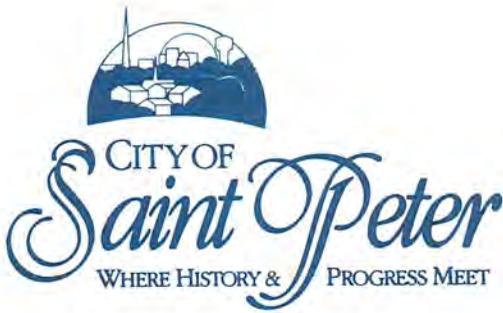


**CITY OF SAINT PETER, MINNESOTA
AGENDA AND NOTICE OF MEETING**

Special City Council Meeting of Monday, June 2, 2014
Public Works Building Conference Room – 5:30 p.m.
405 West St. Julien Street

- I. CALL TO ORDER
- II. LINDSEY TERMINAL (HOLIDAY) PURCHASE AGREEMENT/EASEMENTS
- III. ADJOURNMENT

Office of the City Administrator
Todd Prafke



Memorandum

TO: Honorable Mayor Strand
Members of the City Council

DATE: 5/30/2014

FROM: Todd Prafke
City Administrator

RE: Lyndale Terminal (Holiday) Right of Way/Temporary Easement

ACTION/RECOMMENDATION

Approve a resolution providing for acquisition of right-of-way and a temporary construction easement at the intersection of St. Julien and Old Minnesota Avenue and directing staff to sign all related documentation related to MnDOT's work on St. Julien Street.

BACKGROUND

The Council has discussed this issue on many, many occasions so my memo will be brief and not outline the entire Highway 169 project.

A special meeting has been requested as we are up to the deadline for documentation and property acquisition to occur on St. Julien in coordination with MnDOT.

As members may remember our work with MnDOT has included the acquisition of the rights of way that would be needed for both the Highway 169 project and any change that is made to the St. Julien/Old Minnesota Intersection. Appraisal work has been completed, legal descriptions finalized, negotiations with Lyndale Terminal Company have been completed and MnDOT Highway 169 plans have been bid.

Lyndale Terminal (Holiday) has agreed to the acquisition and construction easements and the timing is appropriate to complete the transaction.

This transaction is requested based on two primary reasons:

- This action enables and allows MnDOT to do work on St. Julien in connection with the Highway 169 project. This will improve the City street at no cost to the City other than the acquisition costs. The construction raises the roadway out of the flood plan making the interconnection of St. Julien and Highway 169 work seamlessly. This also allows the changes in the driveways that we have discussed previously, which are agreed to by Lyndale Terminal (Holiday). If the Council does not take this action work on St. Julien adjacent to Lyndale Terminal (Holiday) will not take place which has a number of ramifications that we have discussed previously so I have not reiterated the same in this memo. In addition, Holiday now wants these changes, exemplified by their agreement

and signature, so they would be disappointed if this work was not included as a part of the Highway 169 project.

- It provides the property needed for the City to improve the St. Julien/Old Minnesota Intersection. As discussed at a previous Council meeting during the Right-Of-Way Plat #3 discussion, this property and easements are needed whether you put in the alternative treatment or a roundabout. Again both intersection designs have the same footprint so the land needed is the same for either. This does not provide for the building of a roundabout, but it does provide the land needed whether a roundabout or the alternative treatment is pursued.

Monday is the last day that MnDOT will accept the documents and include in the project. We come to you with short notice as all the negotiations were just completed earlier today.

Members may recall that the process was different for the McDonald's and Holiday properties due to the initial stance taken by McDonald's and their inclusion in this project.

As stated above, Lyndale Terminal (Holiday) wishes to be included in this 169 project as they see a clear benefit for this work to them and their property.

FISCAL IMPACT:

Funding is provided by Municipal State Aid funds and the debt issuance you completed late last year. Costs fall in line with our anticipated budget amount and are \$201.65 or \$1.85 per sq. ft.

ALTERNATIVES/VARIATIONS:

Do Not Act: Work on St. Julien will not take place as a part of this project

Denial: Work on St. Julien will not take place as a part of this project

Modification of the Resolution: This is always an option of the Council.

Please feel free to contact me if you have any questions or concerns about this agenda item.

