

SG-09235
Metropolitan Council
Grant Program for Recreation Open Space
Development

General Obligation Bond Proceeds
Construction Grant Agreement
for the Como Zoo Seal and Sea Lion Habitat
Project

City of St. Paul

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**General Obligation Bond Proceeds
Construction Grant Agreement for the
Como Zoo Seal and Sea Lion Habitat Project**

THIS AGREEMENT shall be effective as of **May 30, 2017**, and is between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota (the “Council”), and the City of St. Paul (the “Grantee”).

RECITALS

The Council is authorized by Minnesota Statutes section 473.301 *et seq.* to make grants to eligible governmental units situated wholly or partly within the metropolitan area (“Recreation Open Space Development Grants”) for the purpose of development of regional recreation open space in accord with the Council’s Recreation Open Space Policy Plan (the “Council Grant Program”).

A. The Grantee is a governmental unit eligible for a Recreation Open Space Development Grant, and under the provisions contained in Minnesota Statutes sections 473.315 and 473.351, the Grantee has been given the authority to implement the Council Grant Program.

B. Under the provisions contained in Minnesota Session Laws 2017, First Special Session, chapter 8, article 1, section 16, subdivisions 6 (the “G.O. Bonding Legislation”) the State of Minnesota has allocated **\$15,000,000.00** of State (G.O) Bonds (the Council Grant) to be given to the Grantee as a grant to assist it in the costs of completing the Grant Project which will improve and better the metropolitan regional parks system.

C. The Grantee has applied to the Council for a Recreation Open Space Development Grant to assist in the development of recreation open space lands.

D. The monies allocated to fund the G.O. Bond Portion of the Council Grant to the Grantee are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution.

E. The Grantee’s receipt and use of the Council Grant to acquire an ownership interest in and/or improve real property (the “Real Property”) and, if applicable, structures situated thereon (the “Facility”) will cause the Grantee’s ownership interest in all of such real property and structures to become “state bond financed property”, as such term is used in Minn. Stat. § 16A.695 (the “G.O. Compliance Legislation”) and in that certain “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended (the “Commissioner’s Order”), even though such funds may only be a portion of the funds being used to acquire such ownership interest and/or improve such real property and structures and that such funds may be used to only acquire such ownership interest and/or improve a part of such real property and structures.

F. The Grantee and the Council desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Grantee, and the operation of the Real Property and, if applicable, Facility.

IN CONSIDERATION of the grant described and other provisions in this Agreement, the parties to this Agreement agree as follows.

Article I DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Advance(s)” means an advance made or to be made by the Council to the Grantee and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Como Zoo Seal and Sea Lion Habitat Project, as such exists on its original date and any amendments, modifications or restatements thereof.

“Approved Debt” means public or private debt of the Grantee that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will be used to acquire an ownership interest in or improve the Real Property and, if applicable, Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

“Approved Master Plan” means the master plan for the Park required and approved by the Council.

“Architect” means the City of St. Paul which will administer the Construction Contract Documents on behalf of the Grantee.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner of MMB” means the commissioner of Minnesota Management and Budget, and any designated representatives thereof.

“Commissioner’s Order” means that certain “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended.

“Completion Date” means **December 31, 2020** the date of projected completion of the Project.

“Contractor” means any person engaged to work on or to furnish materials and supplies for the Construction Items including, if applicable, a general contractor.

“Construction Contract Documents” means the document or documents, in form and substance acceptable to the Council, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Grantee and the Contractor or Contractors for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” means the work to be performed under the Construction Contract Documents.

“Council” means the entity identified as the “Council” in the lead-in paragraph of this Agreement.

“Council Grant Program” means the grant program created by the Council pursuant to Minn. Stat. section 473.301 *et. seq.* for the acquisition and development of regional recreation open space in accord with the Council’s Recreation Open Space Policy Plan.

“Council Grant” means the grant of monies from the Council to the Grantee in amount identified as the “Council Grant” in Recital C to this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Counterparty” means any entity with which the Grantee contracts under a Use Contract. *This definition is only needed and only applies if the Grantee enters into an agreement with another party under which such other party will operate the Real Property, and if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Declaration” means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Grantee’s ownership interest in the Real Property and, if applicable, Facility is bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

“Draw Requisition” means a draw requisition that the Grantee, or its designee, submits to the Council when an Advance is requested, as referred to in Section 6.02.

“Event of Default” means one or more of those events delineated in Section 2.07.

“Facility”, if applicable, means Como Zoo Seal and Sea Lion Habitat, which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the Council Grant.

“Fair Market Value” means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

“G.O. Bonds” - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the Council Grant and any bonds issued to refund or replace such bonds.

“G.O. Compliance Legislation” - means Minn. Stat. § 16A.695 as such may subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Grantee’s ownership interest in the Real Property and, if applicable, Facility if the Grantee does not already possess the required ownership interest, and the costs of betterments of the Real Property and, if applicable, Facility; provided, however, the Commissioner of MMB is not bound by any specific amount of such alleged costs unless he/she has consented, in writing, to such amount.

“Inspecting Engineer”, if any - means the Council’s construction inspector, or its designated consulting engineer.

“Leased/Easement Premises” - means the real estate and structures, if any, that are leased to the Grantee under a Real Property/Facility Lease or granted to the Grantee under an easement. *This definition is only needed and only applies if the Grantee’s ownership interest in the Real Property, the Facility, if applicable, or both is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Lessor/Grantor” – means the fee owner/lessor or grantor of the Leased/Easement Premises. *This definition is only needed and only applies if the Grantee’s ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Outstanding Balance of G.O. Bond Portion of Council Grant” – means the G. O Bond Portion of the Council Grant that has been disbursed to or on behalf of the Grantee minus any G.O. Bond Portion thereof previously paid back to the Commissioner of MMB.

“Ownership Value”, if any – means the value, if any, of the Grantee’s ownership interest in the Real Property and, if applicable, Facility that existed concurrent with the Grantee’s execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the Council and the Commissioner of MMB. The parties hereto agree and acknowledge that such value is \$76,523,800 (land and buildings, or NA. The Commissioner of MMB is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount.

“Policy Plan” means the regional recreation open space system policy plan, including the capital improvement program for recreation open space, required by Minnesota Statutes section 473.147.

“Project” - means the Grantee’s acquisition, if applicable, of the ownership interests in the Real Property and, if applicable, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03. *(If the Grantee is not using any portion of the Council Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in **Attachment III** hereto and instead shall be included in the definition for Ownership Value under this Section.)*

“Real Property” - means the real property located in Ramsey County, Minnesota, legally described in **Attachment II** to this Agreement.

