

EQUIPMENT LOAN AGREEMENT

This Equipment Loan Agreement (“Agreement”) is made and entered into as of the ___ day of _____, 20___ by and among the governmental units that have executed this document as evidenced by the signature pages attached hereto.

RECITALS

- A. Each Party has certain public works Equipment that can be utilized by other Parties for use in carrying out their respective duties to keep public infrastructure properly maintained and to protect the public health, safety, and welfare in a cost-effective manner.
- B. It is the best interests of the Parties and their respective taxpayers to enter into an agreement to set out a process by which a Party may request the use of certain equipment of another Party and to set out the terms under which such equipment will be made available.
- C. This Agreement is an extension of the joint powers agreement titled the Public Works Joint Powers Mutual Aid Agreement the parties have adopted and which is a prerequisite to entering into this Agreement.
- D. In order to reduce the financial risks associated with loaning Equipment, this Agreement is limited to only loaning Equipment that has a replacement value of no greater than \$500,000 as determined by the Party who owns the equipment.
- E. Hennepin County Emergency Management has agreed to receive and maintain the contact information for the Parties that have entered into this Agreement in order to facilitate requests to borrow equipment.
- F. This Agreement is made pursuant to Minnesota Statutes, section 471.59, which authorizes the joint and cooperative exercise of powers common to the parties. Each of the Parties to this Agreement is authorized to own and operate Equipment and so may enter into a joint powers agreement to share such Equipment.

AGREEMENT

The Parties to this Agreement hereby agree as follows:

- 1. **Definition of Terms.** For the purposes of this Agreement, the following terms shall have the meaning given them in this section.
 - (a) **Agreement.** “Agreement” means this Equipment Loan Agreement.
 - (b) **Eligible Party.** “Eligible Party” means a “governmental unit” as defined by Minnesota Statutes, section 471.59, subdivision 1 that has entered into the joint powers agreement titled the Public Works Joint Powers Mutual Aid Agreement.

- (c) Equipment. "Equipment" means any equipment, vehicles, or other property owned by a Party that has a replacement value of under \$500,000 as determined by the Party who owns the equipment.
 - (d) HCEM. "HCEM" means Hennepin County Emergency Management or its designee.
 - (e) Party and Parties. "Party" means an Eligible Party that elects to participate in this Agreement by the authorization of its governing body. "Parties" means more than one Party to this Agreement.
 - (f) Requesting Official. "Requesting Official" means a person who is designated by the Requesting Party to request the loan of one or more pieces of Equipment from another Party.
 - (g) Requesting Party. "Requesting Party" means a Party that requests to loan one or more pieces of Equipment from a Sending Party.
 - (h) Sending Official. "Sending Official" means a person who is designated by a Party to determine whether and to what extent that Party should loan one or more pieces of its Equipment to a Requesting Party.
 - (i) Sending Party. "Sending Party" means a Party that loans one or more pieces of Equipment to a Requesting Party.
2. **Designate Officials**. The governing body of each Party shall designate one or more employees or elected officials to serve as a Requesting Official that is authorized to request Equipment from another Party. The governing body of each Party shall also designate one or more employees or elected officials to serve as a Sending Official that is authorized to loan Equipment to another Party. Each Party shall provide the names and contact information regarding its designated Requesting Official and Sending Official to HCEM.
 3. **Requesting Equipment**. Whenever, in the opinion of a Requesting Official of a Party, there is a need for Equipment from another Party, such Requesting Official may, at his or her discretion, call upon the Sending Official of any other Party to furnish the requested Equipment. The Parties understand that this Agreement is limited to Equipment that has a replacement value of under \$500,000 as determined by the Party that owns the Equipment. Any piece of Equipment that has a replacement value of \$500,000 or greater may not be loaned or borrowed pursuant to this Agreement. The Sending Party has the sole discretion of determining whether to loan the requested Equipment to the Requesting Party and shall in no way be held liable for denying a request.
 4. **Fees**. The Requesting Official and the Sending Official shall mutually agree on whether a fee shall be charged for use of the Equipment. The Requesting Official and the Sending Official may determine that no fee will be charged. If a fee is to be charged, the amount of the fee must be documented in writing and mutually agreed upon before any Equipment is loaned. Such writing may be by email or any other written form. If a fee is

charged, the Sending Party shall submit an invoice to the Receiving Party within 30 days after the Equipment is returned to the Sending Party. The Receiving Party shall pay the invoice within 30 days after receipt of the invoice.