TP/bal

TEMPORARY CONSTRUCTION EASEMENT GRANT

TO

THE CITY OF SAINT PETER, MINNESOTA

Dated May 28, 2014

FOR VALUABLE CONSIDERATION, LYNDALE TERMINAL CO., a Minnesota corporation, Grantor, hereby grants and conveys to the **CITY OF SAINT PETER**, a municipal corporation, Grantee, its successors or assigns, a temporary easement for construction of a roadway and public utilities over, under and across the property legally described as follows, to-wit:

Parcel 6E, as depicted on Exhibit "A", attached hereto and incorporated herein, and entitled "TEMPORARY EASEMENTS Saint Julien Street – Old Minnesota Avenue.

The Grantor shall fully use and enjoy the aforesaid premises, except as to the rights herein granted; and the Grantee shall hold and save the said Grantor harmless from any and all damage arising from its use of the right, and easement herein granted and agrees to pay any damage or damages which may arise to the property, premises, or rights of the Grantor through Grantee's use, occupation, and possession of the rights herein granted.

The Grantor herein for himself, his heirs and representatives, does grant the right at all times to Grantee, its employees and agents, to go upon the above described premises for the purpose of erecting, constructing, excavating, and supplying, the utilities, at the discretion of the Grantee, upon completion of the installation of the utilities, the Grantee shall restore the premises to its pre-existing smooth mowable

condition and shall exercise caution to minimize tree impact within the temporary easement area.

This Temporary Construction Easement shall expire and be of no further force and effect upon the completion of construction of the roadway and public utilities, but in no event later than August 15, 2015. This Temporary Construction Easement is subject to the further terms and conditions on Exhibit B.

The terms and provisions hereof shall run with the land and shall extend to and bind the representatives, successors and assigns of the parties hereto.

LYNDALE TERMINAL CO.


By: James R. Hupp
Its: Assistant Secretary

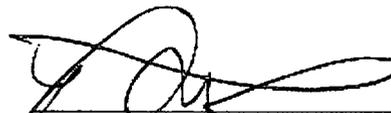
STATE OF MINNESOTA)

) ss.

COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 28th day of May, 2014, by James R. Hupp, the Assistant Secretary of Lyndale Terminal Co., a Minnesota corporation, on behalf of the corporation, Grantor.





Notary Public

EXHIBIT B

- 1) Grantee will perform all construction in a good and workmanlike manner and will keep the improvements in good maintenance and repair at its sole cost and expense.
- 2) Grantee will give written notice to Grantor at least 10 days before beginning any work in the easement area, which notice will specify the work to be performed and a date when the work will be completed. Grantee will use its best efforts to complete the work by that date.
- 3) Unless otherwise agreed in writing, immediately after Grantee completes any work in the easement area, Grantee will restore the easement area to the same or better condition as it was in before Grantee began the work and to a safe condition and will remove all of its equipment, tools, trash and debris from the easement area.
- 4) Unless otherwise agreed in writing, Grantee will not move, remove or demolish any of Grantor's signs, access drives, curbing or other improvements located within the easement area.
- 5) Grantee will separate by cones or other appropriate construction safety barriers ("cone off") the easement area while Grantee performs any work in the easement area.
- 6) Grantee will perform all work in such a manner so as to not unduly disrupt the operation of the gas station/convenience store on grantor's property. Grantee will not "cone off" or block in any manner more than half of any access drive at any time, allowing at least one lane open at all times in each access drive for vehicular traffic.
- 7) Grantee will not park on or store any construction vehicles, equipment or materials within the easement area or on Grantor's other property.
- 8) If any damage occurs to Grantor's property or any improvements thereon arising out of, related to, or as a consequence of any of Grantee's work in the easement area, Grantor promptly will notify Grantee in writing of the damage. Unless otherwise agreed by the parties, Grantee will repair the damage (or commence and diligently pursue repairing the damage) within 30 days after receipt of Grantor's notice.
- 9) If Grantee defaults under any provision of the easement agreement, in addition to any other remedies available in law or equity, Grantor will be entitled to: 1) terminate this easement on written notice; 2) obtain specific performance or any other appropriate equitable relief against Grantee; and/or 3) in the case of incomplete repairs, Grantor may complete the necessary repairs, and Grantee promptly will pay Grantor for the actual cost of the repairs plus 20% for overhead costs and expenses.