“Real Property/Facility Lease” - means a long-term lease of the Real Property, the Facility, if applicable, or both by the Grantee as lessee thereunder. *This definition is only needed and only applies if the Grantee’s ownership interest in the Real Property, the Facility, if applicable, or both is a leasehold interest under a lease. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Subsequent Betterment Costs” – means the costs of betterments of the Real Property and, if applicable, Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term is used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the Council and the Commissioner of MMB.

“Use Contract” - means a lease, management contract or other similar contract between the Grantee and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Grantee enters into an agreement with another party under which such other party will operate the*

Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.

“Useful Life of the Real Property and, if applicable, Facility” – means the term set forth in Section 2.05.X, which was derived as follows: (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered.

Article II GRANT

Section 2.01 **Grant of Monies.** The Council shall make and issue the Council Grant to the Grantee, and disburse the proceeds in accordance with the provisions of this Agreement. The Council Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the Council or the Commissioner of MMB under certain circumstances.

Section 2.02 **Public Ownership.** The Grantee acknowledges and agrees that the Council Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and, if applicable, Facility must be owned by one or more public entities. Such ownership may be in the form of fee ownership, a Real Property/Facility Lease, or an easement. In order to establish that this public ownership requirement is satisfied, the Grantee represents and warrants to the Council that it has, or will acquire, the following ownership interests in the Real Property and, if applicable, Facility, and, in addition, that it possess, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, Facility in the manner specified in Section 2.04: (Check the appropriate box.)

Ownership Interest in the Real Property.

- ☒ **Fee simple ownership** of the Real Property.
- ☐ A Real Property/Facility Lease for the Real Property that complies with the requirements contained in Section 2.06. (If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

Ownership Interest in, if applicable, the Facility.

- ☒ Fee simple ownership of the Facility.
- ☐ A Real Property/Facility Lease for the Facility that complies with all of the requirements contained in Section 2.06. (If the term of the Real Property/Facility Lease is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)
- ☐ Not applicable because there is no Facility.

Section 2.03 **Use of Grant Proceeds.** The Grantee shall use the Council Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the Council Grant for any other purpose. (Check appropriate)

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | Acquisition of fee simple title to the Real Property. |
| <input type="checkbox"/> | Acquisition of an easement for the Real Property. |
| <input checked="" type="checkbox"/> | Improvement of the Real Property. |
| <input type="checkbox"/> | Construction of the Facility. |
| <input type="checkbox"/> | Renovation of the Facility. |

Section 2.04 **Operation of the Real Property and Facility.** The Real Property and, if applicable, Facility must be used by the Grantee or the Grantee must cause such Real Property and, if applicable, Facility to be used for those purposes required by the Council Grant Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Grantee may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03. The Grantee must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the Council and the Commissioner of MMB.

For those programs, if any, that the Grantee will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Grantee covenants with and represents and warrants to the Council that: (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the Council, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply to the Council and the Commissioner of MMB certified copies of such resolution and budget.

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Grantee covenants with and represents and warrants to the Council that: (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it

believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the Council and the Commissioner of MMB certified copies of such resolution and budget.

Section 2.05 **Grantee Representations and Warranties.** The Grantee further covenants with, and represents and warrants to the Council as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Declaration, and all documents referred to herein, and it has taken all actions necessary to its execution and delivery of such documents.

B. It has legal authority to use the Council Grant for the purpose or purposes described in Recital A of this Agreement.

C. It has legal authority to operate the Council Grant Program and the Real Property and, if applicable, Facility for the purposes required by the Council Grant Program.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Grantee enforceable against the Grantee in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration, and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, the Council Grant Program and the G.O. Bonding Legislation.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the Council Grant, and all of the information it has submitted or will submit to the Council or Commissioner of MMB relating to the Council Grant or the disbursement of any of the Council Grant is and will be true and correct.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and, if applicable, Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the

Declaration, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and, if applicable, Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and, if applicable, Facility or cause the Real Property and, if applicable, Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and, if applicable, Facility.

O. It will fully enforce the terms and conditions contained in any Use Contract.

P. It has complied with the matching funds requirement in Section 7.23.

Q. It will not, without the prior written consent of the Council and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Grantee's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the Council and the Commissioner of MMB will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and, if applicable, Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Grantee's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for

capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

R. It reasonably expects to possess the ownership interest in the Real Property and, if applicable, Facility described Section 2.02 for the entire Useful Life of the Real Property and, if applicable, Facility, and it does not expect to sell such ownership interest.

S. It does not reasonably expect to receive payments under a Use Contract in excess of the amount the Grantee needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

T. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the Council Grant to complete and fully pay for the Project.

U. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and all such items along with, if applicable, the Facility will be situated entirely on the Real Property.

V. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

W. It has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to the Council and to Minnesota Management and Budget that contains all of the recording information, unless a waiver is requested and granted, in whole or in part, under the Commissioner's Order, in which case it has or will promptly submit the certification required by the Commissioner's Order to the Council and to Minnesota Management and Budget.

X. The Useful Life of the Real Property, and, if applicable, Facility is 30 years.

Y. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the Council or the Commissioner of MMB.

Section 2.06 Ownership by Leasehold or Easement. *This Section shall only apply if the Grantee's ownership interest in the Real Property, the Facility, if applicable, or both is by way of a Real Property/Facility Lease or an easement. For all other circumstances this Section is not needed and should be ignored and treated as if it were left blank, and any reference to this Section in this Agreement shall be ignored and treated as if the reference did not exist.*

A. A Real Property/Facility Lease or easement must comply with the following provisions.

1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any

way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

2. It must be for a term that is equal to or greater than 125% of the Useful Life of the Real Property and, if applicable, Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. Any payments to be made under it by the Grantee, whether designated as rent or in any other manner, must be by way of a single lump sum payment that is due and payable on the date that it is first made and entered into.

4. It must not contain any requirements or obligations of the Grantee that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Grantee to operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

6. It must not contain any provisions that would limit or impair the Grantee's operation of the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

7. It must contain a provision that prohibits the Lessor/Grantor from creating or allowing, without the prior written consent of the Council and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Leased/Easement Premises or the Lessor/Grantor's interest in the Real Property/Facility Lease or easement, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the Council and the Commissioner of MMB will consent to any such lien or encumbrance if the holder of such lien or encumbrance executes and files of record a document under which such holder subordinates such lien or encumbrance to the Real Property/Facility Lease or easement and agrees that upon foreclosure of such lien or encumbrance to be bound by and comply with all of the terms, conditions and covenants contained in the Real Property/Facility Lease or easement as if such holder had been an original Lessor/Grantor under the Real Property/Facility Lease or easement.

8. It must acknowledge the existence of this Agreement and contain a provision that the terms, conditions and provisions contained in this Agreement shall control over any inconsistent or contrary terms, conditions and provisions contained in the Real Property/Facility Lease or easement.

