

# Wastewater Operations Proposal

To

## The Sanctuary, LLC

August 17, 2006

### I ASSUMPTIONS

The following assumptions were considered:

EcoCheck Assumes the Following:

1. The Sanctuary, LLC is the managing agent for the Sanctuary of Lake Elmo Homeowners Association. For the purpose of this contract the "Owner" as defined in the General Terms and Conditions will be The Sanctuary, LLC until ownership is transferred to the Sanctuary of Lake Elmo Homeowners Association as determined in Item 5 of this section.
2. EcoCheck, herein referred as "Wastewater Operator" in the General Terms and Conditions will be granted access to the wastewater site to perform services as necessary.
3. EcoCheck will provide 24/7 emergency services in the event they are needed. Emergency service calls will be responded to as soon as possible. Most service calls are responded to within a 24-hour timeframe.
4. For the first year of operation, the installation contractor will be responsible for warranty related repairs at the direction of EcoCheck.
5. The duration of this contract is for 3 years. This contract transfers to the Sanctuary of Lake Elmo Homeowners Association upon completion of the installation of the system and transfer of title of Outlot F to the Association if completed within 3 years.
6. If additional monitoring is required for permit exceedances or other permit requirements, services will be provided on a time and materials basis.
7. If permit or regulatory changes occur during the contract period, the terms of the contract will be revised to reflect the increase in monitoring to maintain compliance with permit requirements.
8. Contract price will increase annually based upon the regional consumer price index starting in 2007. The CPI that will be used is "water and sewer and trash collection services" for the Midwest region.
9. Mobilization costs are included in the hourly fee charged for routine maintenance.
10. One time submittals (One Year Certification Report, Final O&M Plan, and Start-up Evaluation Report) are not included in this proposal. These are not included since the contract is for recurring years and the submittals only need to be completed once. We assume these submittals will be completed by the Engineer or EcoCheck as directed by the Owner.
11. Grinder pumps will be owned and operated by each individual homeowner. Since the grinders are located inside the homes, EcoCheck does not assume operational responsibility under the terms of this contract.
12. Pressure sewer valves need to be opened and closed in a specific manner to ensure proper operation. EcoCheck assumes the Owner will provide a phasing plan so

the valves can be opened at the appropriate time. If others will have access to the pressure sewer valves, the Owner shall require them to inform EcoCheck prior to any modifications.

13. EcoCheck does not propose to make site visits to open pressure sewer valves. If this is needed, services will be provided on a time and materials basis.

Below are other permit driven responsibilities of the Owner:

1. The Owner shall control access by snowmobiles or all terrain vehicles from the treatment site and other wastewater treatment system components.
2. The Owner shall comply with the terms and conditions specified in the SDS Permit issued from the MPCA. EcoCheck will operate the system in accordance with the permit conditions.
3. As-built drawings will be submitted to EcoCheck to assist in operations.
4. A remote telemetry monitoring system or a local homeowner will call out to EcoCheck in the event of an alarm condition.

This Contract Excludes:

1. Septic tank pumping costs and chemical costs are not included in this proposal.

## **II. PROPOSED ECOCHECK SERVICES:**

Below are the tasks EcoCheck proposes to provide:

### WASTEWATER OPERATION SERVICES

1. Monitor septic tank water levels while septic tanks are used as holding tanks.
2. Coordinate with a septic tank pumper for removal of septage while tanks are used as holding tanks.
3. Assist the Owner in determining pressure sewer operation status.
4. Make visual inspections of the pressure sewer.
5. Make site visits to the facility a minimum of twice a month to evaluate system performance.
6. Coordinate with the analytical lab for analysis of samples.
7. Complete reporting to the Minnesota Pollution Control Agency on monthly Discharge Monitoring Reports.
8. Provide e-mail correspondence on monthly items that arise at the wastewater facilities.
9. Read elapsed time meters and event counters from pumps and calculate flow.
10. Adjust equipment settings programmed for the wastewater system based upon system performance and flow meter readings.
11. Test pump operation through amp draws and voltage checks.
12. Assist you in determining when septic tanks need to be pumped.
13. Note maintenance activities required at the site and maintain a logbook.
14. Clean the effluent filter at the centralized treatment site once a year.
15. Perform influent and effluent analytical monitoring as defined in the "Limits and Monitoring Requirements" section of the SDS Permit issued in 2006.
16. Implement a winterizing plan to minimize the potential for freezing conditions prior to winter.

17. Log blower pressure for the gravel filter.
18. Adjust chemical feed rate of the acetate for the denitrification system.
19. Observe drainfield for proper operation.
20. Flush the end of the dosing lines at the end of the infiltration bed, as needed.
21. Control invasive species in the vertical flow wetland through hand pulling or periodic herbicide treatment.
22. Perform ponding depth inspections of the drainfield standpipes and maintain a log.
23. Perform annual VOC monitoring in the septic tank as required by the permit.
24. Perform periodic operational control monitoring prior to equipment adjustment.
25. Clean drip irrigation filters once a quarter.
26. Test drainfield pressures once a month.
27. Modify ball valves in the drip irrigation to regulate field pressures.
28. Make drip irrigation repairs if found during regular site visits.

