

The Listening Forum begins at 6:30 p.m. before the second and fourth regularly scheduled City Council meetings and replaces Visitor Presentations on the City Council Agenda.

AGENDA
MAPLEWOOD CITY COUNCIL
7:00 P.M. Monday, July 23, 2012
City Hall, Council Chambers
Meeting No. 13-12

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE

1. *Acknowledgement of Maplewood Residents Serving the Country.*

C. ROLL CALL

Mayor's Address on Protocol:

"Welcome to the meeting of the Maplewood City Council. It is our desire to keep all discussions civil as we work through difficult issues tonight. If you are here for a Public Hearing or to address the City Council, please familiarize yourself with the Policies and Procedures and Rules of Civility, which are located near the entrance. Before addressing the council, sign in with the City Clerk. At the podium please state your name and address clearly for the record. All comments/questions shall be posed to the Mayor and Council. The Mayor will then direct staff, as appropriate, to answer questions or respond to comments."

D. APPROVAL OF AGENDA

E. APPROVAL OF MINUTES

1. Approval of July 9, 2012 City Council Workshop Minutes
2. Approval of July 9, 2012 City Council Meeting Minutes
3. Approval of July 9, 2012 EDA Meeting Minutes

F. APPOINTMENTS AND PRESENTATIONS

1. Resolution of Appreciation for Tanya Nuss – Planning Commission

G. CONSENT AGENDA – *Items on the Consent Agenda are considered routine and non-controversial and are approved by one motion of the council. If a councilmember requests additional information or wants to make a comment regarding an item, the vote should be held until the questions or comments are made then the single vote should be taken. If a councilmember objects to an item it should be removed and acted upon as a separate item.*

1. Approval Of Claims
2. Approval to Accept the Ramsey County All-Hazard Mitigation Plan Resolution
3. Consider Authorizing Lease Agreement with Life Fitness for Replacement of Cardio Equipment
4. Lions Park Improvements, Project 08-09
 - a. Resolution Directing Modification of Existing Construction Contract, Change Order No. 2
 - b. Resolution Approving Final Payment and Acceptance of Project
5. Conditional Use Permit Review, St. Paul's Priory Planned Unit Development, Benet Road and Monastery Way
6. Conditional Use Permit Review, All Metro Glass, 1357 Cope Avenue
7. Conditional Use Permit Review, South Metro Human Services Mental Health Care Facility, 1111 Viking Drive
8. Approval of Resolution Adopting Support for Municipal Agreement Funding Application, County Road D Court Improvements, City Project 10-20

9. Approval of Resolution Approving Plans and Specifications and Advertising for Bids (Bid Package 2), East Metro Public Safety Training Facility, City Project 09-09
10. Consider Approval of Resolution Accepting Responsibility for State Grant Funding for Tubman Improvements and Authorizing Lease and Use Agreement

H. PUBLIC HEARINGS

I. UNFINISHED BUSINESS

1. Ordinance Amendment Regarding Reinforced-Turf Parking Lots—Section 44-17 – Second Reading

J. NEW BUSINESS

1. Arkwright-Sunrise Area Street Improvements, City Project 12-09, Resolution Ordering Preparation of Feasibility Study

K. AWARD OF BIDS

L. ADMINISTRATIVE PRESENTATIONS

1. MnPass Open House Update – Public Works Director/City Engineer Thompson

M. COUNCIL PRESENTATIONS

N. ADJOURNMENT

Sign language interpreters for hearing impaired persons are available for public hearings upon request. The request for this must be made at least 96 hours in advance. Please call the City Clerk's Office at 651.249.2001 to make arrangements. Assisted Listening Devices are also available. Please check with the City Clerk for availability.

RULES OF CIVILITY FOR OUR COMMUNITY

Following are some rules of civility the City of Maplewood expects of everyone appearing at Council Meetings – elected officials, staff and citizens. It is hoped that by following these simple rules, everyone's opinions can be heard and understood in a reasonable manner. We appreciate the fact that when appearing at Council meetings, it is understood that everyone will follow these principles: Show respect for each other, actively listen to one another, keep emotions in check and use respectful language

MINUTES
MAPLEWOOD CITY COUNCIL
7:00 p.m., Monday, July 09, 2012
Council Chambers, City Hall
Meeting No. 12-12

Item E2

A. CALL TO ORDER

A meeting of the City Council was held in the City Hall Council Chambers and was called to order at 7:02 p.m. by Mayor Rossbach.