9. It must provide that any use restrictions contained therein only apply as long as the Grantee is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Grantee's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications

of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

10. It must allow for a transfer thereof in the event that the lessee under the Real Property/Lease or grantee under the easement makes the necessary determination to sell its interest therein and allow such interest to be transferred to the purchaser of such interest.

11. It must contain a provision that prohibits and prevents the sale of the underlying fee interest in the Real Property and, if applicable, Facility without first obtaining the written consent of the Commissioner of MMB.

12 The Grantee must be the lessee under the Real Property/Lease or grantee under the easement.

B. The provisions contained in this Section are not intended to and shall not prevent the Grantee from including additional provisions in the Real Property/Facility Lease or easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The expiration of the term of a Real Property/Facility Lease or easement shall not be an event that requires the Grantee to reimburse the Council for any portion of the Council Grant, and upon such expiration the Grantee's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Grantee shall fully and completely comply with all of the terms, conditions and provisions contained in a Real Property/Facility Lease or easement, and shall obtain and file, in the Office of the County Recorder or the Registrar of Titles, whichever is applicable, the Real Property/Facility Lease or easement or a short form or memorandum thereof.

Section 2.07 Event(s) of Default. The following events shall, unless waived in writing by the Council and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the Council or the Commissioner of MMB giving the Grantee 30 days written notice of such event and the Grantee's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Grantee is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the Council and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Grantee in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the Council to disburse any of the Council Grant, shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Grantee fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Grantee fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, the Council Grant Program or the G.O. Bonding Legislation.

D. If the Grantee fails to complete the Project, or cause the Project to be completed, by the Completion Date.

E. If the Grantee fails to provide and expend the full amount of the matching funds, if any, required under Section 7.23 for the Project.

F. If the Grantee fails to record the Declaration or submit the certification, as applicable, and deliver copies thereof as set forth in Section 2.05.W.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the Council and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the Council or the Commissioner of MMB giving the Grantee written notice of such event.

Section 2.08 **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Council, the Council or the Commissioner of MMB may enforce any or all of the following remedies.

A. The Council may refrain from disbursing the Council Grant; provided, however, the Council may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than Sections 4.01 or 4.02, then the Commissioner of MMB, as a third-party beneficiary of this Agreement, may demand that the Outstanding Balance of G. O. Bond Portion of the Council Grant be returned to it, and upon such demand the Grantee shall return such amount to the Commissioner of MMB. Similarly, the Council may demand that an amount in excess of the amount paid to the Commissioner of MMB be returned to it up to the Outstanding Balance of Park Bond Portion of the Council Grant, and upon such demand, the Grantee shall return such amount to the Council.

C. If the Event of Default involves a failure to comply with the provisions of Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, and the Council may demand that the Grantee pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Grantee shall return such amounts to the Commissioner of MMB and to the Council.

D. Either the Council or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the Council or the Commissioner of MMB would otherwise possess.

If the Grantee does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Commissioner of MMB, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Grantee and in favor of the Council and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Grantee is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Grantee shall furnish to the Council and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Grantee proposes to take with respect thereto.

Section 2.10 Survival of Event of Default. This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement and shall only terminate in accordance with the provisions contained in Section 2.12 and at the end of its term in accordance with the provisions contained in Section 2.11.

Section 2.11 Term of Grant Agreement. This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the operation of the Council Grant Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

Section 2.12 Modification and/or Early Termination of Grant. If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the Council Grant has not been disbursed as of the date that is 4 years from the date on which the Project is started, or such later dates to which the Grantee and the Council may agree in writing, then the Council's obligation to fund the Council Grant shall terminate. In such event, (i) if none of the Council Grant has been disbursed by such dates then the Council's obligation to fund any portion of the Council Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the Council Grant has been disbursed by such dates then the Council shall have no further obligation to provide any additional funding for the Council Grant and this Agreement shall remain in full force and effect but shall be modified and

amended to reflect the amount of the Council Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Grantee's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon the Grantee's sale of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or upon the termination of Grantee's ownership interest in the Real Property and, if applicable, Facility if such ownership interest is by way of an easement or under a Real Property/Facility Lease. Upon such termination the Council shall execute, or have executed, and deliver to the Grantee such documents as are required to release the Grantee's ownership interest in the Real Property and, if applicable, Facility, from the effect of this Agreement and the Declaration.

Section 2.13 **Excess Funds.** If the full amount of the Council Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the Council Grant Program or G.O. Bonding Legislation indicates otherwise, the Council Grant shall be reduced by the amount not needed.

Article III USE CONTRACTS

This Article III and its contents is only needed and only applies if the Grantee enters into an agreement with another party under which such other party will operate any portion of the Real Property, and if applicable, Facility. For all other circumstances this Article III and its contents is not needed and should be ignored and treated as if it were left blank, and any reference to this Article III, its contents, and the term Use Contract in this Agreement shall be ignored and treated as if the references did not exist.

Section 3.01 **General Provisions.** If the Grantee has statutory authority to enter into a Use Contract, then it may enter into Use Contracts for various portions of the Real Property and, if applicable, Facility; provided that each and every Use Contract that the Grantee enters into must comply with the following requirements:

- A. The purpose for which it was entered into must be to operate the Council Grant Program in the Real Property and, if applicable, Facility.
- B. It must contain a provision setting forth the statutory authority under which the Grantee is entering into such contract and must comply with the substantive and procedural provisions of such statute.
- C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the Council Grant Program and must describe such program.
- D. It must contain a provision that will provide for oversight by the Grantee. Such oversight may be accomplished by way of a provision that will require the Counterparty to

provide to the Grantee: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the Council Grant Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Council Grant Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Grantee will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the Council Grant Program.

E. It must allow for termination by the Grantee in the event of a default thereunder by the Counterparty, or in the event that the Council Grant Program is terminated or changed in a manner that precludes the operation of such program in the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract.

F. It must terminate upon the termination of the statutory authority under which the Grantee is operating the Council Grant Program.

G. It must require the Counterparty to pay all costs of operation and maintenance of that portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, unless the Grantee is authorized by law to pay such costs and agrees to pay such costs.

H. If the Grantee pays monies to a Counterparty under a Use Contract, such Use Contract must meet the requirements of Rev. Proc. 97-13, 1997-1 CB 632, so that such Use Contract does not result in "private business use" under Section 141(b) of the Code.

I. It must be approved, in writing, by the Commissioner of MMB, and any Use Contract that is not approved, in writing, by the Commissioner of MMB shall be null and void and of no force or effect.