### ADDITIONAL TASKS

1. Provide service calls as needed. Service calls are events that fall outside of the "Wastewater Operation Services" tasks and need urgent attention (i.e. alarm light is on, a broken pipe was observed, etc).
2. Perform other services as requested by the Owner that are beyond the scope of this contract.

### **III. COSTS OF ECOCHECK SERVICES**

**Wastewater Operation Services** (task 1-2) will be conducted on a time and materials basis in accordance with the EcoCheck Standard Billing Rates. These services will be completed while the septic tanks are used as temporary holding tanks and expires when the system initiates full operation (defined as start-up of the system).

**Wastewater Operation Services** (tasks 3-27) will be invoiced monthly after start-up occurs on a lump sum basis for a fee of \$1272.00 a month (\$15,264.00 annually) for "Wastewater Operation Services" tasks outlined in Section II. Expenses associated with mileage, project materials (disposable gloves, one-time use test kits, etc.) are included in the lump sum costs.

The Owner is responsible for costs that do not occur on a monthly basis for typical operation services. These expenses include chemical costs for denitrification, septic tank pumping, electrical costs, etc.

**Additional Tasks** will be charged as stated below:

- Service Calls (Item 1 under Additional Tasks) will be charged at \$80 per event, plus time and materials in accordance with the EcoCheck Standard Billing Rates.
- Other services (Item 2 under Additional Tasks) will be provided as requested on a time and materials basis in accordance with the EcoCheck Standard Billing Rates.

**PROPOSAL ACCEPTANCE – The Sanctuary**

The Owner accepts this proposal including the attached General Terms and Conditions, and EcoCheck is authorized to proceed with the services described herein. This proposal is valid for 30 days.

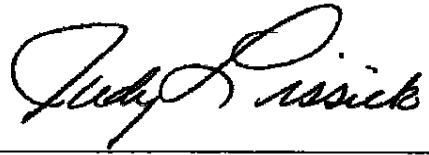
**The Sanctuary, LLC**  
(or its assignee the  
Sanctuary of Lake Elmo  
Homeowners Association)

**EcoCheck, Inc.**

By:



By:



Name: Case A. Aekell

Name: Judy Lissick

Title: Vice President

Title: Sr. Vice President

Date: August 21, 2006

Date: August 17, 2006

**ECOCHECK STANDARD 2006 BILLING RATES**  
for  
**WATER AND WASTEWATER OPERATION SERVICES**

<b>POSITION</b>	<b>STANDARD BILLING RATE</b>
Project Principal	\$100.00/hour
Senior Water/Wastewater Operator	\$77.50/hour
Junior Water/Wastewater Operator	\$67.00/hour
Apprentice Operator (Operator in Training)	\$62.50/hour
Construction Observer	\$65.00/hour
Field Technician	\$60.00/hour

**EXPENSES**

Mileage	\$0.50/mile (prevailing rate)
Subcontractor	At Cost plus 10%
Other expenses	As per Terms and Conditions

**OTHER OPERATION SERVICES**

Confined Space Entry	\$75 per entry permit
Use of HAZMAT Monitoring Equipment	\$40/hour (minimum 1 hour)

**EMERGENCY SERVICES/SERVICE CALLS\***

Service Call	\$80 each response
Labor associated with repairs or services	Time and Materials in accordance with standard billing rates

## General Terms and Conditions

### 1. STANDARD OF PERFORMANCE

All services of ("WASTEWATER OPERATOR") and its affiliates, subsidiaries, independent professional associates, consultants, and subcontractors required by this agreement between OWNER and WASTEWATER OPERATOR ("Agreement") will be performed in a reasonable and prudent manner in accordance with generally accepted WASTEWATER OPERATOR practice. All estimates, recommendations, opinions, and decisions of WASTEWATER OPERATOR will be made upon the basis of the information available to WASTEWATER OPERATOR and WASTEWATER OPERATOR's experience, technical qualifications, and professional judgement.

THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES OR GUARANTEES WHATSOEVER, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY SERVICE PERFORMED OR MATERIALS PROVIDED UNDER THE AGREEMENT

### 2. INVOICES

Invoices will be submitted periodically (customarily on a monthly basis) and are due and payable upon receipt. Unpaid balances shall be subject to an additional charge at the rate of one and one-half (1.5) percent per month from the date of invoice, if the unpaid balance is not paid within 30 days of the date of the invoice. In addition, WASTEWATER OPERATOR may, after giving seven days' written notice to OWNER, suspend services without liability until OWNER has paid in full all amounts due WASTEWATER OPERATOR on account of services rendered and expenses incurred, including interest on past-due invoices. Payment of invoices is not subject to discounting by OWNER.