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Will Rossbach, Mayor	Present
Robert Cardinal, Councilmember	Present
Kathleen Juenemann, Councilmember	Present
Marvin Koppen, Councilmember	Present
James Llanas, Councilmember	Present

D. APPROVAL OF AGENDA

The following items were added to the agenda:

- F1. July 4th Celebration Report
- M1. National Night Out
- M2. Afternoon Theft
- M3. Recruiting Firefighters
- M4. Ramsey County Family Service Center

Councilmember Llanas moved to approve the agenda as amended.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

E. APPROVAL OF MINUTES

1. Approval of June 25, 2012 City Council Workshop Minutes

Councilmember Juenemann moved to approve the June 25, 2012 City Council Workshop Minutes as submitted.

Seconded by Councilmember Llanas Ayes – All

The motion passed.

2. Approval of June 25, 2012 City Council Meeting Minutes

Councilmember Llanas moved to approve the June 25, 2012 City Council Meeting Minutes as submitted.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

F. APPOINTMENTS AND PRESENTATIONS

1. July 4th Celebration Report

City Clerk Guilfoile presented the staff report and thanked City staff for all their help in making the event a success with the return of July 4th fireworks.

G. CONSENT AGENDA

Councilmember Juenemann requested agenda item G3, G6, G7 and G10 be highlighted.

Councilmember Juenemann moved to approve agenda items G1-G10.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

1. Approval of Claims

Councilmember Juenemann moved to approve the Approval of Claims.

ACCOUNTS PAYABLE:

\$ 398,877.19	Checks # 87321 thru # 87369 dated 6/18/12 thru 6/26/12
\$ 268,610.64	Disbursements via debits to checking account dated 6/18/12 thru 6/22/12
\$ 307,276.93	Checks # 87371 thru # 87460 dated 6/26/12 thru 7/3/12
\$ 346,380.54	Disbursements via debits to checking account dated 6/25/12 thru 6/29/12
<hr/>	
\$ 1,321,145.30	Total Accounts Payable

PAYROLL

\$ 508,184.58	Payroll Checks and Direct Deposits dated 6/22/12
\$ 1,956.39	Payroll Deduction check # 9987285 thru # 9987288 dated 6/22/12
<hr/>	
\$ 510,140.97	Total Payroll
<u>\$ 1,831,286.27</u>	GRAND TOTAL

Seconded by Councilmember Koppen Ayes – All

The motion passed.

2. Approval of Resolution Certifying Election Judges for the August 14, 2012 State and Federal Primary Election

Councilmember Juenemann moved to Approve the Resolution Certifying Election Judges for the August 14, 2012 State and Federal Primary Election.

RESOLUTION 12-7-761
ACCEPTING ELECTION JUDGES

RESOLVED, that the City Council of Maplewood, Minnesota, accepts the following list of Election Judges for the 2012 Primary Election to be held on Tuesday, August 14, 2012.

Abeyratne, Pria	Combe, Edward	Fuller, Mary Katherine
Achmeier, Kevin	Connelly, Thomas	Galligher, Patricia
Ahl, Chuck	Connolly, Colleen	Garrison, Carolyn Ann
Ahrens, Fran	Coyle, Jim	Garvey, Terrence
Aikens, Meredith	Coyle, Rose	Gebauer, Victor
Allen, Jim	D'Arcio, India	Gerlach, Barbara
Allen, Mark R.	Deeg, Edward	Gerten, John
Anderson, Beverly	Delveaux, Jay	Gerten, Judy
Anderson, Elsie	Demko, Fred	Gipple, Kristine
Anderson, Mary Sue	Desai, Kalpana	Glissendorf, Sue
Anderson, Nancy	DeZelar, Phil	Golaski, Diane
Anderson, Suzanne	Dickerson, Glendell	Gordon, Suzanne
Ansari, Ahsan	Dickson, Helen Jean	Granse, Barbara
Arnold, Ajla	Droeger, Diane	Gravink, Barb
Aurandt, Robert	Duellman, Audrey	Gudknecht, Jamie
Bartelt, Joan	Dunham, Bob	Gustafson, Dianne
Bedor, David	Eickhoff, Carolyn	Guthrie, Rosie
Beggs, Regan	Ek, John	Hafner, Michael
Behr, Jeanette	Ek, Susan	Hahn, Vonna
Behrens, Margaret	Elliott, Michael	Hanson, Joan
Belland, Jaime	Erickson, Elizabeth	Hart, Barbara
Berry, Robert	Erickson, Eric	Heininger, Gordon
Bieniek, Robert	Erickson, Sue	Herber, Darlene
Bjorklund, Diane	Evans, Carol	Hervig, Cindy
Bolden, Donita	Fastner, Vicki	Hill, Jan
Bond, Sandra	Fernholz, Jean	Hines, Constance
Booher, Michele	Finch, Michael	Hinnenkamp, Gary
Bortz, Albert	Finch, Roberta	Hitzman, Harold
Bortz, Jeanne	Fischer, Peter	Hogan, Anna
Bruner, Deborah	Fitzgerald, Delores	Horgan, Gerald
Bunkowske, Bernice	Fosburgh, Anne	Horgan, Sharon
Carle, Jeanette	Fowler, Cynthia	Horner, Jan
Carson, Fannie	Franzen, James	Horwath, Ivori
Carson, Helen	Franzen, Nick	Hulet, Jeanette
Cathleen, Cotter	Freer, Mary Jo	Hulet, Robert
Chromey, Donna	Friedlein, Charlene	Huth, Patricia
Chromey, Terrance	Friedlein, Richard	Huth, Raymond
Cleland, Ann	Frost, James	Inhofer, Mary Claire