J. It must contain a provision requiring that each and every party thereto shall, upon direction by the Commissioner of MMB, take such actions and furnish such documents to the Commissioner of MMB as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

K. It must contain a provision that prohibits the Counterparty from creating or allowing, without the prior written consent of the Council and the Commissioner of MMB, any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested against the Real Property or, if applicable, Facility, the Grantee's ownership interest in the Real Property or, if applicable, Facility, or the Counterparty's interest in the Use Contract, whether such lien or encumbrance is superior or subordinate to the Declaration. Provided, however, the Council and the Commissioner of MMB will consent, in writing, to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract in the manner specified in Section 2.04 and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real

Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Grantee's ownership interest in the Real Property and, if applicable, Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and, if applicable, Facility in accordance with the requirements imposed under Section 2.04.

L. If the amount of the Council Grant exceeds \$200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

M. It must contain a provision that clearly states that the Grantee is not required to renew the Use Contract beyond the original term thereof and that the Grantee may, at its sole option and discretion, allow the Use Contract to expire at the end of its original term and thereafter directly operate the Council Grant Program in the Real Property and, if applicable, Facility or contract with some other entity to operate the Council Grant Program in the Real Property and, if applicable, Facility.

Section 3.02 Initial Term and Renewal. The initial term for a Use Contract may not exceed the lesser of (i) 50% of the Useful Life of the Real Property and, if applicable, Facility for the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract, or (ii) the shortest term of the Grantee's ownership interest in the Real Property and, if applicable, Facility.

A Use Contract may allow for renewals beyond its initial term on the conditions that (a) the term of any renewal may not exceed the initial term, (b) the Grantee must make a determination that renewal will continue to carry out the Council Grant Program and that the Counterparty is suited and able to perform the functions contained in Use Contract that is to be renewed, (c) the Use Contract may not include any provisions that would require, either directly or indirectly, the Grantee to either make the determination referred to in this Section or to renew the Use Contract with the Counterparty after the expiration of the initial term or any renewal term, and (d) no such renewal may occur prior to the date that is 6 months prior to the date on which the Use Contract is scheduled to terminate. Provided, however, notwithstanding anything to the contrary contained herein the Grantee's voluntary agreement to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Grantee does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Grantee to renew such Use Contract.

Section 3.03 Reimbursement of Counterparty. A Use Contract may but need not contain, at the sole option and discretion of the Grantee, a provision that requires the Grantee to reimburse the Counterparty for any investment that the Counterparty provided for the acquisition or betterment of the Real Property and, if applicable, Facility that is the subject of the Use Contract if the Grantee does not renew a Use Contract if requested by the Counterparty. If agreed to by the Grantee, such reimbursement shall be on terms and conditions agreed to by the Grantee and the Counterparty.

Section 3.04 **Receipt of Monies Under a Use Contract.** The Grantee does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Grantee does receive any monies under a Use Contract in excess of the amount the Grantee needs and is authorized to use to pay the operating expenses of the portion of the Real Property and, if applicable, Facility that is the subject of a Use Contract, and to pay the principal, interest, redemption premiums, and other expenses on Approved Debt, then a portion of such excess monies must be paid by the Grantee to the Council and Commissioner of MMB proportionate to their respective shares of the Council Grant. The portions of such excess monies that the Grantee must and shall pay to the Council and the Commissioner of MMB shall be determined by the Council and the Commissioner of MMB, and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess monies by a fraction the numerator of which is the Council Grant and the denominator of which is sum of the Council Grant and the Approved Debt.

Article IV SALE

Section 4.01 **Sale.** The Grantee shall not sell any part of its ownership interest in the Real Property and, if applicable, Facility unless all of the following provisions have been complied with fully.

- A. The Grantee determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Council Grant Program, which such determination may be based on a determination that the portion of the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.
- B. The sale is made as authorized by law.
- C. The sale is for Fair Market Value.
- D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Grantee's ownership interest in the Real Property and, if applicable, Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Grantee's ownership interest in or betterment of the Real Property and, if applicable, Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and, if applicable, Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Grantee may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Grantee agrees that if it is

the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Council Grant Program.

Section 4.02 Proceeds of Sale. Upon the sale of the Grantee's ownership interest in the Real Property and, if applicable, Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, but not including the repayment of any debt associated with the Grantee's ownership interest in the Real Property and, if applicable, Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Bond Portion of the Council Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the Council Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02.A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Grantee for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the Council under Section 4.02.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and, if applicable, Facility, then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to the Council, the Grantee, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the Council, the Grantee, and such other public and private entities made to the acquisition and betterment of the Real Property and, if applicable, Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the Council shall be made to the Commissioner of MMB, and the Grantee may direct its distribution to be made to any other entity including, but not limited to, a Counterparty.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Grantee shall not be required to pay or reimburse the Council or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the G.O. Bond Portion of Council Grant.

Article V COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01 State Bond Financed Property. The Grantee and the Council acknowledge and agree that the Grantee's ownership interest in the Real Property and, if applicable, Facility is, or when acquired by the Grantee will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Grantee's ownership interest in the Real Property and, if applicable, Facility and any Use Contracts relating thereto.

Section 5.02 Preservation of Tax Exempt Status. In order to preserve the tax-exempt status of the G.O. Bonds, the Grantee agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the Council Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the G.O. Bonds.

C. It will, upon the occurrence of any act or omission by the Grantee or any Counterparty that could cause the interest on the G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, 1997-1 CB 632, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an "unrelated trade or business" or for any "private business use" (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

D. It will not otherwise use any of the Council Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor omit to take any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner's Order. In the event that the G.O. Compliance Legislation or the Commissioner's Order is amended in a manner that reduces any requirement imposed against the Grantee, or if the Grantee's ownership interest in the Real Property or, if applicable, Facility is exempt from the G.O. Compliance Legislation and the Commissioner's Order, then upon written request by the Grantee the Council shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Grantee's ownership interest in the Real Property and, if applicable, Facility from the G.O. Compliance Legislation or the Commissioner's Order.

Article VI DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 The Advances. The Council agrees, on the terms and subject to the conditions set forth herein, to make Advances from the Council Grant to the Grantee from time to time in an aggregate total amount not to exceed the amount of the Council Grant. If the amount of Council Grant that the Council cumulatively disburses hereunder to the Grantee is less than the amount of the Council Grant delineated in Section 1.01, then the Council and the Grantee shall enter into and execute whatever documents the Council may request in order to amend or modify this Agreement to reduce the amount of the Council Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the Council's obligation to make Advances shall terminate as of the dates specified in such Section even if the entire Council Grant has not been disbursed by such dates.

Advances shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the G.O. Bonding Legislation, or (iii) have otherwise been consented to, in writing, by the Council and the Commissioner of MMB.

