

This Development Agreement (“Agreement”) is entered into this ____ day of _____, 2015, 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 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 (“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 Wakan Tipi Center and the City to lease the building to Lower Phalen Creek Project as developer and operator of the facility;

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 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.
- 1.2 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.

- 1.3 Project: 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 the location on parkland and Metropolitan Parks and Open Spaces System land, and will be subject to a Lease between the City and Lower Phalen Creek Project.
- 1.4 Project Cost: All costs related to the completion of the Project, including, but not limited to, Initial Improvements listed in Article 3.3, and all costs listed in Article 3.4 (1) and (2) - Wakan Tipi Center Preliminary Budget Exhibit C, Tab 1.
- 1.5 Final Design of the Property: The design of the Property which is the product of the community engagement process and which has been approved by the City, as provided in Article VI, and includes Initial Improvements.

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 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 1.01 acre parcel.
 - (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, construct and operate Wakan Tipi 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; (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 The Center will be located on the Property, and will be donated to the City at the end of construction, and leased back to the Lower Phalen Creek Project.
- 3.3 The City shall be responsible for:

- (1) Demolition of and the cost of demolishing the existing building on the Property; and
- (2) Subject to the availability of funding from Lower Phalen Creek Project or other sources, as provided in Article 4.1, will be responsible for the construction of the following initial improvements (“Initial Improvements”) in accordance with the Final Design of the Property and will be responsible for their ongoing maintenance, repair and replacement:

- * entrance road and parking lot
- * utility infrastructure
- * storm water infrastructure
- * site lighting
- * irrigation
- * initial landscaping, including grading, planting, plant materials

3.4 Lower Phalen Creek Project shall be responsible for:

- (1) Design of the Center, subject to the City’s authority to approve architect selection and maintain design approval, neither of which shall be unreasonably withheld. The City will provide Lower Phalen Creek Project with the design standards that it will require for the Center and a schedule of required design approvals for each design phase.
- (2) Construction of the Center, which will be owned by the City. Both design and construction work are listed in the Wakan Tipi Preliminary Capital Budget dated _____, attached hereto as Exhibit C and incorporated herein.
- (3) Capital maintenance and replacement work on the Center as listed in the Wakan Tipi Capital Replacement Budget dated _____, attached hereto as Exhibit D and incorporated herein.
- (4) Operating the Center which includes the work listed in the Wakan Tipi Operating Budget Projection dated _____, attached hereto as Exhibit E and incorporated herein.
- (5) 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 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 Material provisions of this Agreement between the City and Lower Phalen Creek Project include that: The City is to be granted \$ 610,000.00 from the Lower Phalen Creek Project, or other sources as agreed upon, for the cost of the Initial Improvements (3.2(2), above) to the Property. If the City does not have the full amount of funding required for the construction of the Initial Improvements, it will, after consultation with Lower Phalen Creek Project, make a determination of which improvements are to be financed with the available funding. Nothing herein obligates the City to make any Initial Improvements for which outside funds are not made available, or to seek funding for the Initial Improvements.
- 4.2 Lower Phalen Creek Project has an estimated design, engineering and construction budget of \$ 6.2 Million for the Project. Lower Phalen Creek Project shall be responsible for securing said funds from public and private sources, consistent with this Agreement. In order for the City to authorize Lower Phalen Creek Project to begin construction of the Project, Lower Phalen Creek Project must have 100% of the estimated construction cost available to it in the form of cash or executed agreements.
- 4.3 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 available to it in the form of cash or executed agreements. Lower Phalen Creek Project may propose an adjusted budget for the first year of operation prior to the commencement date of the Lease.
- 4.4 In the event that it is determined that there are unanticipated expenses for soil remediation, or other problems related to the condition of the Property related to its use as described in Section 3.1 of the Agreement, 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. In the event adequate funding cannot be obtained within 12 months from the time the additional expenses are discovered or either party determines that the expense is unwarranted, either party may cause this Agreement to be terminated in accordance with Section VIII.