Jaafaru, Timothy
Jagoe, Carole
Jahn, David
Janaszak, Meghan
Jefferson, Gwendolyn
Jensen, Robert
Johannessen, Judith
Johansen, Kathleen
Johnson, Warren
Jones, Shirley
Jurmu, Joyce
Kapfer, Deb
Karner, Ann
Kaul, Shirley
Kearn, Barbara
Kirchoff, Harold
Kliethermes, Jami
Knauss, Carol
Knutson, Lois
Koch, Rosemary
Kramer, Dennis
Krause, Bruce
Krebsbach, Jean
Kreger, Jason
Kude, Carol
Kuehnel, Edward
Kwapick, Jackie
Labossiere, Donna
Lackner, Marvella
Lampe, Charlotte
Larson, Michelle
Lauren, Lorraine
LaValle, Faylene
Lawrence, Donna
Layer, Stephanie
Layer, Tom
Leiter, Barbara
Leo, Pati
Letourneau, Sandra
Lincowski, Steve
Lincowski, Vi
Lindskog, Phyllis
Liptak, Marianne
Lockwood, Jackie
Loipersbeck, Darlene
Loipersbeck, Jules
Lowery, Paul
Lucas, Lydia
Lynne, Carole
Mahowald, Valerie
Mahre, Jeri
Mammenga II, Donald
Manthey, John
Maskrey, Thomas

Mauston, Shelia
McCabe, Bonnie
McCann, John
McCarthy, Peggy
McCarthy, Ryan
McCauley, Judy
Mealey, Georgia
Mechelke, Geraldine
Mechelke, Mary Lou
Meehan, James
Meister-Westermann,
Jean
Mersereau, Connie
Meyer, Kayleen
Mielke, Karen
Moen, Bill
Moenck, Mary Ann
Mollica, Arthur
Moran, Joyce E.
Moreno, Marlene
Mudek, Dolores
Mudek, Leo
Mudgett, Sandy
Muenchow, Mike
Muraski, Gerry
Myster, Thomas
Nazarian, Frederick
Nelson, Percy
Nettleton, Janet
Newcomb, Mary
Nichols, Miranda
Nieters, Louise
Nissen, Helen
Norberg, Ann
Noyes, Douglas
Ober, Caleb
O'Brien, D. William
Olson, Anita
Olson, Lois
Olson, Norman
Olson, Stacy
Oslund, Kathryn
Osman, Jamal
Otto, Eric
Paddock, Ken
Parent, Dian
Pavel, Margaret
Pedersen, Bernard
Peitzman, Lloyd
Peper, Marilyn
Pickett, William
Plaster, Rae
Pogalz, Linda
Priefer, Bill

Reeve, Claudia
Renslow, Rita
Rieper, Allan
Robinson, Emily
Rodriguez, Vincent
Rohrbach, Charles
Rohrbach, Elaine
Roller, Carolyn
Rubbert, Shirley
Rudeen, Elaine
Sagert, Chris
Saltz, Rosalie
Sandberg, Janet
Satriano, Pauline
Sauer, Elmer
Sauer, Kathleen
Sauro, Janet
Sawyer, Sharon
Scharnott, Thomas
Scheuble, RoJean
Scheunemann,
Marjorie
Schiff, Marge
Schluender, Cynthia
Schneider, Mary Ann
Schramel, Betty
Schramel, Jim
Schultz, Louise
Seidel, Dave
Seidel, Gloria
Shankar, Ananth
Shores, Teresa
Simmer, Kathleen
Simmer, Richard
Skaar, Delaney
Skaar, Susan
Spangler, Bob
Spies, Louis
Stafki, Tim
Steenberg, Judith
Steenberg, Richard
Stenson, Karen
Stevens, Sandra
Storm, Mary
Strack, Joan
Sweningeon, Rudolph
Taylor, Lori
Taylor, Rita
Thomas, Jeff
Thomforde, Faith
Thompson, Jerrilyn
Thompson, Julie
Tietel, Lynn
Tourville, Michael

Trippler, Dale
Tschida, Micki
Urbanski, Holly
Urbanski, William
VanBlaricom, Beulah
Volkman, Phyllis
Wasmundt, Gayle
Webb, Paulette
Weiland, Connie
Weinberg, Vicki

Wessel, Warren
Westergard, Joanne
Whitcomb, Larry
White, Greg
Witschen, Delores
Wold, Hans
Wolff, Patricia
Wolfgram, Dorothy
Wood, Susan
Yang, Cana

Yorkovich, Cindy
Young, Linda
Zacho, Karen
Zager, Scott
Zawacki, James
Zian, Helen
Zipko, Leroy

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

3. Resolution Accepting Donation to the Police Department From Residential Mortgage Group

Chief of Police Thomalla presented the staff report.