It is the intent of the parties hereto that the rate of disbursement of the Advances shall not exceed the rate of completion of the Project or the rate of disbursement of the matching funds required, if any, under Section 7.23. Therefore, the cumulative amount of all Advances disbursed by the Council at any point in time shall not exceed the portion of the Project that has been completed and the percentage of the matching funds required, if any, under Section 7.23 that have been disbursed as of such point in time.

Section 6.02 Draw Requisitions. Whenever the Grantee desires a disbursement of a portion of the Council Grant, which shall be no more often than once each calendar month, the Grantee shall submit to the Council a Draw Requisition duly executed on behalf of the Grantee or its designee. Each Draw Requisition shall be submitted on or between the 1st day and the 15th day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days

before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Grantee and the Council, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the Council, less (iii) any applicable retainage, and less (iv) all prior Advances.

Notwithstanding anything herein to the contrary, no Advances for materials stored on or off the Real Property will be made by the Council unless the Grantee shall advise the Council, in writing, of its intention to so store materials prior to their delivery and the Council has not objected thereto. At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Grantee shall submit to the Council such supporting evidence as may be requested by the Council to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Real Property and, if applicable, Facility and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Grantee shall submit to the Council: (i) such supporting evidence as may be requested by the Council to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

If on the date an Advance is desired the Grantee has complied with all requirements of this Agreement and the Council approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then the Council shall disburse the amount of the requested Advance to the Grantee.

Section 6.03 Additional Funds. If the Council shall at any time in good faith determine that the sum of the undisbursed amount of the Council Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the Council may send written notice thereof to the Grantee specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Grantee agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the Council's notice.

Section 6.04 Condition Precedent to Any Advance. The obligation of the Council to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

- A. The Council shall have received a Draw Requisition for such Advance specifying the amount of funds being requested, which such amount when added to all prior requests for an Advance shall not exceed the amount of the Council Grant delineated in Section 1.01.

B. The Council shall have either received (i) a duly executed Declaration (Attachment I) that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or (ii) a certification required by Section 7.02(b) of the Commissioner's Order if a waiver to the Declaration requirement has been granted by the Commissioner of MMB.

C. The Council shall have received evidence, in form and substance acceptable to the Council, that (i) the Grantee has legal authority to and has taken all actions necessary to enter into this Agreement and the Declaration, and (ii) this Agreement and the Declaration are binding on and enforceable against the Grantee.

D. The Council shall have received evidence, in form and substance acceptable to the Council, that the Grantee has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

E. The Council shall have received evidence, in form and substance acceptable to the Council, that the Grantee is in compliance with the matching funds requirements, if any, contained in Section 7.23.

F. The Council shall have received evidence, in form and substance acceptable to the Council, showing that the Grantee possesses the ownership interest in Section 2.02.

G. The Council shall have received evidence, in form and substance acceptable to the Council, that the Real Property and, if applicable, Facility, and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The Council shall have received evidence, in form and substance acceptable to the Council, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The Council shall have received evidence, in form and substance acceptable to the Council, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The Council shall have received evidence, in form and substance acceptable to the Council, that the Project will be completed in a manner that will allow the Real Property and, if applicable, Facility to be operated in the manner specified in Section 2.04.

K. The Council shall have received evidence, in form and substance acceptable to the Council, that the Grantee has the ability and a plan to fund the operation of the Real Property and, if applicable, Facility in the manner specified in Section 2.04.

L. The Council shall have received evidence, in form and substance acceptable to the Council, that the insurance requirements under Section 7.01 have been satisfied.

M. The Council shall have received evidence, in form and substance acceptable to the Council, of compliance with the provisions and requirements specified in Section 7.10 and all additional applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that: (i) the predesign package referred to in Section 7.10.B has, if required, been reviewed by and received a favorable recommendation from the Commissioner of Administration for the State of Minnesota, (ii) the program plan and cost estimates referred to in Section 7.10.C have, if required, received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota Senate Capital Investment Committee have, if required, been notified pursuant to Section 7.10.G.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The Council shall have received evidence, in form and substance acceptable to the Council, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefor, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the Council and the Grantee dual obligees thereunder, or such other evidence as may be acceptable to the Grantee and the Council.

P. No determination shall have been made by the Council that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Grantee under Section 6.03, then the Grantee has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to the Council that sufficient funds are available.

Q. The Grantee has supplied to the Council all other items that the Council may reasonably require.

Section 6.05 Construction Inspections. The Grantee and the Architect, if any, shall be responsible for making their own inspections and observations of the Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents. If any work done or materials supplied by a Contractor are not satisfactory to the Grantee or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Grantee shall immediately notify the Council, in writing. The Council and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the Council's interest, and that any inspections which may be made of the Project by the Council or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the Council, and the Grantee will not rely thereon.

Article VII MISCELLANEOUS

Section 7.01 Insurance. The Grantee shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Grantee, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the Council under which the Council and the Grantee are named as loss payees. If damages which are covered by such required insurance occur, then the Grantee shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Grantee elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Grantee's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Grantee's ownership interest in the Real Property and Facility. If the Grantee elects to sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Grantee.

The Council agrees to and will assign or pay over to the Grantee all insurance proceeds it receives so that the Grantee can comply with the requirements that this Section imposes thereon as to the use of such insurance proceeds.

If the Grantee elects to maintain general comprehensive liability insurance regarding the Real Property and, if applicable, Facility, then the Grantee shall have the Council named as an additional named insured therein.

The Grantee may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Grantee continues to be responsible for the providing of such insurance in the event that the Counterparty fails to provide or maintain such insurance.

At the written request of either the Council or the Commissioner of MMB, the Grantee shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Grantee regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Grantee fails to provide and maintain the insurance required under this Section, then the Council may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the Council to obtain or maintain such insurance shall be due and payable on demand by the Council and bear interest from the date of advancement by the Council at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the Council to obtain or maintain such insurance, and the Council's decision to not obtain or maintain such insurance shall not lessen the Grantee's duty to obtain and maintain such insurance.

Section 7.02 Condemnation. If after the Grantee has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and, if applicable, Facility is condemned to an extent that the Grantee can no longer comply with the provisions contained in Section 2.04, then the Grantee shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Grantee to continue to comply with the provisions contained in Section 2.04 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in the Real Property and, if applicable, Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Grantee's ownership interest in the Real Property and, if applicable, Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Grantee's ownership interest in the remaining Real Property and, if applicable, Facility. If the Grantee elects to sell its ownership interest in the portion of the Real Property and, if applicable, Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Grantee.

As recipient of any of condemnation awards or proceeds referred to herein, the Council agrees to and will disclaim, assign or pay over to the Grantee all of such condemnation awards or proceeds it receives so that the Grantee can comply with the requirements that this Section imposes upon the Grantee as to the use of such condemnation awards or proceeds.

