

**AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT**

This Amended and Restated Development Agreement (“**Agreement**”) is entered into this \_\_\_\_ day of May, 2020, between the City of Saint Paul, a municipal corporation (“**City**”) and Lower Phalen Creek Project, a registered 501(c)(3) Minnesota non-profit corporation (“**Lower Phalen Creek Project**”).

WHEREAS, the parties have previously entered into a Development Agreement dated April 22, 2015 (the “**Original Development Agreement**”) relating to the Center (defined below);

WHEREAS, the purpose of Lower Phalen Creek Project is to strengthen Saint Paul, Minnesota’s East Side and Lowertown communities by developing and maximizing the value of local parks and trails, ecological and cultural resources and connections to the Mississippi River;

WHEREAS, the City has identified in its Great River Passage Master Plan the need to create a gathering place at the Bruce Vento Nature Sanctuary (as further defined below, “**Nature Sanctuary**”) and to provide interpretive, educational and visitor amenities and services, landscape improvements, as well as improved trail connections from the Nature Sanctuary to nearby trails;

WHEREAS, the City realizes the importance of establishing partnerships with community organizations to provide recreational opportunities and enhanced interpretive and educational services;

WHEREAS, Lower Phalen Creek Project has worked with the City and the community to acquire, restore and develop the Nature Sanctuary and has a vision to create and operate, at this location, a community gathering place and an interpretive center called Wakan Tipi Center (“**Center**”), in honor of Wakan Tipi Cave, a Dakota sacred site and historic site; and

WHEREAS, the City and the Lower Phalen Creek Project wish to set forth the expectations of each party as to what is needed for the parties to design and construct the Center and the City to lease the building to Lower Phalen Creek Project as developer and operator of the facility;

WHEREAS, the parties now wish to amend and restate the Original Development Agreement in its entirety as set forth below;

NOW, THEREFORE, in consideration of the mutual promises and obligations of the parties, the City and Lower Phalen Creek Project hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

1.1 **Final Design of the Property:** The design of the Property which is the product of the community engagement process and which has been mutually agreed to and approved by

the City and Lower Phalen Creek Project, as provided in Article VI, and includes Initial Improvements.

- 1.2 **Initial Improvements:** As defined in Article 3.4 below.
- 1.3 **Lease.** The Lease between the City and Lower Phalen Creek Project as further described in Article V below.
- 1.3 **Nature Sanctuary:** The entire 27.1 acres of property owned by the City of Saint Paul and operated as the Bruce Vento Nature Sanctuary, as identified on the attached Exhibit A, and which is part of the Metropolitan Parks and Open Spaces System.
- 1.4 **Project:** As further described below in Articles 3.3 and 3.4, the design and development of an interpretive and visitor center to be used for exhibits, programming and related educational and recreational opportunities and amenities. The programming and use of the Center will be complementary to and suitable for such a facility and consistent with its location on parkland and Metropolitan Parks and Open Spaces System land and will be subject to the Lease.
- 1.5 **Project Cost:** All costs related to the completion of the Project, including, but not limited to, Initial Improvements listed in Article 3.4, and all costs listed in Article 3.3 (1) - Wakan Tipi Center Preliminary Capital Budget Exhibit C, Tab 1.
- 1.6 **Property:** The 1.01 acre parcel identified as the Wakan Tipi Center Development site on the attached Exhibit B, which is also part of the Nature Sanctuary, or such other site within the Nature Sanctuary as agreed to in writing by the parties.
- 1.7 **State Grant:** That certain proposed grant of \$3,000,000 for Project Costs from the State of Minnesota to the Metropolitan Council as provided by the State legislature, Laws of Minnesota 2018, Chapter 214, Article 1, Section 17, Subdivision 6.

ARTICLE II  
REPRESENTATIONS AND WARRANTIES

- 2.1 Representations and Warranties of the City. The City makes the following representations and warranties:
  - (1) The City is a municipal corporation organized and existing pursuant to Minnesota law and its City Charter, and it has the power and authority to enter into this Agreement and carry out its obligations hereunder.
  - (2) To its knowledge, neither the execution of this Agreement, the transactions contemplated herein nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with any provision of Minnesota law, the City's charter, administrative code, or legislative

code, or any contractual agreements of whatever nature to which the City is now a party.