Councilmember Juenemann moved to approve the Resolution Accepting Donation to the Police Department From Residential Mortgage Group.

RESOLUTION 12-7-762
RESOLUTION AUTHORIZING GIFT TO CITY

WHEREAS, Maplewood is AUTHORIZED to receive and accept grants, gifts and devices of real and personal property and maintain the same for the benefit of the citizens and pursuant to the donor's terms if so-prescribed, and;

WHEREAS, Residential Mortgage Group (RMG) wishes to grant the City of Maplewood the following: \$100, and;

WHEREAS, Residential Mortgage Group has instructed that the City will be required to use the aforementioned for: use by the Police Department to directly improve the community, and;

WHEREAS, the City of Maplewood has agreed to use the subject of this resolution for the purposes and under the terms prescribed, and;

WHEREAS, the City agrees that it will accept the gift by a super majority of its governing body's membership pursuant to Minnesota Statute §465.03;

NOW, THEREFORE, BE IT RESOLVED, pursuant to Minnesota Statute §465.03, that the Maplewood City Council approves, receives and accepts the gift aforementioned and under such terms and conditions as may be requested or required.

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

4. Conditional Use Permit Review for a Planned Unit Development, Gethsemane Senior Housing, South of 2410 Stillwater Road

Councilmember Juenemann moved to Terminate the Conditional Use Permit for the Gethsemane Senior Housing Planned Unit Development, South of 2410 Stillwater Road.

RESOLUTION 12-7-767
CONDITIONAL USE PERMIT
TERMINATION RESOLUTION

WHEREAS, Gethsemane Lutheran Church and Presbyterian Homes of Minnesota, received approval from the Maplewood City Council on July 14, 2008, for a conditional use permit for a planned unit development to build a 111-unit senior-housing development.

WHEREAS, in the subsequent four years no construction progress has been made and therefore city code states the permit is null and void.

WHEREAS, this permit applies to the property located south of Gethsemane Lutheran Church, 2410 Stillwater Road. The legal description is:

Lot 1, Block 1, Gethsemane Addition

WHEREAS, the history of this conditional use permit termination is as follows:

1. On July 9, 2012, the city council terminated this conditional use permit since the applicants, Gethsemane Lutheran Church and Presbyterian Homes of Minnesota have made no substantial construction progress on this project.

NOW, THEREFORE, BE IT RESOLVED that the city council terminates the above-described conditional use permit because Gethsemane Lutheran Church and Presbyterian Homes of Minnesota have made no construction progress and city code requires the permit to end.

The Maplewood City Council approved this resolution of termination on July 9, 2012.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

5. Approval to Move the Tennis Court Project from Playcrest to Maplewood Heights

Councilmember Juenemann moved to approve Moving the Money for the Project Approved for Playcrest Park to the Tennis and Basketball Courts at Maplewood Heights; and Moving Forward with Resurfacing the Basketball Court at Playcrest Park.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

6. Resolution Accepting Donation from St. Paul East Parks Lions to City of Maplewood

Park and Recreation Director Konewko presented the staff report.

Councilmember Juenemann moved to approve the Resolution Accepting the \$300 Donation for Trees for Lions Park and Refreshments for Maplewood's 2012 Arbor Day Celebration from St. Paul East Parks Lions to City of Maplewood.

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

10. Approval to Accept the Grant from Firehouse Subs and Authorization to Purchase Turnout Gear

Fire Chief Lukin presented the staff report.

Councilmember Juenemann moved to approve to Accept the Grant from Firehouse Subs in the Amount of \$20,004 and Authorize the Purchase of Turnout Gear Through Firehouse Subs Foundation in the Amount of \$20,004.

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

H. PUBLIC HEARING

1. Approval of Ordinance Amendment Regarding Reinforced-Turf Parking Lots – First Reading

City Planner Ekstrand presented the staff report and answered questions of the council.

Mayor Rossbach opened the public hearing. No one spoke.

Mayor Rossbach closed the public hearing.

Councilmember Juenemann moved to approve the First Reading of the Reinforced Parking Lots Ordinance Adding Getting Approval from the Police and Fire Chiefs on the Proposal.