Drafted by:
James W. Brandt
219 W. Nassau,
St. Peter, MN 56082

PURCHASE AGREEMENT

1. PARTIES. This Purchase Agreement is made on _____, 2014, by and between the City of Saint Peter, a municipal corporation, 227 South Front Street, Saint Peter, Minnesota, hereinafter referred to as **CITY**, and Lyndale Terminal Co., a Minnesota Corporation, 4567 American Boulevard West, Minneapolis, Minnesota, 55437, Attention Real Estate, hereinafter referred to as **LYNDALE TERMINAL**.

2. OFFER/ACCEPTANCE. **CITY** offers to purchase and **LYNDALE TERMINAL** agrees to sell real property legally described as follows, to-wit:

Parcel 5N according to the City of Saint Peter Right-of-Way Plat No. 3 on file and of record in the Office of the County Recorder within and for Nicollet County, Minnesota;

Temporary Construction Easement – Parcel 5E consisting of 2148 square feet;

located at City of St. Peter, County of Nicollet, State of Minnesota.

3. ACCEPTANCE DEADLINE. This offer to purchase, unless accepted sooner, shall be null and void at 11:59 p.m., June 5, 2014, and in such event all earnest money shall be refunded to **CITY**.

4. PRICE AND TERMS. The price for the real property included in this sale is Two Hundred one and 65/100ths Dollars (\$201.65) (\$1.85 per square foot) which **CITY** shall pay in cash on or before August 1, 2014, the date of closing.

5. DEED/MARKETABLE TITLE. Upon performance by **CITY**, **LYNDALE TERMINAL** shall execute and deliver:

- A. Limited Warranty Deed, conveying marketable title, subject to:
 - 1) Building and zoning laws, ordinances, state and federal regulations;
 - 2) Restrictions relating to use or improvement of the property without effective forfeiture provisions;
 - 3) Reservation of any mineral rights by the State of Minnesota;
 - 4) Utility and drainage easements which do not interfere with existing

improvements;

5) Subject to matters of record.

B. A Temporary Construction Easement granting the CITY the right to construct a roadway and public utilities, in the form of attached Exhibit A.

6. REAL ESTATE TAXES AND SPECIAL ASSESSMENTS. Real estate taxes due and payable in and for the year of closing shall be paid by **LYNDALE TERMINAL**.

7. LYNDALE TERMINAL'S BOUNDARY LINE, ACCESS, RESTRICTIONS AND LIEN WARRANTIES. **LYNDALE TERMINAL**, to its knowledge, warrants that there is a right of access to the real property from a public right of way. **LYNDALE TERMINAL**, to its knowledge, warrants that there has been no labor or material furnished to the property for which payment has not been made. **LYNDALE TERMINAL**, to its knowledge, warrants that there are no present violations of any restriction relating to the use of improvement of the property. These warranties shall survive the delivery of the deed.

8. DISCLOSURE OF NOTICES. **LYNDALE TERMINAL** has not received any notice from any governmental authority as to violation of any law, ordinance or regulation, if the property is subject to restrictive covenants, **LYNDALE TERMINAL** has not received any notice from any person as to a breach of the covenants.

9. POSSESSION. **LYNDALE TERMINAL** shall deliver possession of the property not later than the day of closing.

10. EXAMINATION OF TITLE. Within a reasonable time after acceptance of this Agreement **LYNDALE TERMINAL** shall furnish **CITY** with a copy of an Owner's Title Insurance Policy, **CITY** shall have ten (10) business days after receipt of a copy of an Owner's Title Insurance Policy to have **CITY'S** attorney examine the title and provide **LYNDALE TERMINAL** with written objections.

11. TITLE CORRECTIONS AND REMEDIES. **LYNDALE TERMINAL** shall have 120 days from receipt of **CITY'S** written title objections to use commercially reasonable efforts to make title marketable. Upon receipt of **CITY'S** title objections, **LYNDALE TERMINAL** shall, within ten (10) business days, notify **CITY** of **LYNDALE TERMINAL'S** intention to make title marketable within the 120 day period. Liens or encumbrances for liquidated amounts which can be released by payment or escrow from proceeds of closing shall not delay the closing. Cure of the defects by

LYNDALE TERMINAL shall be reasonable, diligent, and prompt. Pending correction of title, all payments required herein and the closing shall be postponed.

TIME IS OF THE ESSENCE FOR ALL PROVISIONS OF THIS CONTRACT.