- (3) The City is not presently aware of any condition or fact which would prevent it from carrying out and performing its obligations under this Agreement.
- (4) The City is not aware of any liens, leases, or other agreements affecting the Property, other than the restrictions placed on the use of the Nature Sanctuary as conditions of the grant to the City by the Metropolitan Council for purchase of the Property, the MPCA Environmental Covenant and Easement and the Conservation Easement from the City to the State of Minnesota, as amended.
- (5) To the best of the City's knowledge and belief, the top 4 feet of soil on the Property is free from any hazardous substances or other conditions which would adversely affect its use as contemplated by the Lower Phalen Creek Project. The City will provide any information it has concerning any remediation of hazardous substances on the Property, the level of clean-up achieved, and its No Action Letter from the Minnesota Pollution Control Agency.

2.2. Representations and Warranties of Lower Phalen Creek Project. Lower Phalen Creek Project makes the following representations and warranties:

- (1) Lower Phalen Creek Project is a non-profit corporation, duly formed and existing under Minnesota Law.
- (2) Lower Phalen Creek Project has the authority to enter into this Agreement and to perform its obligations hereunder, and to its knowledge is not in violation of any provisions of the laws of the State of Minnesota.
- (3) To its knowledge, neither the execution of this Agreement, the transactions contemplated herein nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with any provisions of the Articles of Incorporation or By-Laws of, or any contractual agreements of whatever nature to which Lower Phalen Creek Project is now a party.
- (4) Lower Phalen Creek Project is not presently aware of any condition or fact which would prevent it from carrying out and performing the obligations under this Agreement.

### ARTICLE III PROJECT DESCRIPTION

3.1 Scope of the Project. Lower Phalen Creek Project intends to design and operate the Center, a facility which will: (1) honor the significance of Wakan Tipi Cave as a Dakota sacred site; (2) honor, accurately interpret and educate the community about the rich

cultural and natural history and features of the Nature Sanctuary, the Lower Phalen Creek Corridor and their connections to the Mississippi River; and (3) provide a gathering place and visitor facility for St. Paul's East Side and Lowertown communities as well as regional, statewide and national visitors.

- 3.2 Ownership of Center. The Center will be located on the Property, owned by the City at all times, and leased to Lower Phalen Creek Project pursuant to the Lease.
- 3.3 Construction of Center. Subject to the availability of funding from Lower Phalen Creek Project or other sources as provided in Article 4.1, the City will be responsible for the construction of the Center, including the Initial Improvements, in accordance with the Final Design of the Property, Lease and the construction schedule pursuant to Article 6.6, all as further described below. Both design and construction work are listed in the Wakan Tipi Preliminary Capital Budget dated May 5, 2020, attached hereto as Exhibit C, which the parties agree to update after the pre-design is complete.
- 3.4 Initial Improvements. Except as otherwise agreed to in writing between the parties, the City will be responsible, pursuant to the Lease, for the ongoing maintenance, repair and replacement of the following initial improvements. These improvements shall be completed consistent with current City Parks and Recreation Department standards (“**Initial Improvements**”):
- (1) entrance road and parking lot
  - (2) utility infrastructure
  - (3) storm water infrastructure
  - (4) site lighting
  - (5) landscaping, including, planting, plant materials.

During the term of the Lease, any change in the Initial Improvements will require the prior approval of Lower Phalen Creek Project, which will not be unreasonably withheld

- 3.5 LPCP Responsibilities. Lower Phalen Creek Project shall be responsible for:
- (1) Design of the Center, including the Initial Improvements, subject to the City's authority to approve architect selection and maintain design approval, neither of which will be unreasonably withheld. City hereby approves Cuningham Group Architecture, Inc. and Full Circle Indigenous Planning LLC for the pre-design and design work. City design standards and a schedule of required City approvals are attached hereto as Exhibit D.
  - (2) During the term of the Lease, capital maintenance and replacement work on the Center as listed in the Wakan Tipi Capital Replacement Budget dated May 5, 2020, attached hereto as Exhibit E, which the parties agree to update after the pre-design is complete.