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

2. Approval of Ordinance Amendment Regarding Dynamic Display Signs – First Reading

City Planner Ekstrand presented the staff report and answered questions of the council.

Mayor Rossbach opened the public hearing.

Mike Miranowski from the Myth Nightclub addressed the council.

Mayor Rossbach closed the public hearing.

No Action Taken

Ayes – All

I. UNFINISHED BUSINESS

1. Approval of Charitable Gambling Policy and Application

Assistant City Manager Ahl presented the staff report and answered questions of the council.

Seconded by Councilmember Llanas

Ayes – All

The motion passed.

Mayor Rossbach called for a 10 minute break.

2. Approval of Purchase Agreement for City-Owned Land, Hazelwood Street and County Road D East

Planner Martin presented the staff report and answered questions of the council.

Councilmember Juenemann moved to approve the Purchase Agreement to Sell 1.32 Acres of City-Owned Land, Hazelwood Street and County Road D East to the Area Economic Development Authority for the Purpose of Economic Development.

Seconded by Councilmember Koppen

Ayes – All

The motion passed.

3. Councilmember Resignation
a. Approval of Resolution Declaring a Vacancy on the City Council
b. Approval of Resolution Calling for a Special Election

City Clerk Guilfoile presented the staff report and answered questions of the council.

Mayor Rossbach moved to approve the Resolution Declaring a Vacancy on the City Council.

RESOLUTION 12-7-765
CITY OF MAPLEWOOD

RESOLUTION ACCEPTING RESIGNATION AND DECLARING A VACANCY

WHEREAS, the Maplewood City Council has received the written resignation of Councilmember James Llanas, effective on October 31, 2012.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA, AS FOLLOWS:

The council accepts Councilmember James Llanas' resignation as described above.

The council declares that a vacancy exists on council effective on October 31, 2012.

Adopted by the City Council of the City of Maplewood on July 9, 2012.

Seconded by Councilmember Llanas

Ayes – Mayor Rossbach, Councilmember Cardinal, Koppen and Llanas
Nay – Councilmember Juenemann

The motion passed.

Mayor Rossbach moved to approve the Resolution Calling for a Special Election.

RESOLUTION 12-7-766
CITY OF MAPLEWOOD

RESOLUTION CALLING FOR A SPECIAL ELECTION

WHEREAS, a vacancy exists on the Maplewood City Council.

WHEREAS, the vacancy occurred before the first day to file affidavits of candidacy for the next regular General Election.

WHEREAS, Maplewood City Ordinance 866 dictates a Special Election is to be held when a vacancy exists as follows:

In the event a vacancy is declared pursuant to state law, the city council shall by resolution declare such a vacancy to exist. If the unexpired term is for a period of six months or less, the council shall appoint an eligible person to serve for the remainder of the unexpired term. In the event the unexpired term is greater than six months, the council shall hold a special election to fill the unexpired term.

The special election shall be held as soon as the vacancy is declared as is practical under state law, no special primary election shall occur in cases of special elections held pursuant to this section.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA, AS FOLLOWS:

A Special Election is ordered to fill a vacancy on the Maplewood City Council. The Special Election will be held in conjunction with the November 6, 2012 General Election. The person elected shall fill the vacancy for the remainder of the term vacated by Councilmember Llanas to January 6, 2014.

Adopted by the City Council of the City of Maplewood on July 9, 2012.

Seconded by Councilmember Koppen

Ayes – Mayor Rossbach, Councilmember Cardinal, Koppen and Llanas
Nay – Councilmember Juenemann

The motion passed.

K. AWARD OF BIDS

None.

L. ADMINISTRATIVE PRESENTATIONS

None.

M. COUNCIL PRESENTATIONS

1. National Night Out

Councilmember Juenemann reminded residents that National Night Out is August 7th. She encouraged residents to starting talking to their neighbors about how as a neighborhood you are going to celebrate National Night Out by being in your neighborhood and getting to know each other.

2. Afternoon Theft

Councilmember Cardinal requesting information from Chief Thomalla regarding an afternoon theft that occurred between 1:30 p.m. and 2:30 p.m.

3. Recruiting Firefighters

Councilmember Cardinal inquired if the City of Maplewood still recruited volunteer firefighters. Chief Lukin informed the council and residents that the City no longer recruits volunteer firefighters. If at some time the City is unable to hire trained firefighters, then a training program would be instituted. There is also training available to junior colleges around the area.

4. Ramsey County Family Service Center

Councilmember Cardinal recognized several organizations that pay and serve dinner to those in need.