12. NOTICES. All notices required herein shall be in writing and delivered personally or mailed to the address as shown at Paragraph 1, above and if mailed, are effective as of the date of mailing.

13. MINNESOTA LAW. This contract shall be governed by the laws of the State of Minnesota.

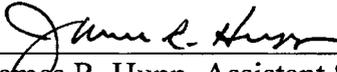
14. ADDITIONAL TERMS. CITY shall pay all survey costs, abstracting fees, recording fees and closing fees. **LYNDALE TERMINAL** shall pay all State Deed Taxes.

Dated: _____, 2014

CITY OF SAINT PETER, MINNESOTA

LYNDALE TERMINAL CO.

By _____
Timothy Strand, Mayor

By 
James R. Hupp, Assistant Secretary

By _____
Todd Prafke, City Administrator

Closing shall be at the office of:

BRANDT LAW OFFICE
Attorneys at Law
219 W. Nassau, Box 57
St. Peter, MN 56082
Tel: (507) 931-6940

EXHIBIT A

TEMPORARY CONSTRUCTION EASEMENT GRANT

TO

THE CITY OF SAINT PETER, MINNESOTA

Dated _____, 2014

FOR VALUABLE CONSIDERATION, LYNDALE TERMINAL CO., a Minnesota corporation, Grantor, hereby grants and conveys to the **CITY OF SAINT PETER**, a municipal corporation, Grantee, its successors or assigns, a temporary easement for construction of a roadway and public utilities over, under and across the property legally described as follows, to-wit:

Parcel 5E, as depicted on Exhibit "A", attached hereto and incorporated herein, and entitled "TEMPORARY EASEMENTS Saint Julien Street – Old Minnesota Avenue.

The Grantor shall fully use and enjoy the aforesaid premises, except as to the rights herein granted; and the Grantee shall hold and save the said Grantor harmless from any and all damage arising from its use of the right, and easement herein granted and agrees to pay any damage or damages which may arise to the property, premises, or rights of the Grantor through Grantee's use, occupation, and possession of the rights herein granted.

The Grantor herein for himself, his heirs and representatives, does grant the right at all times to Grantee, its employees and agents, to go upon the above described premises for the purpose of erecting, constructing, excavating, and supplying, the utilities, at the discretion of the Grantee, upon completion of the installation of the utilities, the Grantee shall restore the premises to its pre-existing smooth mowable condition and shall exercise caution to minimize tree impact within the temporary easement area.

This Temporary Construction Easement shall expire and be of no further force and effect upon the completion of construction of the roadway and public utilities, but in no event later than August 15, 2015. This Temporary Construction Easement is subject to the further terms and conditions on Exhibit B.

The terms and provisions hereof shall run with the land and shall extend to and bind the representatives, successors and assigns of the parties hereto.

LYNDALE TERMINAL CO.

By: _____
Its: _____

STATE OF MINNESOTA)

) ss.

COUNTY OF NICOLLET)