- (3) During the term of the Lease, operating the Center which includes the work listed in the Wakan Tipi Operating Budget Projection dated May 5, 2020 attached hereto as Exhibit F. The City will not impose any additional costs or fees, such as administrative fees or management fees, to be paid to the City with respect to the management or maintenance of the Center. Lower Phalen Creek Project may propose an adjusted budget for the first year of operation prior to the commencement date of the Lease.
- (4) During the term of the Lease, staffing and programming in the Center, consistent with its mission, offering exhibits, programs, tours, workshops and classes to the public and visitor amenities which may include food, retail and other park visitor amenities consistent with park purposes and Metropolitan Parks and Open Spaces Systems generally applicable requirements.

3.5 Future Development. Any proposals for additional improvements or expansion of the Project during the term of this Agreement must be by amendment, signed by both parties and the party requesting such improvements or expansion will be responsible for any additional financing required unless otherwise agreed to in the written amendment.

#### ARTICLE IV PROJECT FUNDING

4.1 Center Construction. Based on pre-design, Lower Phalen Creek Project has an estimated design, engineering and construction budget of approximately \$6.7 Million for the Project. Lower Phalen Creek Project shall be responsible for securing said funds from public and private sources, consistent with this Agreement. Any additional mitigation costs resulting from building placement partially or entirely off of the slab will be an additional cost to be paid from funds secured by Lower Phalen Creek Project. In order for the City to begin construction of the Project, Lower Phalen Creek Project must have 100% of the estimated construction cost, based on the Final Design of the Property, less the State grant funds, available to it in the form of cash or executed agreements as required by Minn. Stat. Section 16A.695, subd. 6.

4.2 Operating Budget. In order for the City to authorize Lower Phalen Creek Project to begin occupancy of the Property, there must be an estimated balanced budget for the first year of operation of the Center, and Lower Phalen Creek Project must have 100% of the estimated revenue for the first year, other than revenue reasonably expected to be generated by operations of the Center, available to it in the form of cash or executed agreements. All revenue raised by and for the Center for this purpose will be owned and managed by Lower Phalen Creek Project.

4.3 Unanticipated Project Costs.

- (1) If there are unanticipated expenses for soil remediation, or other problems related to the condition of the Property that would prohibit its use as described in Section 3.1 of this Agreement unless corrected, both the City and Lower Phalen Creek

Project will actively work together in good faith to seek and obtain funding from any appropriate sources, public or private, to address the problems in a manner that allows the Project to proceed. Failure to obtain the necessary funding under this section by October 31, 2022 will result in termination of this Agreement.

- (2) If, during construction of the Project, the available Project funding is not sufficient to complete the Project as designed, parties may after consulting with each other: 1) seek additional funds to meet increased costs; 2) amend the Project scope to reduce costs; or 3) if neither of those options are successful within six (6) months after discovering the shortfall, terminate the Project, repay the State grant based on the terms required by the State Grant Agreement and return any remaining escrowed money to Lower Phalen Creek Project.
- (3) Nothing herein obligates the City to provide additional funding for the Project.

## ARTICLE V LEASE REQUIREMENTS

- 5.1 State Program. The State of Minnesota has authorized a grant of \$3,000,000 to be given to the City from the Metropolitan Council to predesign, design, construct, furnish and equip the Center for programs that the City determines meet regional and city park purpose requirements (the “**State Program**”). In order to carry out the State Program, the parties will enter into the Lease, which will be a lease-use agreement complying with the provisions of the State Program enabling legislation, Minnesota Statutes Section 16A.695, and the rules, regulations, and orders issued pursuant thereto. The parties endeavor to negotiate the Lease in good faith and finalize the terms thereof as soon as reasonably practical. The City shall use the grant proceeds to pay for the Project construction costs and other eligible project expenses as agreed with Lower Phalen Creek Project.
- 5.2 Use Restrictions. Pursuant to the Lease, the City may reasonably restrict the activities undertaken as part of the Center to those consistent with its location on and adjacent to metropolitan parkland. Subject to this provision and Article 3.5 of this Agreement, and with the written approval of the City, Lower Phalen Creek Project may sublease portions of the Center for uses consistent with these Metropolitan Council--authorized- parkland uses.
- 5.3 Rent. No rent other than paying for capital maintenance and replacement costs and operating costs will be due or paid under the Lease in consideration of the funding Lower Phalen Creek Project is providing as part of the Project.
- 5.4 Term. To the extent allowed under the State Program requirements described above in Article 5.1, the Lease shall have an initial term and an initial renewal term for the number of years mutually agreed to as set forth in the Lease, subject to all of the terms required by Minn. Stat. §16A.695, subd. 2. The Lease will require Lower Phalen Creek Project to

provide information regarding the use and operation of the Center at least annually to the City, including an operating budget, to allow City oversight.