ARTICLE V
LEASE REQUIREMENTS

- 5.1 The City may reasonably restrict the activities undertaken as part of the Center to those consistent with its location on and adjacent to parkland. Subject to this provision and Section 3.5 of the Agreement, and with the approval of the City, the Lower Phalen Creek Project may sub-lease portions of the Center for uses consistent with these parkland uses.
- 5.2 Rent shall be negotiated on the basis of agreed-upon amortization of the total Project Cost provided by the Lower Phalen Creek Project over the Lease term of no longer than 30 years. This amortization of Project Costs shall be the only rent due to the City from Lower Phalen Creek Project. Capital maintenance and replacement costs, see Exhibit D, and operating costs, see Exhibit E, will not be included in the calculation of rent.

ARTICLE VI
DESIGN, COMMUNITY ENGAGEMENT, AND CONSTRUCTION

- 6.1 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.
- 6.2 The City is responsible for the design of the Nature Sanctuary. Lower Phalen Creek Project will be responsible for the design of Wakan Tipi Center and may hire a consultant at its own expense to provide architectural and engineering documents for the design and construction of the Center. The City will retain ultimate authority to approve the selection of an architect and the Final Design of the Property, which shall not be unreasonably withheld.
- 6.3 The design of the Property and its component parts will be informed by input from the community and interested stakeholders through a community engagement process, with a framework to be timely approved by the City. The community engagement process will be led by the Lower Phalen Creek Project and will be planned and executed by a task force with representatives from Lower Phalen Creek Project, Urban Oasis, The Trust for Public Land, the City and other community representatives as may be identified through the community engagement process. The re-use of the existing building slab is anticipated to be the lowest cost option for the new building. Any additional mitigation costs resulting from building placement partially or entirely off of the slab will be Lower Phalen Creek Project's additional responsibility under Article 3.4 (2).

- 6.4 The City shall be compensated for actual and documented time spent on the Project, including necessary attendance by City staff at community engagement meetings. Payment will be out of the \$6.2M grant to the City from Lower Phalen Creek Project unless an alternate source of funding is identified. The amount of compensation for such time shall not exceed \$375,000 and will be supported by reasonable documentation.
- 6.5 Construction of Center will be managed by the Lower Phalen Creek Project. Parties will enter into a construction agreement which will set forth requirements for prevailing wage rates, insurance and bonding by construction contractors, and allow access to the Property for construction purposes.

ARTICLE VII EVENTS OF DEFAULT

- 7.1 The occurrence of any of the following shall constitute a “Default” by the City under this Agreement:
- (a) Failure of the City to complete Initial Improvements, provided the failure was not due to lack of funding as set forth in 3.3, above.
 - (b) Failure of the City to enter into the Lease with Lower Phalen Creek Project within four years of the effective date of this Agreement or within two years of the grant to the City or Lower Phalen Creek Project of state bonding money for the Wakan Tipi Center, whichever occurs first.
- 7.2 The occurrence of any of the following shall constitute a “Default” by Lower Phalen Creek Project under this Agreement
- (1) Failure to maintain nonprofit status of Lower Phalen Creek Project
 - (2) Failure to enter into a Lease with the City within: 1) four years of the effective date of this Agreement; or 2) by December 31, 2018, whichever is later.
 - (3) Failure to begin construction within four years of entering into a Lease with the City.

ARTICLE VIII TERMINATION

- 8.1 This Agreement may be terminated at any time by mutual consent of the Parties.
- 8.2 This Agreement may be terminated for cause in the event either party has an Event of Default listed in Article 7, above. The party seeking termination must give written notice of the nature of the default, and the time, if any, to cure.

8.3 If soil remediation or other problems with the site require additional funding which cannot be obtained as set forth in Article 4.4, either party may give notice to the other of intent to terminate this Agreement.

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:
- | | |
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| LOWER PHALEN CREEK PROJECT
733 East 7 th Street
Saint Paul, Minnesota 55106
ATTN: Dan McGuiness, Executive
Director | CITY OF SAINT PAUL
Parks and Recreation
25 West. 4 th Street
Saint Paul, MN 55102 |
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- 9.3 Law Governing. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota.
- 9.4 Independent Contractors. Nothing in this Agreement is intended to or shall 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 without consent will render the Agreement void.

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

Carol Carey, Chair

Director of Parks and Recreation

Approved as to form:

Director of Finance

Assistant City Attorney

City Clerk

DRAFT