### 3. CHANGES OR DELAYS

Unless the accompanying proposal provides otherwise, the proposed fees constitute WASTEWATER OPERATOR's estimation to perform the services required to complete the project as WASTEWATER OPERATOR understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. WASTEWATER OPERATOR will inform OWNER of such situations so that changes in scope and adjustments to the time of performance of the services, whether or not changed by any order, and equitable adjustment shall be made, and the Agreement modified accordingly.

### 4. PAYMENT

Where the method of payment under the Agreement is based upon cost reimbursement (e.g., hourly rate, time and materials, direct personnel expense, or per diem), the provisions of subparagraph a. shall apply in addition to the provisions of subparagraphs b. through d.

- a. Direct costs, excluding travel and subsistence, are payable at actual documented cost plus 10% for handling and administration.

- b. The minimum time segment for charging fieldwork is four (4) hours unless specifically addressed in the proposal. The minimum time segment for charging work done at any of WASTEWATER OPERATOR's offices is one-half hour.
- c. If a lump sum fee is proposed, expenses are included as part of the lump sum fee. Otherwise project related office expenses such as shipping, communication, subcontractors, printing and reproduction, computer services, supplies and equipment will be calculated with a 10% mark-up. Travel and subsistence expenses of personnel when on business connected with the Project are reimbursable at cost. The use of re-usable field and support equipment owned by WASTEWATER OPERATOR will be billed at pre-determined rates.
- d. When applicable, rental charges will be applied to cover the cost of pilot-scale facilities or equipment, apparatus, instrumentation, or other technical machinery. When such charges are applicable, OWNER will be advised at the start of the assignment, task or phase. Analyses performed in WASTEWATER OPERATOR's or WASTEWATER OPERATOR's subconsultant's laboratories will be billed on a unit cost-per-analysis basis, unless specified otherwise in the accompanying Proposal.
- e. Invoices based upon cost reimbursement will be submitted showing labor (hours worked) and total expense, but not actual documentation. If requested by OWNER, reasonable documentation will be supplied.

### 5. TERMINATION AND TERM

The term of this Agreement shall be for a period of three (3) years. Termination may occur by OWNER by giving ninety (90) days written notice. WASTEWATER OPERATOR may terminate agreement if OWNER substantially fails to follow terms and conditions of the contract.

### 6. LIMITATION OF LIABILITY

Notwithstanding any other provisions of these General Terms and Conditions, and unless otherwise subject to a greater limitation, WASTEWATER OPERATOR's total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including WASTEWATER OPERATOR's professional negligent acts, errors, or omissions, shall not exceed the greater of \$50,000 or the total annual compensation for labor received by the WASTEWATER OPERATOR hereunder, and OWNER hereby releases WASTEWATER OPERATOR from any liability above such amount.

### 7. INSURANCE

During the term of this agreement, the WASTEWATER OPERATOR agrees to provide evidence of insurance coverage.

### 8. HAZARDOUS SUBSTANCE INDEMNIFICATION

WASTEWATER OPERATOR hereby states, and OWNER acknowledges, that WASTEWATER OPERATOR has no professional liability (errors and omissions) or other insurance, and

neither is able to reasonably obtain such insurance, for claims or claims expenses arising out of the performance of or failure to perform professional services, including but not limited to the preparation of reports, related to any investigation, detection, abatement, replacement, or removal of parts, materials or processes containing asbestos or relating of the actual, alleged, or threatened discharge, dispersal, release or escape of pollutants (defined herein as any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste.) Accordingly, OWNER hereby agrees to bring no claim for negligence, breach of contract, indemnity, or other action against WASTEWATER OPERATOR, its principals, employees, agents, and consultants, from and against all claims, damages, losses, and expenses, direct or indirect, or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the performance of WASTEWATER OPERATOR's services hereunder, or claims brought against WASTEWATER OPERATOR by third parties and arising from WASTEWATER OPERATOR's services or others' services and/or work related to asbestos and/or pollutant activities.

#### 9. PROJECT SITE

OWNER shall furnish or cause to be furnished to WASTEWATER OPERATOR all documents and information known to OWNER that relate to the identity, location, quantity, nature, or characteristics of any hazardous waste at, on, or under the site. In addition, OWNER shall furnish such other reports, data, studies, plans, specifications, documents, and other information regarding surface and subsurface site conditions requested by WASTEWATER OPERATOR for proper performance of its services. WASTEWATER OPERATOR shall be entitled to rely upon OWNER provided documents and information in performing the services required under this Agreement; however, WASTEWATER OPERATOR assumes no responsibility or liability for the accuracy or completeness of said documents and information. OWNER-provided documents will remain the property of OWNER.