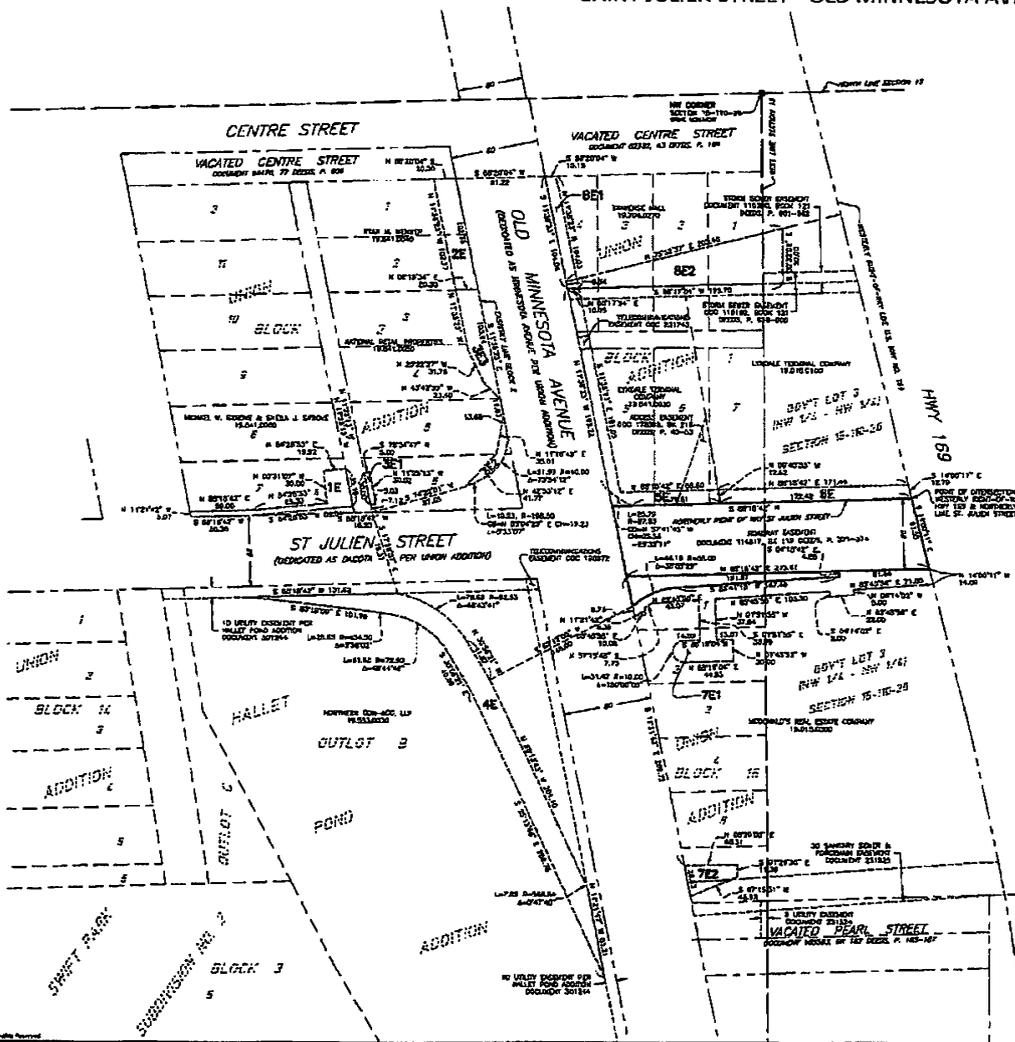
The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, the _____ of Lyndale Terminal Co., Grantor.

Notary Public

EXHIBIT "A"

TEMPORARY EASEMENTS

SAINT JULIEN STREET - OLD MINNESOTA AVENUE



Horizontal Datum: NAD83 County Coordinate System
 NAD83, UTM Adjustment

LEGEND	
—	Existing Right of Way Line
—	Section Line
—	Quarter Line
—	Quarter-Section Line
—	Section Line

Owner of Parcel	Document Number	Location	Refer to by Plat Number (County Parcel)
Michael S. Brown and Shelia A. Brown	200314	Lot 7, Block Two, Union Addition	1E 1201
Ryan R. Warner	204310	Lots 1 and 2, Block Two, Union Addition	2E 3530
National Retail Properties, LP	201830	Lots 3-6 and 8, Block Two, Union Addition	2E 3531 2E 3532 2E 3533 2E 3534
Northern Deer-App, LLP	201244	Block 5, Union Addition	4E 0421
Unkable Terminal Company	207930	Part Block One, Union Addition	0C 3530
Unkable Terminal Company	170320	Part of 1/4 Section 17, Township 14N, Range 10E, Section 24, Block One, Union Addition	0E 2148
McDonnell's Real Estate Company	142292	Part of 1/4 Section 17A, Township 14N, Range 10E, Section 24, Block One, Union Addition	2E 3530 2E 3531
Transtar Inc	144621	Part Block One, Union Addition	0E 3530 0E 3531

SURVEYOR'S NOTES

1. Orientation of all bearings is to the Universal County Coordinate System, NAD83, UTM Adjustment.
2. The corners of record mentioned on this plat were taken from the books on file in the Register County Recorder's Office.
3. The location and size of the adjacent parcel boundaries ("P" and "M") were determined by current deed records of record only. This is a plat of record. Boundaries of record shown on this plat are assumed to correspond to the best existing survey records. If there is a discrepancy between the boundaries shown on this plat and the boundaries of record, the boundaries of record shall be adjusted to conform to the best existing survey records.