5. **Loan Period.** Prior to sending the Equipment, the Requesting Official and the Sending Official shall agree on the length of the period during which the Requesting Party may use the Equipment. The Requesting Official and the Sending Official may agree to modify the loan period.
6. **Recalling Equipment.** Whenever a Sending Party has provided one or more pieces of Equipment to a Requesting Party, the Sending Official may at any time, regardless of the agreed upon loan period, recall any of the Equipment it loaned if the Sending Official determines, in his or her best judgment, such recall is necessary to provide for the best interests of the Sending Party's community. Such action shall not result in liability to any Party and each Party hereby waives all claims against another Party for recalling any Equipment.
7. **Requesting Party's Responsibilities.** A Requesting Party that receives one or more pieces of Equipment from a Sending Party shall, during the entire period in which the Requesting Party has possession of the Equipment, be responsible for each of the following:
 - (a) **Transporting.** Transporting the Equipment to and from the Sending Party's location;
 - (b) **Examining the Equipment.** Examining the Equipment upon receipt to determine its suitability for the Requesting Party's intended use;
 - (c) **Trained Operators.** Ensuring that only properly trained and licensed personnel are allowed to operate the Equipment;
 - (d) **Routine Maintenance.** Conducting any routine maintenance required to operate the Equipment. Routine maintenance includes, but is not limited to, supplying fuel, lubricants, fluids, repairing flat tires, and other items that are typically incidental to the use of the Equipment;
 - (e) **Liability and Equipment Insurance.** Maintaining liability, property, automobile, and such other insurance coverages as may be needed to cover its operation of the Equipment. The Requesting Party's coverage shall be primary and non-contributory to any other coverage available to the Sending Party. The Requesting Party shall also be entitled to maintain a program of self-insurance. The Sending Party may require proof of insurance coverage from the Requesting Party before agreeing to loan its Equipment;
 - (f) **Workers' Compensation.** Injuries to or death of its own personnel while using the Equipment. The Requesting Party shall maintain workers' compensation insurance or self-insurance covering its own personnel while they are using the Equipment. The Requesting Party waives the right to sue the Sending Party for any workers' compensation benefits paid to its own personnel or their

dependents, even if the injuries were caused wholly or partially by the negligence of the Sending Party or its officers, employees, volunteers, or agents;

- (g) **Damages.** Damages to or loss of the Equipment. At a minimum, the Requesting Party shall be obligated to either repair the Equipment or pay the mutually agreed upon actual cash value of the Equipment. The Sending Party shall be entitled to receive any insurance or coverage proceeds received by the Requesting Party that are in excess of the Equipment's actual cash value;
 - (h) **Storing.** Storing the Equipment in a safe and secure place; and
 - (i) **Returning.** Returning the Equipment to the Sending Party at the end of the agreed upon loan period or earlier if recalled by the Sending Party. The Equipment shall be returned in at least the same condition it was in when received, except normal wear and tear. Any Equipment using fuel or other fluids must be returned with at least the same level of fuel and fluids that the Equipment had when received by the Requesting Party.
8. **Indemnification.** To the fullest extent permitted by law, the Requesting Party agrees to defend, indemnify, and hold the Sending Party harmless against any claims brought or actions filed against the Sending Party or any officer, employee or agent of the Sending Party for injury to, death of, or damage to the property of any third person or persons, arising from the Requesting Party's use of the Equipment or the Requesting Party's failure to perform its obligations under this Agreement. The Requesting Party is not required to indemnify the Sending Party for claims arising from the Sending Party's own negligence or misconduct. Under no circumstances shall a Party be required to pay on behalf of itself and the other Party any amounts in excess of the limits on liability established in Minnesota Statutes, Chapter 466 applicable to any one Party.
9. **Liability.** To the fullest extent permitted by law, action by the Parties to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the Parties that they shall be deemed a "single governmental unit" for the purposes of liability, as set forth in Minnesota Statutes, section 471.59, subd. 1a(a), provide further that for purposes of that statute, each Party to this Agreement expressly declines responsibility for the acts or omissions of another Party, except to the extent necessary to give effect to the indemnification provision in this Agreement.
10. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota.
11. **Waiver.** The waiver by either the Requesting Party or the Sending Party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.
12. **Entire Agreement.** This document, including the recitals and the documents expressly incorporated herein by reference, constitutes the entire agreement between the Parties regarding the lending and borrowing of Equipment. This Agreement is an extension of the Public Works Joint Powers Mutual Aid Agreement, which is incorporated herein. To

the extent there are any inconsistencies between the documents, the provisions of this Agreement shall be controlling with respect the lending and borrowing of Equipment by the Parties.

- 13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- 14. **Savings Clause.** If any court of competent jurisdiction finds any portion of this Agreement to be contrary to law or invalid, the remainder of the Agreement will remain in full force and effect.
- 15. **Withdrawal.** Any Party may withdraw from this Agreement by action of its governing body. The withdrawing Party shall send written notification of its withdrawal to HCEM. Any Party who withdraws from the Public Works Joint Powers Mutual Aid Agreement shall, as of the effective date of such withdrawal, be deemed to have also withdrawn from this Agreement.
- 16. **Effective Date and Termination.** This Agreement is effective on the date at least two Parties sign this Agreement. This Agreement will become effective as to additional Parties on the date executed by each such additional Party. This Agreement shall continue until terminated. This Agreement shall be deemed terminated if the Public Works Joint Powers Mutual Aid Agreement is terminated according to its terms, or if the number of Parties to this Agreement falls below 11. HCEM will notify the remaining Parties if this Agreement is terminated.
- 17. **No Third Party Rights.** This Agreement is solely for the benefit of the Parties. This Agreement shall not create or establish any rights in or for the benefit of any third party.

IN WITNESS WHEREOF, the Parties, by action of their respective governing bodies, caused this Agreement to be approved on the date below.

GOVERNMENTAL UNIT

Dated: _____

BY: _____

Its _____

AND: _____

Its _____