WASTEWATER OPERATOR will not direct, supervise, or control the work of contractors or their subcontractors. WASTEWATER OPERATOR's services will not include a review or evaluation of the contractor's (or subcontractor's) safety measures.

WASTEWATER OPERATOR shall be responsible only for its activities and those of its employees on any site. Neither the professional activities nor the presence of WASTEWATER OPERATOR, its employees, or its subcontractors on a site shall imply that WASTEWATER OPERATOR controls the operations of others; nor shall this be construed to be an acceptance by WASTEWATER OPERATOR of any responsibility for job-site safety.

#### 10. DISPOSAL OF CONTAMINATED MATERIAL

It is understood and agreed that WASTEWATER OPERATOR is not, and has no responsibility as a handler, generator, operator, treater or storer, transporter, or disposer of hazardous or toxic substances found or identified at a site. OWNER shall undertake or arrange for the handling, removal, treatment, storage, transportation, and disposal of hazardous substances or constituents found or identified at a site.

#### 11. CONFIDENTIALITY

WASTEWATER OPERATOR shall maintain as confidential and not disclose to others without OWNER's prior written consent all information obtained from OWNER that was not otherwise previously known to WASTEWATER OPERATOR or in the public domain and is expressly designated by OWNER in writing to be "CONFIDENTIAL." The provisions of this paragraph shall not apply to information in whatever form that (1) is published or comes into the public domain through no fault of WASTEWATER OPERATOR, (2) is furnished by or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law on order of a court, administrative agency, or other authority with proper jurisdiction.

OWNER agrees that WASTEWATER OPERATOR may use and publish OWNER's name and a general description of WASTEWATER OPERATOR's services with respect to the Project in describing WASTEWATER OPERATOR's experience and qualifications to other clients or potential clients.

#### 12. RE-USE OF DOCUMENTS

All documents, including drawings and specifications, prepared or furnished by WASTEWATER OPERATOR (and WASTEWATER OPERATOR's affiliates, subsidiaries, independent professional associates, consultants, and subcontractors) pursuant to this Agreement and Instruments of service in respect to the Project, and WASTEWATER OPERATOR shall retain an ownership and property interest therein, whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for re-use by OWNER or others on extensions of the Project or on any other project. Any re-use without written verification or adaptation by WASTEWATER OPERATOR for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to WASTEWATER OPERATOR or WASTEWATER OPERATOR's affiliates, subsidiaries, independent professional associates, consultants, and subcontractors with respect to any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages, whatsoever arising out of or resulting therefrom. Any such verification or adaptation will entitle WASTEWATER OPERATOR to further compensation at rates to be agreed upon by OWNER and WASTEWATER OPERATOR.

#### 13. CONTROLLING AGREEMENT

These General Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document regarding WASTEWATER OPERATOR's services.

If any of these General Terms and Conditions are determined to be invalid or unenforceable in whole or part by a court of competent jurisdiction, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that as closely as possible expresses the intention of the stricken provision.

These General Terms and Conditions shall survive the completion of the services under this Agreement and the termination of this Agreement for any cause.

**14. PROPRIETARY DATA**

The technical and pricing information contained in the accompanying Proposal or Agreement is not to be disclosed or otherwise made available to third parties without the express written consent of WASTEWATER OPERATOR.

**15. GOVERNING LAW**

This Agreement is to be governed by and construed in accordance with the laws of Minnesota.

**16. COPYRIGHT**

All reports, plans specifications, computer files, field data, notes and other documents prepared by WASTEWATER OPERATOR as instruments of service shall remain the property of the WASTEWATER OPERATOR. The WASTEWATER OPERATOR shall retain all common law, statutory and other reserved rights, including the copyright thereto.

**17. MEDIATION**

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Owner and the WASTEWATER OPERATOR agree that all disputes shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The Owner and the WASTEWATER OPERATOR further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants to include similar mediation provisions in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

**18. INDEMNIFICATION**

The WASTEWATER OPERATOR agrees, to the fullest extent permitted by law to indemnify and hold the Owner harmless from any damage, liability or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by WASTEWATER OPERATOR's negligent acts, errors or omissions in the performance of professional services under this agreement and those of his or her subconsultants or anyone whom the WASTEWATER OPERATOR is legally liable.

The Owner agrees, to the fullest extent permitted by law to indemnify and hold the WASTEWATER OPERATOR harmless from any damage, liability or cost (including reasonable attorneys' fees and cost of defense) to the extent caused by the Owner's negligent acts, errors or omissions in the performance of professional services under this agreement and those of his or her contractors, subcontractors, consultants or anyone whom the Owner is legally liable and arising from the project that is subject to this agreement.

The WASTEWATER OPERATOR is not obligated to indemnify the Owner in any manner whatsoever for the Owners own negligence.