Section 7.03 Use, Maintenance, Repair and Alterations. The Grantee shall (i) keep the Real Property and, if applicable, Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property or, if applicable, Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any Real Property/Facility Lease if the Grantee's ownership interest in the Real Property and, if applicable, Facility, is a leasehold interest, (vi) comply with the provisions of any easement if its ownership interest in the Real Property and, if applicable, Facility is by way of such easement, and (vii) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and, if applicable, Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

The Grantee shall not, without the written consent of the Council and the Commissioner of MMB, (a) permit or suffer the use of any of the Real Property or, if applicable, Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or, if applicable, Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or, if applicable, Facility by increasing the value thereof or improving its ability to be used to operate the Council Grant Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or, if applicable, Facility, (d) abandon the Real Property or, if applicable, Facility, (e) commit or permit any waste or deterioration of the Real Property or, if applicable, Facility, (f) remove any fixtures or personal property from the Real Property or, if applicable, Facility, that was paid for with the proceeds of the Council Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or, if applicable, Facility, in violation of any law, ordinance or regulation.

If the Grantee fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the Council may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Grantee irrevocably authorizes and empowers the Council to enter upon the Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the Council hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the Council to take any action, incur any expense, or expend any funds, and the Council shall not be responsible for or liable to the Grantee or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner.

Any funds expended by the Council to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the Council and bear interest from the date of advancement by the Council at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 Records Keeping and Reporting. The Grantee shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and, if applicable, Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, the Council Grant Program and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the Council, auditors for the Council, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Grantee shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and, if applicable, Facility for a period of 6 years from the date such operation is initiated.

Section 7.05 Inspections by Council. Upon reasonable request by the Council and without interfering with the normal use of the Real Property and, if applicable, Facility, the Grantee shall allow and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, Facility to allow the Council to inspect the Real Property and, if applicable, Facility.

Section 7.06 Data Practices. The Grantee agrees with respect to any data that it possesses regarding the Council Grant, the Project, or the operation of the Real Property and, if applicable, Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.07 Non-Discrimination. The Grantee agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and, if applicable, Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 Worker's Compensation. The Grantee agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and, if applicable, Facility.

Section 7.09 Antitrust Claims. The Grantee hereby assigns to the Council and the Commissioner of MMB all claims it may have for overcharges as to goods or services provided

with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10 Review of Plans and Cost Estimates. The Grantee agrees to comply with all applicable provisions and requirements, if any, contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Grantee agrees to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Grantee shall provide all information that the Council may request in order for the Council to determine that the Project will comply with the provisions and requirements contained in Minn. Stat. § 16B.335, as it may be amended, modified or replaced from time to time.

B. Prior to its proceeding with design activities for the Project the Grantee shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Grantee shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair and Ranking Minority Member of the Minnesota House of Representatives Capital Investment Committee and the Chair and Ranking Minority Member of the Minnesota Senate Capital Investment Committee. The program plan and cost estimates must note any significant changes in the work to be performed on the Project, or in its costs, which have arisen since the appropriation from the legislature for the Project was enacted or which differ from any previous predesign submittal.

D. The Grantee must notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

E. The program plan and cost estimates referred to in Section 7.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Council Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 7.10.B and the program plan and cost estimates referred to in Section 7.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Grantee shall just notify the Chairs and the Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees that the work to be performed is ready to begin.

H. The Project must be: (i) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

Provided, however, the provisions and requirements contained in this Section only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, parking structures, park and ride facilities, bus rapid transit stations, light rail lines, passenger rail projects, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice centers, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

Section 7.11 Prevailing Wages. The Grantee agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Council Grant Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Grantee is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Council Grant Program on or in the Real Property and, if applicable, Facility.

Section 7.12 Liability. The Grantee and the Council agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the Council and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time

to time. If the Grantee is a “municipality” as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Grantee, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 Indemnification by the Grantee. The Grantee shall bear all loss, expense (including attorneys’ fees), and damage in connection with the Project and operation of the Real Property and, if applicable, Facility, and agrees to indemnify and hold harmless the Council, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the Council, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the Council, the Commissioner of MMB, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and, if applicable, Facility, whether or not due to any act of omission or commission, including negligence of the Grantee or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the Council, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Grantee further agrees to indemnify, save, and hold the Council, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Grantee, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Grantee’s liability hereunder shall not be limited to the extent of insurance carried by or provided by the Grantee, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Grantee, the Council, or the Commissioner of MMB, nor shall the Grantee be considered or deemed to be an agent, representative, or employee of the Council, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and, if applicable, Facility.

The Grantee represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Grantee or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with the Council, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers’ Compensation Act of the State of Minnesota, claims of

discrimination against the Grantee, its officers, agents, contractors, or employees shall in no way be the responsibility of the Council, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the Council, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 **Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

The Council:

Grant Administrator (Incumbent, Victoria Dupre)
390 North Robert Street, St. Paul, MN 55101
tori.dupre@metc.state.mn.us

The Grantee:

Michelle Furrer, Director/Campus Manager
Como Park Zoo & Conservatory
1225 Estabrook Drive, Saint Paul, MN 55103
michelle.furrer@ci.stpaul.mn.us

The Commissioner of MMB:

Minnesota Department of Management and Budget
400 Centennial Office Bldg., 658 Cedar St.
St. Paul, MN 55155
Attention: Commissioner

Section 7.16 **Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Grantee and the Council, and their respective successors and assigns. Provided, however, that neither the Grantee nor the Council may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Grantee or the Council unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 **Waiver.** Neither the failure by the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to

exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 **Entire Agreement.** This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Grantee and the Council, and there are no other agreements, either oral or written, between the Grantee and the Council on the subject matter hereof.

Section 7.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venues in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 **Matching Funds.** The Grantee must obtain and supply the following matching funds for the project. Matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to pay for the Project. The Grantee shall supply to the Commissioner of MMB whatever documentation the Commissioner of MMB may request to substantiate the availability and source of any matching funds, and the source and terms relating to all matching funds must be consented to, in writing, by the Commissioner of MMB.

Section 7.24 **Source and Use of Funds.** The Grantee represents to the Council and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

- (i) State funds including the Council Grant, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.
- (iii) Other funds supplied by the Grantee, identifying the source and amount of such funds.
- (iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.
- (v) Other funds, identifying the source and amount of such funds.

C. Such other financial information needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

Previously paid project expenses that are to be reimbursed and paid from proceeds of the Council Grant may only be included as a source of funds and included in **Attachment III** if such items have been approved, in writing, by the Commissioner of MMB.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Grantee must provide to the Council and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Grantee shall also supply whatever other information and documentation that the Council or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

The value of the Grantee's ownership interest in the Real Property and, if applicable, Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the Council Grant Program or G.O. Bonding Legislation, be provided by either the Grantee or a Counterparty under a Use Contract.