- | | |
|----------------------------|----------------------------|
| St. Ambrose | St. Peter |
| Christ Lutheran | St. Jerome |
| Transfiguration | St. Pius, White Bear Lake |
| Grace Lutheran | Cross Lutheran |
| Our Savior | Unitarian, White Bear Lake |
| St. John in the Wilderness | St. Pascal |
| St. Charles | St. Mark's Catholic |
| St. Mark's Lutheran | Holy Spirit |
| Christ the King | St. Odilia |
| Zion Lutheran | 3M Families |
| Harbor Church | Catholic Charities |

N. ADJOURNMENT

Mayor Rossbach adjourned the meeting at 9:38 p.m.

AGENDA
MAPLEWOOD AREA ECONOMIC DEVELOPMENT AUTHORITY
July 9, 2012
Council Chambers, City Hall

A. CALL TO ORDER

A meeting of the City Council serving as the Economic Development Authority, (EDA), was held in the City Hall Council Chambers and was called to order at 9:40 p.m. by EDA Vice Chair Llanas.

B. ROLL CALL

Will Rossbach, Mayor	Present
Robert Cardinal, Councilmember	Present
Kathleen Juenemann, Councilmember	Present
Marvin Koppen, Councilmember	Present
James Llanas, EDA Chair	Present

C. APPROVAL OF AGENDA

Mayor Rossbach moved to approve the agenda as submitted.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

D. NEW BUSINESS

1. Maplewood Area Economic Development Authority
a. Election of Officers

Vice Chair Llanas called for nominations for EDA Chair.

Mayor Rossbach nominated James Llanas as Chair for the EDA Committee.

Seconded by Councilmember Juenemann

Vice Chair Llanas closed the nominations for EDA Chair.

Vice Chair Llanas called for nominations for EDA Vice Chair.

Councilmember Juenemann nominated Mayor Rossbach as Vice Chair

Seconded by Councilmember Koppen

Vice Chair Llanas closed the nomination for EDA Vice Chair.

Ayes - All

The motion passed.

b. Approval of Purchase Agreement for City-Owned Land, Hazelwood Street and County Road D East

Planner Martin presented the staff report and answered staff report.

Mayor Rossbach moved to approve the Purchase Agreement to allow the Maplewood Area Economic Development Authority to Purchase 1.32 Acres of Land, Located at the Intersection of Hazelwood Street and County Road D East, from the City of Maplewood for the Purpose of Economic Development.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

c. Highway 36 and 61 Improvements – Potential Land Purchase, 2228 Maplewood Drive

Planner Martin presented the staff report and answered questions of the council.

Councilmember Juenemann moved to authorize the Authorities Director or his Designee to Negotiate a Potential Land Purchase with the Property Owner of 2228 Maplewood Drive.

Seconded by Councilmember Koppen Ayes – All

The motion passed.

d. BEDC Update

Planner Martin presented the staff report and answered questions of the council. Mark Jenkins, BEDC Chair was present and addressed the council.

E. ADJOURNMENT

The EDA meeting was adjourned at 10:02 p.m.

MEMORANDUM

TO: James Antonen, City Manager
FROM: Tom Ekstrand, Senior Planner
Chuck Ahl, Assistant City Manger
SUBJECT: **Resolution of Appreciation for Tanya Nuss**
DATE: July 12, 2012

INTRODUCTION

Tanya Nuss has resigned from the planning commission. The planning commission appreciates her two years of service to the city and wishes her the best in the future.

COMMISSION ACTION

June 19, 2012: The planning commission moved to approve this resolution of appreciation.

RECOMMENDATION

Approve the attached resolution of appreciation for Tanya Nuss' years of service to the City of Maplewood as a member of the planning commission.

P:\Planning Commission\Resolutions of Appreciation for Tanya Nuss CC Report 7 12 te
Attachment:
Resolution of Appreciation for Tanya Nuss

JOINT RESOLUTION OF APPRECIATION

WHEREAS, Tanya Nuss has been a member of the Maplewood Planning Commission since February 8, 2010 and has served faithfully in that capacity; and

WHEREAS, the Planning Commission has appreciated Tanya's experience, insights and good judgment; and

WHEREAS, Tanya has freely given of her time and energy, without compensation, for the betterment of the City of Maplewood; and

WHEREAS, Tanya has shown sincere dedication to her duties and has consistently contributed her leadership, time and effort for the benefit of the City.

NOW, THEREFORE, IT IS HEREBY RESOLVED for and on behalf of the City of Maplewood, Minnesota, and its citizens that Tanya Nuss is hereby extended our gratitude and appreciation for her dedicated service.

***Passed by the Maplewood
City Council on _____, 2012***

Will Rossbach, Mayor

***Passed by the Maplewood
Planning Commission
On June 19, 2012***

Lorraine Fischer, Chairperson

Attest:

Karen Guilfoile, City Clerk

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AGENDA REPORT

TO: City Council
FROM: Finance Manager
RE: APPROVAL OF CLAIMS
DATE: July 23, 2012

Attached is a listing of paid bills for informational purposes. The City Manager has reviewed the bills and authorized payment in accordance with City Council approved policies.

