, together with the incorporated Exhibits A and B, represents the entire agreement between the parties.
7. This agreement may be signed in counterpart. Signature pages may be transmitted via email as PDF documents and each, once signed, shall be deemed an original.
8. To the extent the parties contemplate executing additional documents to effectuate or implement this Mediated Settlement Agreement, they shall cooperate in good faith with each other and shall include commercially reasonable terms. Nonetheless, this Mediated Settlement Agreement is binding and enforceable subject to the terms in paragraph 10 herein.
9. Any and all disputes arising out of Mediated Settlement Agreement, including the making of this Mediated Settlement Agreement, or the negotiation, drafting, or execution of any additional documents to effectuate or implement this Mediated Settlement Agreement, shall be submitted to binding arbitration. Mark J. Heley shall serve as Arbitrator. If Mr. Heley is unable to serve as Arbitrator, the parties shall endeavor to agree on the selection of an Arbitrator. If agreement cannot be reached on the identity of the Arbitrator, either party may petition to the Ramsey County District Court to appoint the Arbitrator. The arbitration shall be conducted on an

expedited basis according to the rules and procedures established by the Arbitrator. Judgment upon the award may be entered in Ramsey County District Court.

10. The terms of this Settlement Agreement and all related Exhibits are subject to the final approval of the Saint Paul City Council and the City's payment made pursuant to Exhibit A, and shall not be binding on the City until such time as the Saint Paul City Council has approved the settlement terms and the City has made payment pursuant to Exhibit A.

The City of St. Paul

Dated: _____

By: _____

Name: _____

Its: _____

Dated: 03/10/2021

Dana Taylor



Dated: 03/10/2021

Suzanne Taylor

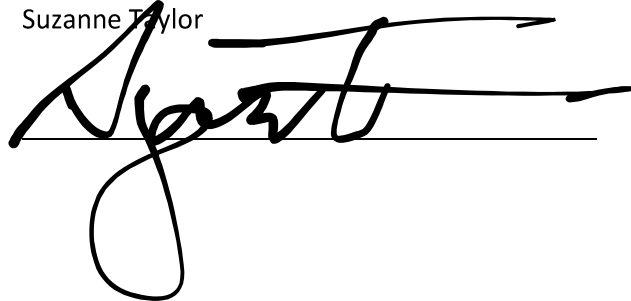
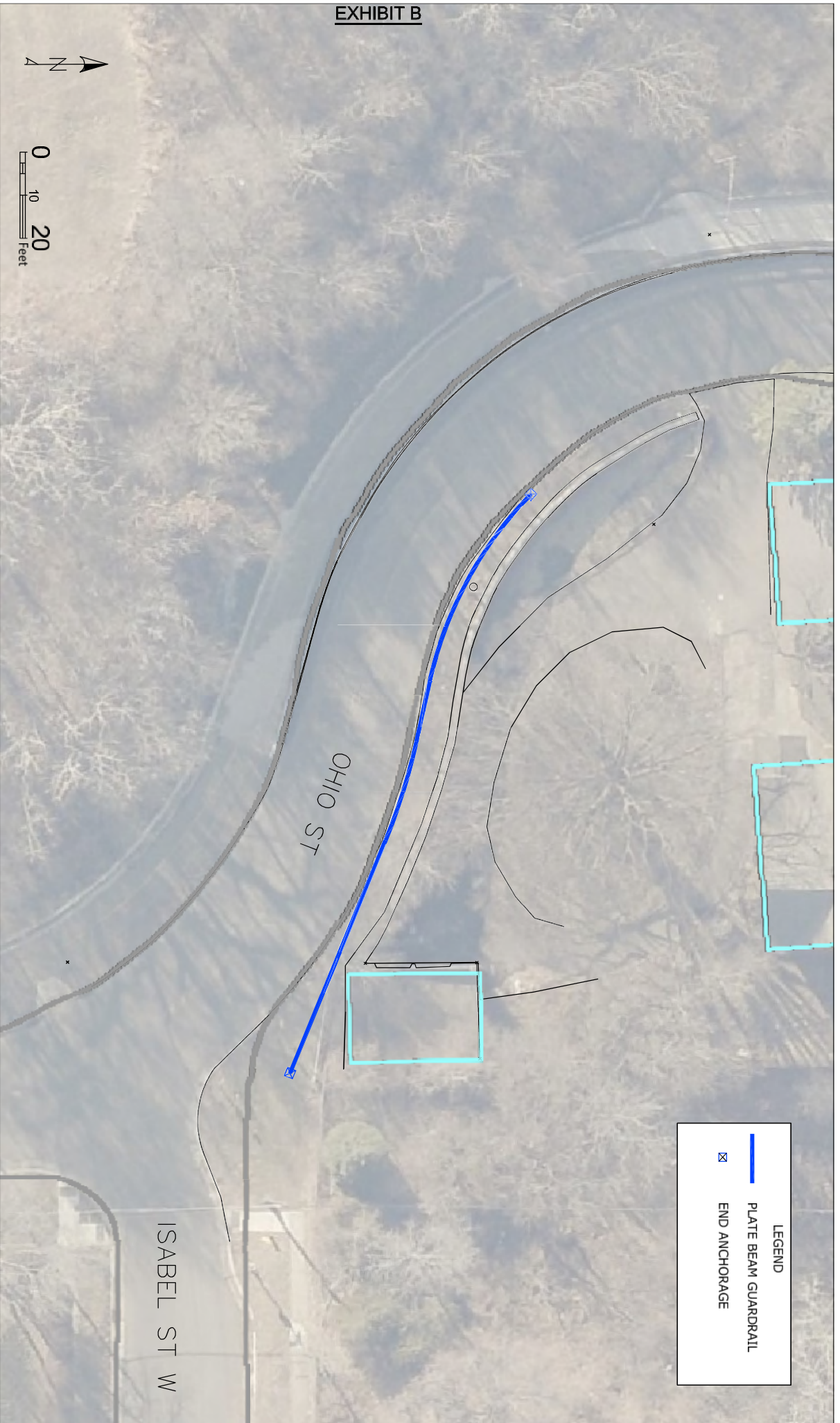