Section 7.25 **Project Completion Schedule.** The Grantee represents to the Council and the Commissioner of MMB that **Attachment IV** correctly and accurately delineates the projected schedule for the completion of the Project.

Section 7.26 **Third-Party Beneficiary.** The Council Grant Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the Council and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 7.27 **Grantee Tasks.** Any tasks that this Agreement imposes upon the Grantee may be performed by such other entity as the Grantee may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Grantee.

Section 7.28 **Council and Commissioner Required Acts and Approvals.** The Council and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.29 **Applicability to Real Property and Facility.** This Agreement applies to the Grantee's ownership interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Grantee's ownership interest in the Real Property.

Section 7.30 **E-Verification.** The Grantee agrees and acknowledges that it is aware of Minn. Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such statute and impose a similar requirement in any Use Contract to which it is a party.

Section 7.31 **Jobs Reporting Requirements.** Pursuant to Minnesota Statute 16A.633, Subdivision 4, the Grantee shall collect, maintain and, upon completion of the Project, provide the information indicated in **Attachment VI** of the Grant Agreement, to the Council. The information must include, but is not limited to, the following: the number and types of jobs created by the Project, whether the jobs are new or retained, where the jobs are located and the pay ranges. .

Section 7.32 **Additional Requirements.** The Grantee and the Council agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

A. **Regional Use.** The Grantee agrees to develop, operate, and maintain the Park in a manner consistent with the Regional Park Policy Plan and the park unit's Approved Master Plan, including allowing use of the Park by all persons in the region. The Grantee further agrees that it will not adopt any rules or restrictions hindering or affecting regional use of the Park including, but not limited to, imposing higher fees for non-residents without the express written consent of the Council, either during the grant period or for a period of twenty (20) years following.

B. **American Made Steel.** Minnesota Laws 2014, Chapter 294, Article 2, Section 22, requires public entities receiving an appropriation of public money for a project in that act to ensure those facilities are built with American-made steel, to the extent practicable. The Grantee shall comply with this requirement, and shall furnish any documentation pursuant thereto reasonably requested by the Council.

C. Report on Women and/or Minority Owned Businesses. The Grantee shall report to the Council on all spending from the grant proceeds for contracts with women and/or minority owned businesses. The Grantee shall complete the form in Attachment VII and submit it to the Metropolitan Council Office of Diversity at the end of the every year until the grant is closed. The Grantee must indicate the proactive steps taken to ensure the hiring of women and/or minority owned businesses on the Grant Project, how the businesses to perform the Project work were selected, whether the Grantee had a goal to hire women and/or minority owned businesses and, if so, indicate that goal and how the Grantee ensured that the goal was met.

[THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on or as of the date first above written.

CITY OF ST. PAUL

METROPOLITAN COUNCIL

By: _____
 Director
 Financial Services

By: _____
 Director
 Community Development Division

Date: _____

Date: _____

By: _____
 Mayor

Date: _____

By: _____
 Director, HREEO

Date: _____

By: _____
 Director, Parks and Recreation

Date: _____
Approved as to form

By: _____
 City Attorney

Date: _____

Attachment I to Grant Agreement - Separate Recorded Document
State of Minnesota
General Obligation Bond Financed
DECLARATION

Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL PROPERTY

Vacated streets and alleys accruing and Lot A, Como Addition, and Lot 8, Lake Como Villas, and Blocks 6 and 7 Strand Addition, and Lots 1 through 6, Strand Addition No. 2, and Sunshine Place Park, in the plat of Warrendale, and Lots 1 through 14, Clarks Subdivision of Lot 22, and the West 1/2 of Lot 20 and all of Lots 21, 23 and 24, Lake Como Villas, and except the leases to the Humane Society the North 1/2 of the Northeast 1/4 of Section 27, Township 29, Range 23, and Lots 1 and 2 Block 22 and Lots 1 through 4, Block 23, and Lots 1 and 2, Block 33, and that part of Lot Block 24 lying Southerly of Arlington Ave, all in Como and all of Block 2, in Warrendale and that part of Government Lot 4 lying North of Warrendale in Section 23, Township 29, Range 23, and part of Lot 43 described as; beginning at the most Southerly corner of said Lot 43; thence North on the West line 19.6 feet; thence East parallel with the North line 26.1 feet more or less to a point on the Southeast line of said Lot; thence Southwest to the beginning and Lot A, all in Block 9, Chelsea Heights, and Lots 150 through 28 Block 6, and all of Blocks 7 and 8, Clifton Dale, and in said Section 22, Township 29, Range 23, except a 19.6 foot by 26.1 foot triangular part which lies adjacent to Lots 42 and 43, Block 9, Chelsea Heights; and that part of the Northeast 1/4 lying South of Chelsea Heights and West of Clifton Dale, and all of the Southeast 1/4 of Section 22, Township 29, Range 23.

Parcel ID No: 22-29-23-44-0003

Attachment III to Grant Agreement
SOURCE AND USE OF FUNDS FOR THE PROJECT
Grant Agreement Section 7.24

Source of Funds		Use of Funds	
<u>Identify Source of Funds</u>	<u>Amount</u>	<u>Identify Items</u>	<u>Amount</u>
State G.O. Funds		Ownership Acquisition and Other Items Paid for with Council Grant Funds	
Council Grant	\$15,000,000		
Other State Funds	0	Purchase of Ownership	\$0
		Interest	\$0
		Other Items of a Capital Nature	
Sub-Total	15,000,000	Construction	\$15,000,000
Matching Funds			
Metro Council bonds	\$0	Sub Total	15,000,000
Sub Total		Items Paid for with Non- Council Grant Funds	
Other Grantee Funds		Pre-design, design, admin	\$3,126,195
Private Funds - Nonprofit	\$3,812,000	Construction	\$1,673,805
Lancer	988,000	Sub Total	\$4,800,000
Sub-Total	\$4,800,000		
Loans	0		
TOTAL FUNDS	\$19,800,000	TOTAL PROJECT COSTS	\$19,800,000

Attachment IV to Grant Agreement
PROJECT COMPLETION SCHEDULE AND DESCRIPTION

Activity (<i>Please list activities in chronological order</i>)	Projected Completion Date
Demolition Package Design	January 2018
Construction Document Design	March 2018
Demolition Package Bid & Award	March 2018
Construction Bid	April 2018
Construction Award	May 2018
Site Demolition and Prep	June 2018
Construction Start	June 2018
Holding Building Construction	May 2019
View Pavilion Construction	February 2019
Zooper Building	June 2019
Restroom Building	June 2019
Habitat Pools	September 2019
Life Support Building	September 2019
Amphitheater	October 2019
Contractor Close Out	April 2020
Phased public openings for the amenities area in Summer 2019. Due to the unknown acclimation time for the animals we are aiming for a Fall 2019 opening but may push to Winter 2019.	