ARTICLE VI  
DESIGN, COMMUNITY ENGAGEMENT, AND CONSTRUCTION

- 6.1 Design and Construction Responsibility. Under Chapter 7A of the City’s Administrative Code, the Department of Parks and Recreation is responsible for the design of all parks, parkways, trails and public grounds. The City is ultimately responsible for the project management of design and construction of the entire property. All City approvals required under this Agreement must be in writing and submitted to Lower Phalen Creek Project within 15 days of approval request.
- 6.2 Parties’ Design Roles. Lower Phalen Creek Project will be responsible for the design of the Center and may hire a consultant as a Project Cost to provide architectural and engineering documents for the design and construction of the Center. The City will retain ultimate authority to approve the Final Design of the Center, which approval will not be unreasonably withheld. The parties acknowledge the City has previously approved the project architect. Prior to sending out bid packages, the City and Lower Phalen Creek Project will consult on the contents of the final bid package, including the plans and specifications. The City shall reasonably consider incorporating Lower Phalen Creek Project’s comments in the final bid plans and specifications.
- 6.3 Community Engagement. The design of the Center and its component parts has been and will continue to be informed by input from the community and interested stakeholders through a community engagement process. The community engagement process will be led by Lower Phalen Creek Project and will be planned and overseen by a committee with representatives from Lower Phalen Creek Project, the City, and other community representatives as may be identified through the community engagement process.
- 6.4 City Expenses. The City will be compensated \$50,000 for design & construction staff time on the Project, plus reimbursement for City landscape-design staff at an hourly rate of \$140.00, such additional reimbursement not to exceed an aggregate amount determined by the parties at the time the contract is let to the general contractor.
- 6.5 Center Construction. Construction of the Center will be performed by the City, subject to the provisions below.
- (1) The Project will be bid by the City pursuant to Minn. Stat. § 471.345. During the bidding of the work, the City will regularly, on at least a weekly basis, consult with Lower Phalen Creek Project.
  - (2) The Lease will include the anticipated completion date for the Center to be determined pursuant to Article 6.6 below, but the actual required completion date will be incorporated into the construction contract. In addition, the construction contract will require that all change orders be approved by City and Lower Phalen

Creek Project and will set forth requirements for prevailing wages, insurance and bonding by contractors, and access to the Property for construction purposes.

- (3) The City will be responsible for administering the construction contract. Lower Phalen Creek Project may hire a construction advisor, as a Project Cost paid from funds raised by Lower Phalen Creek Project, to advise it during design and construction and provide quality control reviews during construction. All contractor pay applications must be reviewed and approved by the Project architect and by Lower Phalen Creek Project's representative, not to be unreasonably withheld, and by the City. Lower Phalen Creek Project will compile all draw requests and send them to the City team (and the appropriate State representatives to the extent required by the State to receive State grant funds) for review and approval, not to be unreasonably withheld. All draws will be disbursed pursuant to a customary disbursing agreement among a mutually acceptable title company, the City, Lower Phalen Creek Project and, if the State so requires, the State.

6.6 Schedule. Within 30 days after the full fundraising for the Project Costs has been secured, the parties will update the schedule for the design of the Center, commencement and completion of the Initial Improvements, and commencement and completion of the Center. The construction contract will include further milestones for the construction schedule for the Center.

6.7 Furnishings and Equipment. To the extent needed for programming purposes, Lower Phalen Creek Project shall be responsible for providing all furnishings, appliances, audio visual equipment, window treatments, and interior signage for the Center pursuant to the Lease as Project Costs and will comply with the design guidelines in Exhibit D. All other equipment will be included as part of the construction contract, including but not limited to the following: HVAC, mechanical, plumbing, and low voltage wiring.