ACCOUNTS PAYABLE:

\$ 987,897.19	Checks # 87461 thru # 87491 dated 7/2/12 thru 7/10/12
\$ 255,820.38	Disbursements via debits to checking account dated 7/2/12 thru 7/6/12
\$ 437,517.30	Checks # 87492 thru # 87526 dated 7/17/12
\$ 431,591.28	Disbursements via debits to checking account dated 7/9/12 thru 7/13/12
<u>\$ 2,112,826.15</u>	Total Accounts Payable

PAYROLL

\$ 520,507.15	Payroll Checks and Direct Deposits dated 7/6/12
\$ 1,806.39	Payroll Deduction check # 9987313 thru # 9987315 dated 7/6/12
<u>\$ 522,313.54</u>	Total Payroll
<u><u>\$ 2,635,139.69</u></u>	GRAND TOTAL

Attached is a detailed listing of these claims. Please call me at 651-249-2902 if you have any questions on the attached listing. This will allow me to check the supporting documentation on file if necessary.

sb
attachments

**Check Register
City of Maplewood**

07/09/2012

<u>Check</u>	<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Amount</u>	
87461	07/02/2012	05014	ICABOD PRODUCTIONS LLC	SOUND SYS/STAGE LIGHTING JULY 4TH	1,000.00
87462	07/10/2012	00585	GOPHER STATE ONE-CALL	NET BILLABLE TICKETS - JUNE	878.80
87463	07/10/2012	01202	NYSTROM PUBLISHING CO INC	MAPLEWOOD MONTHLY - JUNE	7,083.03
87464	07/10/2012	04265	MARIA PIRELA	ZUMBA INSTRUCTOR - JUNE	194.00
87465	07/10/2012	01337	RAMSEY COUNTY-PROP REC & REV	PLANTS FOR JOY PARK RAINGARDEN	2,059.48
	07/10/2012	01337	RAMSEY COUNTY-PROP REC & REV	PROJ 10-14 PLANTS	1,733.51
	07/10/2012	01337	RAMSEY COUNTY-PROP REC & REV	TREES FOR LIONS PARK	496.97
	07/10/2012	01337	RAMSEY COUNTY-PROP REC & REV	PROJ 09-15 PLANTS	203.06
87466	07/10/2012	01337	RAMSEY COUNTY-PROP REC & REV	FLEET SUPPORT FEE - JUNE	414.96
87467	07/10/2012	01409	S.E.H.	PROJ 09-08 CONSULTANT SERVICES	91,503.03
	07/10/2012	01409	S.E.H.	PROJ 09-09 CONSULTANT SERVICES	27,072.38
	07/10/2012	01409	S.E.H.	FIRE STATION NO 1	3,500.73
	07/10/2012	01409	S.E.H.	PROJ 04-21 CONSULTANT SERVICES	2,548.82
	07/10/2012	01409	S.E.H.	PROJ 11-19 CONSULTANT SERVICES	2,071.05
	07/10/2012	01409	S.E.H.	CONSULTANT SERVICES	1,111.83
	07/10/2012	01409	S.E.H.	PROJ 11-15 CONSULTANT SERVICES	379.02
87468	07/10/2012	01574	T.A. SCHIFSKY & SONS, INC	PROJ 11-14 BARTELMY/MEYER PMT#2	250,650.11
	07/10/2012	01574	T.A. SCHIFSKY & SONS, INC	PROJ 09-15 HILLS& DALES PARTPMT11	92,422.60
87469	07/10/2012	01798	YOCUM OIL CO.	CONTRACT DIESEL FUEL - JUNE	9,476.79
87470	07/10/2012	05025	622 EDUCATION FOUNDATION	SPONSORSHIP FEE FUN RUN JULY 28	500.00
87471	07/10/2012	03964	ACCESS COMMUNICATIONS INC	LOCATE SRVS FOR SOLAR PANELS	184.44
87472	07/10/2012	05026	ADVANTAGE SPORTS LLC	TENNIS INSTRUCTOR SUMMER 1	539.00
87473	07/10/2012	00111	ANIMAL CONTROL SERVICES	PATROL HOURS 6/11 - 7/1	2,079.00
87474	07/10/2012	03738	CHARLES E. BETHEL	ATTORNEY SRVS FEES/RENT - AUG	6,775.00
87475	07/10/2012	03513	BRIAN BIERDEMAN	REIMB FOR MEAL 06/21	15.19
87476	07/10/2012	05024	CJ SPRAY INC.	PUMP REPAIR - MESSAGE PAINTER	211.03
87477	07/10/2012	00412	DONALD SALVERDA & ASSOCIATES	EFFECTIVE MGMT PROG - BOOKS	83.35
	07/10/2012	00412	DONALD SALVERDA & ASSOCIATES	EFFECTIVE MGMT PROG - BOOKS	75.81
87478	07/10/2012	00003	ESCROW REFUND	ESCROW REL JK ANDERSON BUILDERS	1,000.00
87479	07/10/2012	00520	TIMOTHY W FLOR	REIMB FOR MEAL 6/21	35.33
87480	07/10/2012	00531	FRA-DOR INC.	BLACK DIRT FOR RESTORATION WORK	128.26
87481	07/10/2012	04947	HARDRIVES, INC.	PROJ 11-15 MILLS/OVERLAYS PMT#2	463,886.24
87482	07/10/2012	03597	MARY JO HOFMEISTER	REIMB FOR MILEAGE 5/31 - 6/25	13.60
87483	07/10/2012	02300	OAKDALE LOCKSMITHS	MCC LOCK REPAIR	22.50
87484	07/10/2012	00001	ONE TIME VENDOR	REFUND J DOREE HP BENEFIT	60.00
87485	07/10/2012	00001	ONE TIME VENDOR	REFUND N HAMPTON - FACE PAINTER	35.00
87486	07/10/2012	04581	ORION SYSTEMS/NETWORKS	SUBSCRIPTION FOR LETS - JULY	150.00
87487	07/10/2012	04272	PARAGON SOLUTIONS GROUP, INC.	AXIS CAMERA/LICENSE FOR MCC	828.09
	07/10/2012	04272	PARAGON SOLUTIONS GROUP, INC.	AXIS CAMERA FOR MCC	519.42
87488	07/10/2012	01836	CITY OF ST PAUL	SRVS (RMS) PROVIDED TO PD - JUNE	5,196.09
	07/10/2012	01836	CITY OF ST PAUL	SRVS (RMS) PROVIDED TO PD - JULY	5,196.09
87489	07/10/2012	00198	ST. PAUL REGIONAL WATER SRVS	WATER UTILITY	2,000.20
	07/10/2012	00198	ST. PAUL REGIONAL WATER SRVS	KENNARD IRRIGATION	48.90
	07/10/2012	00198	ST. PAUL REGIONAL WATER SRVS	3050 KENNARD IRRIGATION	16.88
87490	07/10/2012	01550	SUMMIT INSPECTIONS	ELECTRICAL INSPECTIONS - JUNE	2,969.60
87491	07/10/2012	04381	ZEUS AND COMPANY	DOG FOOD FOR PD K-9	528.00
				987,897.19	