Attachment V to Grant Agreement
GRANT APPLICATION - *Not applicable*

Attachment VI to Grant Agreement
JOBS REPORTING

(a) Pursuant to M.S. Sec. 16A.633, subd. 4, the Council is required to report to Minnesota Management and Budget the number of jobs created or retained by the Project. To enable the Council to comply with M.S. Sec. 16A.633, subd. 4, the Grantee is required to report the number of jobs created or retained by the Project to the Council as set forth below.

(b) The Grantee shall require all of its contractors to report the information below to the Grantee. The Grantee shall then report to the Council. Information must be recorded by the Grantee in an Excel document that can be downloaded into the report by Minnesota Management and Budget. Each report must contain the following:

- (1) The name of the Project.
- (2) The Council grant or contract number, if applicable.
- (3) Reporting period. The appropriate biennium is to be selected.
- (4) The Agency Number. This will complete the next column with Agency Name.
- (5) Legal Citation for the Authorization depicted in Recital C of this grant agreement
- (6) Department ID responsible for the Project.
- (7) The Appropriation for the Project.
- (8) The Appropriation Amount.
- (9) Project Start Date.
- (10) Project Completion Date.
- (11) The County where the Project is located or, if it is located in more than one county, where it is primarily located.
- (12) Funding Source for Project. The selection will be Trunk Highway Bonds, General Obligation Bonds or General Fund.
- (13) Job Type. Jobs should be classified as either (i) engineering/professional, (ii) construction, or (iii) other. Manager and supervisor jobs shall be classified as category (i), (ii) or (iii) based on the nature of the work those individuals spent the majority of their time overseeing.
- (14) Hourly Wages. Jobs should be classified according to the hourly pay ranges below. Overhead or indirect costs or the value of pensions or other benefits should not be included in wages.
 - (i) less than \$10.00,
 - (ii) \$10.01 to \$15.00,
 - (iii) \$15.01 to \$20.00,
 - (iv) \$20.01 to \$25.00,
 - (v) \$25.01 to \$30.00,
 - (vi) \$30.01 to \$35.00,

- (vii) \$35.01 to \$40.00, or
- (viii) more than \$40.00.

(15) Jobs.

- a. Jobs should be classified as either (i) jobs created or (ii) jobs retained; they will not be counted as both. A “job created” is a new position created and filled, or an existing unfilled position that is filled, because of the Project. A “job retained” means a job at a specific wage level that existed prior to beginning the Project that would have been lost but for the Project. Only jobs in Minnesota should be counted.
- b. Jobs should be expressed in “full-time equivalents” (FTE). In calculating an FTE, the number of hours worked during the Reporting Period should be divided by the number of hours representing a full work schedule in a Reporting Period, i.e. 1,040 for a six month period or 2,080 for a period of a year. Jobs should be reported regardless of when the Project or an individual’s employment began or ended. Jobs are to be calculated based on hours worked in the current Reporting Period only, so that reporting is not cumulative.
- c. Jobs should not be separated into full-time, part-time, temporary, seasonal, etc. Instead, all hours should be totaled and converted into FTEs as indicated above.

(c) Each contractor will report its workforce and the workforce of its subcontractors active during the Reporting Period. This includes employees actively engaged in the Project who work on the jobsite, in the Project office, in the home office or telecommute from home or other alternative office location. This includes, but is not limited to, any engineering personnel, inspectors, sampling and testing technicians, and lab technicians performing work directly in support of the Project. This does not include material suppliers such as steel, culverts, guardrail and tool suppliers. Only hours that relate to time spent on the Project should be reported.

(d) The Grantee must incorporate these reporting requirements into its contracts with its contractors (in part so that contractors can add the requirements to their contracts with subcontractors and impose deadlines on reporting by subcontractors).

(e) To distinguish the jobs reported by contractors that were funded by the Grant, the Grantee must multiply the job numbers reported by each contractor in each category above by the percentage of total Project costs funded by the Grant (e.g., if the Grant was 40% of total Project costs, the Grantee should multiply the jobs numbers given in each category by 40% to arrive at the number of jobs funded by the Grant) and it is those numbers that should be reported to the Council.

Attachment VII
Minority and Women owned Businesses Reporting

Report Form on Women/Minority Owned Businesses for Metro Council Park Grants

Please complete this form at the end of every 12 month period during the project. Submit the form to: Metropolitan Council

Director, Office of Equal Opportunity
390 N. Robert Street
St. Paul, MN 55101

Annual Report No. ____ (*Number 1, end of first 12 months, 2 end of second 12 months, etc.*)

Grantee Agency Name: _____

Grantee Agency Contact Person: _____

Email address: _____

Telephone Number: _____

Annual Report Period: *mo/year to mo/year*

Date Report Filed: _____

Grant Agreement Number: _____ **Grant Amount:** _____

Grant Project Description: (*insert the project description from Attachment IV of the grant agreement here*)

Were other funds used to finance this project? Yes____ No____

If yes, please list other fund sources and amounts from Attachment III of the grant agreement and amounts on table below.

Fund Source	Amount
Metro Council grant	
Total All Sources	

List all companies hired to carry out work for this project and amount paid with Metro Council grant funds only during the reporting period. Pro-rate funds provided by Metro Council grant if other funding sources also paid to companies. For example if the Metro Council grant funded 40% of project, then multiply payments to that company by 40% for the reporting period.

Company Name	Company Address (Street, City, State, ZIP)	Work Performed (Landscape Design/Architectural/ Engineering Services, Construction, Legal Services, Other Services--please describe)	Women/ Minority Owned Business? (Yes/No)	Amount Paid with Metro Council Grant Funds During Reporting Period	Cumulative Amount Paid from MC Grant Funds All Reports (Add amounts paid to that business from previous reports plus this report)

Please describe the demographics of companies listed above

Company Name	Company Address (Street, City, State, ZIP)	Number of Employees	Number of Women Employees	Number of Employees who are People of Color

Please answer the following questions:

- 1. Were any pro-active steps taken to insure the hiring of women/minority owned businesses to perform work on this project? If so, please describe those steps.**
- 2. How did you select businesses to perform work for this project?**
- 3. Did you place a goal to hire women/minority owned businesses in your contracts to carry out work for this project? If so, what is that goal?**
- 4. How did you insure your goal for hiring women/minority owned businesses was met?**