**19. SUBCONSULTANTS / SUBCONTRACTORS**

The WASTEWATER OPERATOR and the Subconsultant / Subcontractor mutually agree, to the fullest extent permitted by law to indemnify and hold each other harmless from any damage, liability or cost, including reasonable attorneys' fees and cost of defense arising from their own negligent acts, errors or omissions in the performance of professional services under this agreement to the extent that each party is responsible for such damages, liabilities and cost on a comparative basis of fault.

**20. INFORMATION PROVIDED BY OTHERS**

The WASTEWATER OPERATOR shall indicate to the Owner the information needed for rendering of services hereunder. The Owner shall provide to the WASTEWATER OPERATOR such information as is available to the Owner and the Owner's consultants and contractors, and the WASTEWATER OPERATOR shall be entitled to rely upon the accuracy and completeness thereof. The Owner recognizes that it is impossible for the WASTEWATER OPERATOR to assure the accuracy, completeness and sufficiency of such information, either because it is impossible to verify, or because if errors or omissions which may have occurred in assembling the information the Owner is providing. Accordingly, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the WASTEWATER OPERATOR and the WASTEWATER OPERATORs subconsultants harmless from any claim, liability or cost (including reasonable attorneys' fees and costs of defense) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the Owner to the WASTEWATER OPERATOR.

**21. STANDARD OF CARE**

Services provided by the WASTEWATER OPERATOR under this agreement will be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

**22. ASSIGNMENT**


Services provided by the WASTEWATER OPERATOR may be assigned to another business entity, in whole or in part, and said assignee shall be responsible for the performance of services under the same terms and conditions.

**Sanctuary of Lake Elmo**  
**City of Lake Elmo, Minnesota**  
**Homeowner's Association Budget**  
**Based on Full Build-Out**

Number of homes in development	62	Monthly		Annually	
		Per Unit Estimate	Development Estimate	Per Unit Estimate	Development Estimate
<b>Sources of funds</b>					
Homeowner dues		\$96.00	\$5,952.00	\$1,152.00	\$71,424.00
<b>Total sources</b>		<b>\$ 96.00</b>	<b>\$ 5,952.00</b>	<b>\$ 1,152.00</b>	<b>\$ 71,424.00</b>
<b>Expenditures:</b>					
<b>Administration:</b>					
Property management services		\$5.00	\$310.00	\$60.00	\$3,720.00
Insurance		15.52	962.24	186.24	11,546.88
Misc. letter, postage, copies		0.30	18.60	3.60	223.20
<b>Operating:</b>					
Entrance area maintenance		2.15	133.30	25.80	1,599.60
Irrigation system (repairs, electricity, startup/blowout)		2.30	142.60	27.60	1,711.20
Landscape replacement		1.25	77.50	15.00	930.00
Land Trust fee-Conservation Easements		2.08	129.17	25.00	1,550.00
Storm water pond maintenance		2.85	176.70	34.20	2,120.40
<b>Waste treatment system:</b>					
Monitoring costs		20.52	1,272.24	246.24	15,266.88
Operating costs		20.35	1,261.70	244.20	15,140.40
Maintenance costs		6.92	429.04	83.04	5,148.48
<b>Total waste treatment</b>		<b>47.79</b>	<b>2,962.98</b>	<b>573.48</b>	<b>35,555.76</b>
<b>Total Operating Costs</b>		<b>79.24</b>	<b>4,913.09</b>	<b>950.92</b>	<b>58,957.04</b>
<b>Replacement Reserves:</b>					
Long-term storm pond maintenance (15 years)		0.45	27.90	5.40	334.80
Trail replacement (15 years)		4.10	254.20	49.20	3,050.40
<b>Waste treatment system:</b>					
Collection system components		1.33	82.46	15.96	989.52
Treatment components		4.85	300.70	58.20	3,608.40
Disposal components		4.91	304.42	58.92	3,653.04
MPCA permitting upgrades		1.12	69.44	13.44	833.28
		<b>12.21</b>	<b>757.02</b>	<b>146.52</b>	<b>9,084.24</b>
<b>Total replacement reserves</b>		<b>16.76</b>	<b>1,039.12</b>	<b>201.12</b>	<b>12,469.44</b>
<b>Total uses of funds</b>		<b>96.00</b>	<b>5,952.21</b>	<b>1,152.04</b>	<b>71,426.48</b>
<b>Net cash flow</b>		<b>(\$0.00)</b>	<b>(\$0.21)</b>	<b>(\$0.04)</b>	<b>(\$2.48)</b>

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ENTERED IN TRANSFER RECORD  
WASHINGTON COUNTY, MINNESOTA  
March 31, 2006  
MOLLY F. O'ROURKE, AUDITOR-TREASURER  
BY Linda M. Dyer DEPUTY