SKETCH OF TEMPORARY EASEMENTS
 SAINT JULIEN STREET - OLD MINNESOTA AVENUE

BOLTON & MENK, INC.
 Consulting Engineers & Surveyors
 1700 WASHINGTON AVENUE
 MINNEAPOLIS, MINNESOTA 55402
 P. 612-331-1111

FOR MORE INFORMATION, CONTACT THE SURVEYOR AT THE OFFICE OF THE SURVEYOR, 1001 1ST AVENUE, SUITE 100, MINNEAPOLIS, MN 55401
 1001 1ST AVENUE, SUITE 100, MINNEAPOLIS, MN 55401

13

EXHIBIT B

- 1) Grantee will perform all construction in a good and workmanlike manner and will keep the improvements in good maintenance and repair at its sole cost and expense.
- 2) Grantee will give written notice to Grantor at least 10 days before beginning any work in the easement area, which notice will specify the work to be performed and a date when the work will be completed. Grantee will use its best efforts to complete the work by that date.
- 3) Unless otherwise agreed in writing, immediately after Grantee completes any work in the easement area, Grantee will restore the easement area to the same or better condition as it was in before Grantee began the work and to a safe condition and will remove all of its equipment, tools, trash and debris from the easement area.
- 4) Unless otherwise agreed in writing, Grantee will not move, remove or demolish any of Grantor's signs, access drives, curbing or other improvements located within the easement area.
- 5) Grantee will separate by cones or other appropriate construction safety barriers ("cone off") the easement area while Grantee performs any work in the easement area.
- 6) Grantee will perform all work in such a manner so as to not unduly disrupt the operation of the gas station/convenience store on grantor's property. Grantee will not "cone off" or block in any manner more than half of any access drive at any time, allowing at least one lane open at all times in each access drive for vehicular traffic.
- 7) Grantee will not park on or store any construction vehicles, equipment or materials within the easement area or on Grantor's other property.
- 8) If any damage occurs to Grantor's property or any improvements thereon arising out of, related to, or as a consequence of any of Grantee's work in the easement area, Grantor promptly will notify Grantee in writing of the damage. Unless otherwise agreed by the parties, Grantee will repair the damage (or commence and diligently pursue repairing the damage) within 30 days after receipt of Grantor's notice.
- 9) If Grantee defaults under any provision of the easement agreement, in addition to any other remedies available in law or equity, Grantor will be entitled to: 1) terminate this easement on written notice; 2) obtain specific performance or any other appropriate equitable relief against Grantee; and/or 3) in the case of incomplete repairs, Grantor may complete the necessary repairs, and Grantee promptly will pay Grantor for the actual cost of the repairs plus 20% for overhead costs and expenses.

Drafted by:
James W. Brandt
219 W. Nassau,
St. Peter, MN 56082

CITY OF SAINT PETER, MINNESOTA

RESOLUTION NO. 2014 -

**STATE OF MINNESOTA)
COUNTY OF NICOLLET)
CITY OF SAINT PETER)**

**RESOLUTION APPROVING TEMPORARY CONSTRUCTION EASEMENTS AND
PURCHASE OF ROAD RIGHT-OF-WAY FROM LYNDALE TERMINAL CO. (HOLIDAY)**

WHEREAS, the City Council has approved Saint Peter Road Right-Of-Way Plat No. 3 to facilitate construction and traffic control activities at the intersection of Old Minnesota Avenue and West St. Julien Street; and

WHEREAS, City staff has negotiated for the purchase of right-of-way from the owner of the property in the northeast corner of the intersection; and

WHEREAS, City staff has also negotiated for temporary construction easements along the same property; and

WHEREAS, the property owner, Lyndale Terminal Co., has agreed to the temporary construction easements and to sale of the requested road right-of-way property; and

WHEREAS, the City Attorney has prepared agreements for both the easements and purchase of the property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAINT PETER, NICOLLET COUNTY, MINNESOTA, THAT:

1. The Mayor and City Administrator are hereby authorized to execute both the temporary construction easement and property purchase documents by and between the City of Saint Peter and LYNDALE TERMINAL CO as approved by the City Attorney.
2. Funding for purchase of the right-of-way in the amount of \$201.65 shall be from Municipal State Aid funds.

Adopted by the City Council of the City of Saint Peter, Nicollet County, Minnesota, this 2nd day of June, 2014.

Timothy Strand
Mayor

ATTEST:

Todd Prafke
City Administrator