

Based on the most recent comments to the Road Construction Agreement, we thought it would be helpful to summarize our main deal points regarding the parties' construction rights and obligations. We would also like to add a couple of new provisions, which are shown in italics.

Deal Points:

A. Construction Prior to Expiration of BSP

1. Construction by NorthPoint

a. Jointly Funded ROW Segment. NorthPoint will design and construct road improvements and water, sewer and stormwater mains for the "Jointly Funded ROW Segment" (59th Avenue frontage between M-51 Industrial's Property and NorthPoint's properties). M-51 will reimburse NorthPoint for one-third of the costs of such construction. NorthPoint will install a minimum of two stormwater stubs, two sewer stubs and four water stubs for M-51, and M-51 will be responsible for the cost of the stubs.

b. BSP Streets (160<sup>th</sup> Street NE and 59<sup>th</sup> Avenue Extension). NorthPoint will design and construct road improvements in the BSP Streets to provide access from M-51's property to 51st Avenue N.E. and 152nd Street N.E, and NorthPoint will construct water, sewer and stormwater mains in the BSP Streets as necessary to connect the M-51 Property with operational water, sewer and stormwater mains and to connect the M-51 Property with the new stormwater system. NorthPoint will pay 100% of such costs.

c. Required Stormwater Improvements: NorthPoint will design and construct a stormwater system (consisting of Edgecomb Creek Stub, Bypass Pipeline and stormwater mains in the BSP Streets) to convey stormwater from the M-51 Property to relocated Edgecomb Creek. NorthPoint will pay such construction costs.

d. Required Improvements. The defined term "Required Improvements" in the Agreement means all of the improvements described in 1a, 1b and 1c above.

2. Construction by M-51 Industrial

a. M-51 Election to Construct. If NorthPoint has not constructed the Required Improvements by the time that M-51 desires to develop its property, M-51 shall have the right (but not the obligation) to construct all or some of the Required Improvements, after giving notice per Section 6 of Agreement. M-51 may perform such construction in one or more phases.

b. Costs Allocation. NorthPoint will reimburse M-51 for one-third of the costs of construction with respect to improvements constructed by M-51 in the Jointly Funded ROW Segment. NorthPoint will reimburse M-51 for all costs of construction of improvements in the BSP Streets and the Required Stormwater Improvements.

c. No Joint Construction. The notice provision in Section 6 requires M-51 to give notice of its intent to construct all or portion of the Required Improvements and to identify the location of such work (i.e., segments of the Jointly Funded Segment, BSP Streets or the Required Stormwater Improvements), whereupon Northpoint may give notice that it intends to perform such

work in the same location. The intent is that the parties may not perform construction of the improvements at the same time.

3. Approved Plans. All improvements constructed by NorthPoint and M-51 prior to expiration of the BSP shall be constructed per the BSP and plans and permits approved by the City.

4. Dedication. Upon completion of the road and utility improvements in the Jointly Funded ROW Segment and acceptance of such improvements by the City, NorthPoint will pay \$109,165 to M-51 for the east 30 feet of M-51's property, M-51 will record a dedication deed to convey such 30 feet to the City, and NorthPoint will dedicate the portion of the Jointly Funded ROW Segment on the NorthPoint Property to the City.

B. Construction After Expiration of BSP. After expiration of the BSP, M-51 shall have the right to construct and maintain road, utility and stormwater improvements in the general area of the Required Improvements as necessary to develop the M-51 property, in accordance with plans approved by the City. M-51 shall pay the costs of construction and maintenance.

C. Maintenance. *[NEW NorthPoint will be responsible, at its cost, to maintain the Required Improvements in the BSP Streets until the improvements are dedicated to the City.]* NorthPoint will be responsible, at its cost, to maintain the drainage ditch used by M-51 for drainage to Edgecomb Creek and for maintenance of completed segments of the new stormwater system until the Required Stormwater Improvements are completed and dedicated as a public utility.

D. Easements

1. Stormwater Easement to M-51. M-51 is presently using a drainage ditch along 59<sup>th</sup> Avenue NE to convey stormwater to Edgecomb Creek. If NorthPoint constructs the new stormwater system in phases, M-51's stormwater system will consist of the drainage ditch for the unconstructed portion of the stormwater system together with the completed, operational segments of the stormwater system (collectively, the "Temporary Stormwater System"). NorthPoint grants a stormwater easement to M-51 for conveyance of stormwater through the drainage ditch and the Temporary Stormwater System. The easement will stay in effect until the final stormwater system is completed and dedicated as a public utility. If the stormwater system is not constructed, M-51's easement to use the drainage ditch shall be perpetual. *[NEW Effective upon expiration of the BSP, any modification of the drainage ditch and constructed segments of the stormwater system serving M-51's property shall require M-51's prior written approval.]*

2. Temporary Construction Easement to NorthPoint. M-51 grants NorthPoint a temporary construction easement for access to construct road and utility improvements in the Jointly Funded ROW Segment. The width of the easement area on exhibits is 95 feet wide. The easement expires when the BSP expires.

3. Access, Utility and Construction Easements to M-51. NorthPoint grants an access and construction easement to M-51 in and across the BSP Streets, permitting M-51 to use the BSP Streets for vehicular and pedestrian access and utilities, until such time as the improvements are dedicated to the City. NorthPoint also grants an easement to M-51 to construct and maintain the Required Improvements in the event M-51 elects to construct such improvements under Section 6 of the Agreement. If the Required Improvements have not been constructed by the time the BSP

expires, the Access, Utility and Construction Easements shall continue in effect; provided that, effective on the BSP expiration date, M-51 will have the right to construct road, utility and stormwater improvements in accordance with new approved plans and permits, in the same general locations as the Required Improvements. In that case, M-51 will pay the costs of such construction.

4. Additional Utility Easements. Northpoint grants M-51 a perpetual easement to construct utility improvements in strips of land adjoining both sides of the BSP Streets. The width of the easements are 10 feet.