3577329  


Office of the  
County Recorder  
Washington County, MN

Certified filed and/or recorded on:  
2006/04/04 10:40:00 AM

3577329



Cindy Korman  
County Recorder  
*Cindy Korman*

**CONSERVATION EASEMENT**

This is a CONSERVATION EASEMENT granted by The Sanctuary, LLC, a Minnesota limited liability company, (the "Owner") to the City of Lake Elmo, a Minnesota statutory city (the "City") and the Minnesota Land Trust, a non-profit corporation organized and existing under the laws of the State of Minnesota (the "Trust"). The City and the Trust are also from time to time hereinafter referred to as (the "Co-Holders");

**RECITALS:**

- A. OWNER. The Owner is the current owner of approximately 61 acres of real property located in Washington County, Minnesota. That real property is more fully described below as the "Protected Property."
- B. PROTECTED PROPERTY. The Protected Property is that real property legally described in Exhibit A and generally depicted on the "Property Map" in Exhibit B. Both exhibits are attached to this Easement and incorporated by this reference.

The Protected Property consists of four outlots in a residential development being developed by the Owner and known as "St. Croix's Sanctuary." The Protected Property includes woodlands, open fields, ponds and wetlands. The developed portion of St. Croix's Sanctuary will include 62 single-family homes located on approximately 50 acres of property adjacent to or near the Protected Property.

The Protected Property is currently used as open space and for nature observation. There are no improvements on the Protected Property except a road accessing the future water treatment facility.

- C. MINNESOTA LAND TRUST. The Minnesota Land Trust is a non-profit corporation organized and operated exclusively for charitable and educational purposes, including the preservation and protection of land in its natural, scenic or other open space condition. The Trust is a public charity as defined in Sections 501(c) (3) and 509(a) of the Internal

*rd* RETURN TO: 265816 (3)  
LAND TITLE, INC.

Revenue Code and an organization qualified to hold conservation easements under Minnesota law and Section 170(h) of the Internal Revenue Code and related regulations.

**CITY OF LAKE ELMO.** The City of Lake Elmo, a Minnesota statutory city, is a political subdivision of the State of Minnesota that is qualified to hold conservation easements under Minnesota Statutes Chapter 84C and Section 170(h) of the Internal Revenue Code and related regulations.

D. **CONSERVATION VALUES.** The Protected Property has the following natural, scenic and open space qualities of significant importance:

- The open nature of the Protected Property helps shape the character of the surrounding residential development and provides opportunities for low impact recreation and nature observation.
- The relatively undeveloped natural character of the Protected Property provides habitat for a variety of plants, animals, and aquatic communities common to oak savanna and woodlands as well as shallow wetlands.
- Restoration of the former cropland to grassland and the protection of wetlands will help to increase the habitat available to common terrestrial and aquatic wildlife.

Collectively, these natural, scenic and open space qualities of the Protected Property comprise its "Conservation Values."

These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as described above or as authorized below or by the use, maintenance or construction of those structures and improvements that presently exist on the Protected Property or that are authorized below.

E. **CONSERVATION POLICY.** Preservation of the Protected Property will further those governmental policies established by the following:

- Minnesota Statutes Chapter 84C, which recognizes the importance of private conservation efforts by authorizing conservation easements for the protection of natural, scenic, or open space values of real property, assuring its availability for agriculture, forest, recreational, or open space use, protecting natural resources, and maintaining or enhancing air or water quality.
- The City's mission statement and land use plan which refer to the preservation of "rural character" and "open spaces" as a recurring theme.
- Lake Elmo Municipal Code, Chapter 3, Section 301-Open Space Preservation, which states that its purpose "is to maintain the rural character of Lake Elmo by preserving...woodlands, corridors, and other significant natural features while

allowing residential development consistent with the goals and objectives of the City's Comprehensive Plan" and which requires that the open space in a residential development approved under this chapter shall be subject to a conservation easement restricting its use and development.

- The conditional use permit issued by the City approving the residential development known as *St. Croix's Sanctuary*.
- Minnesota Statutes Chapter 103A.201 and 103A.202, which specifically promote the protection of wetlands.

F. **CONSERVATION INTENT.** The Owner and the Co-Holders are committed to protecting and preserving the Conservation Values of the Protected Property in perpetuity. Accordingly, it is their intent to create and implement a conservation easement that is binding upon the current Owner and all future owners of the Protected Property and that conveys to the Co-Holders the right to protect and preserve the Conservation Values of the Protected Property for the benefit of this generation and generations to come.

**CONVEYANCE OF CONSERVATION EASEMENT:**

Pursuant to the laws of the State of Minnesota and in particular Minnesota Statutes Chapter 84C and in consideration of the facts recited above and the mutual covenants contained herein, the Owner hereby conveys and warrants to the Trust and the City as Co-Holders and to their successors and assigns a perpetual conservation easement over the Protected Property. This conservation easement consists of the following rights, terms and restrictions (the "Easement"):

1. **CONSERVATION PURPOSE.** The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property identified above by confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Easement.