EXHIBIT A

1. The City agrees that Plaintiffs Dana Taylor and Suzanne Taylor (“the Taylors”) will hire Carl Bolander & Sons Co. (“Bolander”) to design and construct the project outlined in a January 4, 2021 estimate from Bolander (the “Project”), which includes a sloped embankment to support the adjacent property above 420 Ohio Street (the “Property”), subject to the City’s final approval of the design (which will not be unreasonably withheld). The Project will be memorialized in design documents signed by a Professional Engineer registered in the State of Minnesota, reflecting that the Project will incorporate soil density/compaction adequate to provide required lateral support. The City’s final approval of the Project’s design shall not make the City liable or otherwise responsible for any deficiency which may be present in the design, or any subsequent, related failure which may occur as a result of any such deficiency. The Project will be accomplished to achieve the dual purpose of providing sufficient lateral support for the adjacent property, as well as maintaining the value and the Taylors’ use of their Property.
2. The City will contribute \$50,000 (Fifty Thousand Dollars) to the Project. The Taylors will be responsible for funding all remaining costs necessary to complete the Project. The City shall make its \$50,000 payment to the Taylors within a reasonable timeframe following the final approval of the Settlement Agreement by the Saint Paul City Council, by no later than May 1, 2021. The parties agree that the City’s payment of \$50,000 is an express condition precedent to the Settlement Agreement, which is not effective or legally binding until the City makes the \$50,000 payment to the Taylors.
3. The City agrees to design and install guardrail along Ohio Street along the roadway as it passes the southern perimeter of the Taylors’ property. The guardrail would be located adjacent to the slope and the roadway, with appropriate end treatment. The guardrail would pass between approximately the southern edge of the Taylors’ driveway and the existing section of guardrail currently in place near the southern edge of the Property, as reflected on the diagram attached as Exhibit B. The City is required to consult with Bolander on the final design and installation location of the guardrail. The City shall also coordinate with Bolander on the date of installing the guardrail within 30 days following Bolander’s completion of the sloped embankment referenced in Paragraph 1 of this Exhibit A.
4. The Taylors agree to maintain the sloped embankment and landscaping on their Property up to the fence or other barrier installed on the Taylors’ Property, in the vicinity of the previous location of the retaining wall (the “Perimeter”). After Bolander completes the Project on the Property, the Taylors agree that they shall not make any physical change to the Property which shall have the effect of removing or reducing the lateral support provided to the adjacent property adjoining the southern border of the Property. The City agrees not to make any physical improvement to the adjacent property adjoining the southern border of the Property which shall have the effect of requiring the need for additional lateral support to be installed on the Property. Normal maintenance operations such as sweeping, normal rehabilitation or reconstruction work, and/or snow/ice clearing/removal operations by the City shall not be prohibited by this Exhibit A. The obligation identified in this Paragraph shall bind the parties and all successors and assigns. The parties agree to memorialize the obligations related to lateral support referenced in this paragraph through an appropriate recorded document.

5. The City agrees to mow the grass and tall weeds lying in the area between the Perimeter and the curb of Ohio Street. The City further agrees to mow the grass lying in the area north of the driveway between the retaining wall and the curb of Ohio Street. The City's mowing obligation shall include only the perimeter of the Taylors' property, and shall not include any additional area outside the perimeter of the Taylors' property. Mowing will be scheduled on a periodic basis at the City's sole discretion, based on condition of the site and consistent with City priorities. The Taylors will hold the City harmless for minor damage to the Property arising from its mowing activities. City shall not be liable for incidental contact with the Taylors' fence and/or north retaining wall which may occur during the mowing process. The mowing obligation referenced herein shall not bind the City as to any subsequent owner of the Property other than the Taylors.
6. The Taylors and the City will draft a mutually acceptable retraction of Councilmember Noecker's statements regarding the closure of Ohio Street and the Property, which the City will issue to any individuals to whom Councilmember Noecker's office sent any statements incorrectly stating that a correction notice had been issued to the Taylors in connection with the collapse of their retaining wall. The statement will also explain that the City and the property owners have reached a satisfactory resolution to repair the damaged retaining wall in order to reopen Ohio Street. The City shall cause the statement to be issued by no later than May 31, 2021.
7. The Taylors will work diligently with Bolander to complete the portion of the Project that provides structural support for Ohio Street by June 18, 2021. The Taylors will not be responsible for any delays caused by weather, scheduling issues, crew availability, strikes, riots, acts of God, shortages of labor or materials, national emergency, pandemic, acts of a public enemy, governmental restrictions, laws or regulations, or any other cause or causes, whether similar or dissimilar to those enumerated, beyond their reasonable control.
8. The parties shall bear their own attorneys' fees and expenses incurred to date in connection with this dispute.

EXHIBIT B



Drawn: 3/9/21

Ohio Street Guardrail Proposal