## ARTICLE VII EVENTS OF DEFAULT

7.1 City Defaults. The occurrence of any of the following shall constitute a "Default" by the City under this Agreement:

- (1) Failure of the City to enter into the Lease with Lower Phalen Creek Project within sixty (60) days after its approval by the State of Minnesota.
- (2) Failure to bid out the construction of the Project within three (3) months after acceptance of State grant funds.
- (3) Failure of the City to observe or perform any other covenant or obligation under this Agreement, and, to the extent such failure is susceptible to cure, City fails to cure, correct or remedy such failure within 30 days after the receipt of written notice thereof provided, however, that if the nature of the failure is such that it

cannot reasonably be cured within the thirty-day period, then the thirty-day period will be extended for the length of time reasonably required (but not in excess of an additional ninety days) to complete such cure if the City promptly commences to cure such default within the thirty-day period and thereafter diligently prosecutes the cure to completion.

7.2 LPCP Defaults. The occurrence of any of the following shall constitute a “Default” by Lower Phalen Creek Project under this Agreement:

- (1) Failure to maintain the nonprofit status of Lower Phalen Creek Project, and such failure is not be cured within thirty (30) days after written notice of such failure from the City.
- (2) Failure to obtain the required Project funding set forth in Article 4.1 by October 31, 2022.
- (3) Failure to enter into a Lease with the City within sixty (60) days after its approval by the State of Minnesota.
- (4) Failure of Lower Phalen Creek Project to observe or perform any other covenant or obligation under this Agreement, and, to the extent such failure is susceptible to cure, Lower Phalen Creek Project fails to cure, correct or remedy such failure within 30 days after the receipt of written notice thereof provided, however, that if the nature of the failure is such that it cannot reasonably be cured within the thirty-day period, then the thirty-day period will be extended for the length of time reasonably required (but not in excess of an additional ninety days) to complete such cure if Lower Phalen Creek Project promptly commences to cure such default within the thirty-day period and thereafter diligently prosecutes the cure to completion.

## ARTICLE VIII TERMINATION

8.1 Mutual Consent. This Agreement may be terminated at any time by mutual consent of the parties.

8.2 For Cause. This Agreement may be terminated for cause in the event either party has a Default listed in Article 7 above that has not been cured. The party seeking termination must give written notice of the nature of the default, and the time, if any, to cure.

8.3 Failure to Obtain Additional Funding. To the extent provided in Article 4.3, either party may give notice to the other of intent to terminate this Agreement, in which event this Agreement will terminate within thirty (30) days of such notice.

ARTICLE IX  
MISCELLANEOUS

- 9.1 Conflicts of Interest. No member of the governing body of Lower Phalen Creek Project shall have any financial interest, direct or indirect, in this Agreement or any contract, agreement, or other transaction contemplated to occur or be undertaken to effect the purpose of this Agreement.
- 9.2 Notices and Demands. Any notice under this Agreement by either party to the other shall be sufficiently given when it is sent by registered or certified mail, postage prepaid, return receipt requested, and addressed to:
- |  |  |
|--|--|
| LOWER PHALEN CREEK PROJECT<br>ATTN: Executive Director<br>804 Margaret Street<br>Saint Paul, Minnesota 55106 | CITY OF SAINT PAUL<br>Parks and Recreation<br>25 West 4th Street, Ste. 400<br>Saint Paul, Minnesota 55102<br>Attn: <u>Director</u> |
|--|--|
- 9.3 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota and any litigation will be venued in the Ramsey County District Court.
- 9.4 Independent Contractors. Nothing in this Agreement is intended to or should be construed as creating a joint venture or partnership among or between the parties.
- 9.5 Assignment. This Agreement may not be assigned without consent of the parties and any attempt to assign it without consent will be void.
- 9.6 Counterparts. The parties may sign this Agreement in counterparts, each of which constitutes an original, but all of which together constitute one instrument.
- 9.7 Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement be valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties further agree that any document (including this Agreement and any attachments or exhibits to this Agreement) containing, or to which there is affixed, an electronic signature shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written when printed from electronic files. For purposes hereof, “electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g. via PDF) of an original signature. Any party’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

[SIGNATURE PAGES FOLLOW]

In Witness Whereof parties have caused this Agreement to be duly executed on the date first written above.

CITY OF SAINT PAUL

LOWER PHALEN CREEK PROJECT

\_\_\_\_\_  
Mayor

\_\_\_\_\_, Chair

\_\_\_\_\_  
Director of Parks and Recreation

Approved as to form:

\_\_\_\_\_  
Director of Finance

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
City Clerk