The terms of this Easement are specifically intended to provide a significant public benefit by:

- Creating permanent open space in a clustered residential setting called *St. Croix's Sanctuary*.
- Protecting habitat for wildlife and plants, both terrestrial and aquatic in a rapidly developing region.
- Protecting this relatively natural setting of undeveloped parcels to facilitate low-impact trail use.

2. **LAND USE RESTRICTIONS.** Any activity on or use of the Protected Property that is inconsistent with the purposes of this Easement is prohibited.

Except as specifically permitted in paragraph 3 below and without limiting the general prohibition above, restrictions imposed upon the Protected Property expressly include the following:

- 2.1. **Industrial, Agricultural, and Commercial Activity.** No industrial, agricultural, or commercial use of the Protected Property is allowed.
- 2.2. **Residential Development.** No residential use or development of the Protected Property is allowed.
- 2.3. **Right of Way.** No right of way shall be granted across the Protected Property in conjunction with any industrial, commercial or residential use or development of other land not protected by this Easement.
- 2.4. **Density.** No portion of the Protected Property may be used to satisfy land area requirements for other property not subject to this Easement for purposes of calculating building density, lot coverage or open space under otherwise applicable laws, regulations or ordinances controlling land use other than that certain plat filed prior to the acceptance of this Easement for the development known as *St. Croix's Sanctuary*. No development rights that have been encumbered or extinguished by this Easement may be transferred to any other property other than the property within the plat of the development known as *St. Croix's Sanctuary*.
- 2.5. **Structures and Improvements.** No temporary or permanent buildings, structures, utilities, roads or other improvements of any kind may be placed or constructed on the Protected Property except as specifically authorized in paragraph 3 or as set forth below:
  - a. **Utilities.** Utility systems and facilities may be installed, maintained, repaired, extended and replaced only to serve uses and activities specifically permitted by this Easement or to serve the overall residential development known as *St. Croix's Sanctuary*. This includes, without limitation, all systems and facilities necessary to provide on-site power, fuel, water, storm water drainage, waste disposal and communication but does not permit communication towers, wind turbines, or similar structures, without the prior written approval of the Co-Holders.

In the event the adjacent properties to the south, west or east of the *St. Croix's Sanctuary* residential development are developed for residential use, those developments may, if necessary, benefit from and use the existing drainage

and utility easements established on the recorded plat of *St. Croix's Sanctuary*.

Utility systems and facilities shall be installed or constructed with minimal grading and disturbance to vegetation. Following installation or construction, the surface shall be restored in a timely manner to a condition consistent with the conservation purposes of this Easement.

- b. Signs. No billboards or other signs may be placed or erected on the Protected Property except for small, unlighted signs for informational or interpretive purposes.
- c. Roads and Trails. No new roads or other rights of way may be established or constructed on the Protected Property without the prior written approval of the Co-Holders. Existing roads may be maintained, repaired or replaced in substantially their same location. Any widening or relocation must be approved in advance by the Co-Holders.

Paths or foot trails may be established on the Protected Property for non-motorized recreational uses as described in the Habitat and Open Space Management Plan as required in Paragraph 3 below.

- d. Fences. Fences may be constructed, maintained, improved, replaced or removed to mark boundaries, to secure the Protected Property, or as needed in carrying out activities permitted by this Easement.
  - e. Outdoor Lighting. Unless otherwise required by law, no lighting shall be permitted on the Protected Property.
- 2.6. Dumping. No trash, non-compostable garbage, hazardous or toxic substances, junk or other unsightly material may be dumped or accumulated on the Protected Property.
  - 2.7. Mining. No mining, drilling, exploring for or removing of any minerals or fossil fuels from the Protected Property is allowed.
  - 2.8. Topography and Surface Alteration. Except as incidental to the development of homes and improvements for the residential development known as *St. Croix's Sanctuary* or with respect to activities or uses specifically permitted by this Easement, no alteration or change in the topography of the surface of the Protected Property is allowed. This includes no ditching, draining or filling and no excavation or removal of soil, sand, gravel, rock or other materials.

The Owner may remove sand from the Protected Property as needed for the initial construction of roads within *St. Croix's Sanctuary*. The Owner agrees to promptly replace the removed sand with soil appropriate for habitat enhancement

or restoration and to restore the surface in accordance with the Habitat and Open Space Management Plan.

2.9. Water. With the exception of drainage pond easements reserved on the plat of *St. Croix's Sanctuary*, no alteration or manipulation of natural watercourses, lakes, shorelines, wetlands or other surface or subsurface bodies of water or creation of new wetlands or water bodies is allowed except to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands in accordance with the Habitat and Open Space Management Plan.

No activities on or uses of the Protected Property that cause significant erosion or are seriously detrimental to water quality or purity are allowed.

2.10. Vegetation Management. No removal, cutting, pruning, trimming or mowing of any trees or other vegetation, living or dead, and no introduction of non-native species is allowed except as follows:

- a. In conjunction with habitat management and restoration in accordance with the Habitat and Open Space Management Plan.
- b. As reasonably required to construct and maintain permitted trails provided that vegetation shall be restored following any such construction to a condition consistent with the conservation purposes of this Easement.
- c. As reasonably required to prevent or control insects, noxious weeds, invasive vegetation, disease, fire, personal injury or property damage.

2.11. Vehicles. No use of motorized vehicles on the Protected Property is allowed except in conjunction with permitted habitat maintenance, restoration or enhancement or the creation or maintenance of trails as permitted under the Habitat and Open Space Management Plan.

2.12. Subdivision. The Protected Property may not be divided, subdivided, or partitioned. The Protected Property may be conveyed only in its entirety as a single parcel, regardless of whether it consists of or was acquired as separate parcels or is treated as separate parcels for property tax or other purposes.

3. **RESERVED RIGHTS.** The Owner retains all rights associated with ownership and use of the Protected Property that are not expressly restricted or prohibited by this Easement. The Owner may not, however, exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property. Additionally, the Owner must give notice to the Co-Holders before exercising any reserved right that might have an adverse impact on the Conservation Values associated with the Protected Property.

Without limiting the generality of the above, the following rights are expressly reserved and the Owner may use and allow others to use the Protected Property as follows:

- 3.1. **Right to Convey.** The Owner may sell, give, lease, bequeath, devise, mortgage or otherwise encumber or convey the Protected Property.
  - a. Any conveyance or encumbrance of the Protected Property is subject to this Easement.
  - b. The Owner will reference or insert the terms of this Easement in any deed or other document by which the Owner conveys title to the Protected Property. The Owner will also specify to what extent reserved rights have been exercised, if at all, and are no longer available for use by the new owner and which reserved rights are specifically allocated to the property being conveyed in accordance with other provisions of this Easement.
  - c. The Owner will notify the Co-Holders of any conveyance within fifteen (15) days after closing and will provide the Trust with the name and address of the new owner and a copy of the deed transferring title.
  - d. If at any time the Protected Property is owned by an association of homeowners in the *St. Croix's Sanctuary* residential development, the Owner shall provide the Co-Holders with the name and address of the contact person for the association.

The enforceability or validity of this Easement will not be impaired or limited by any failure of the Owner to comply with this subparagraph.

- 3.2. **Recreational and Educational Uses.** The Protected Property may be used for hiking, cross-country skiing, nature observation or study, and other similar low impact nonmotorized recreational and educational programs or activities.

Minor rustic structures such as trail barriers, small trailside shelters, picnic tables, benches, and informational kiosks may be placed on the Protected Property in conjunction with these activities.

- 3.3. **Habitat and Open Space Management.** The Protected Property shall be used to create, maintain, restore or enhance habitat for wildlife and native biological communities in accordance with a Habitat and Open Space Management Plan approved by the Trust.

- 4. **CO-HOLDERS' RIGHTS AND REMEDIES.** In order to accomplish the purposes of this Easement, the Trust and the City individually and jointly as Co-Holders of this Easement have the following rights and remedies:

- 4.1. **Right to Enter.** The Co-Holders have the right to enter the Protected Property at reasonable times and in a reasonable manner for the following purposes:
- a. To inspect the Protected Property and to monitor compliance with the terms of this Easement.
  - b. To obtain evidence for use in seeking judicial or other enforcement of this Easement.
  - c. To survey or otherwise mark the boundaries of all or part of the Protected Property if necessary to determine whether there has been or may be a violation of this Easement. If a violation is found, any survey or boundary demarcation completed under this provision will be at the Owner's expense.
  - d. To otherwise exercise its rights under this Easement.

4.2. **Right of Enforcement.** The Trust and the City as Co-Holders of this Easement have the right to act individually or jointly to prevent or remedy violations of this Easement through appropriate judicial action brought against the Owner or other responsible party in any court of competent jurisdiction.

- a. **Notice.** The Co-Holders may not initiate judicial action until the Owner has been given notice of the violation, or threatened violation, of this Easement and a reasonable opportunity to correct the situation. This provision shall not apply if, in the sole discretion of either Co-Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Owner are unsuccessful.
- b. **Remedies.** Remedies available to the Co-Holders in enforcing this Easement include the right to request temporary or permanent injunctive relief for any violation or threatened violation of this Easement, to require restoration of the Protected Property to its condition at the time of this conveyance or as otherwise necessitated by a violation of this Easement, to seek specific performance or declaratory relief and to recover damages resulting from a violation of this Easement or injury to any Conservation Values protected by this Easement.

These remedies are cumulative and are available without requiring the Co-Holders to prove actual damage to the Conservation Values protected by this Easement. The Co-Holders and the Owner also recognize that restoration, regardless of cost, may be the only adequate remedy for certain violations of this Easement.

The Co-Holders are entitled to seek expedited relief, ex parte if necessary, and shall not be required to post any bond applicable to a petition for such relief.