31 Checks in this report.

CITY OF MAPLEWOOD
Disbursements via Debits to Checking account

Settlement			
<u>Date</u>	<u>Payee</u>	<u>Description</u>	<u>Amount</u>
7/2/2012	MN State Treasurer	Drivers License/Deputy Registrar	46,799.99
7/2/2012	US Bank Merchant Services	Credit Card Billing fee	2,447.79
7/3/2012	MN State Treasurer	Drivers License/Deputy Registrar	39,419.54
7/5/2012	MN State Treasurer	Drivers License/Deputy Registrar	41,359.60
7/6/2012	MN State Treasurer	Drivers License/Deputy Registrar	30,549.81
7/6/2012	US Bank VISA One Card*	Purchasing card items	63,278.50
7/6/2012	ING - State Plan	Deferred Compensation	27,477.00
7/6/2012	ICMA (Vantagepointe)	Deferred Compensation	4,488.15
TOTAL			255,820.38

*Detailed listing of VISA purchases is attached.

Transaction Date	Posting Date	Merchant Name	Transaction Amount	Name
06/15/2012	06/18/2012	BOARD OF AELSLAGID	\$135.50	R CHARLES AHL
06/14/2012	06/18/2012	DELTA AIR 0062307881963	\$266.60	JAMES ANTONEN
06/18/2012	06/19/2012	ICMA INTERNET	\$620.00	JAMES ANTONEN
06/22/2012	06/25/2012	INN LAKE SUPERIOR	\$146.25	JAMES ANTONEN
06/27/2012	06/28/2012	MAH JONGG MAVEN	\$40.00	MANDY ANZALDI
06/28/2012	06/29/2012	WILD MOUNTAIN	\$264.51	MANDY ANZALDI
06/23/2012	06/25/2012	UNIFORMS UNLIMITED INC.	\$133.49	STANLEY BELDE
06/15/2012	06/18/2012	BUSINESS-SUPPLY.COM	\$186.12	CHAD BERGO
06/27/2012	06/29/2012	VERIZON WRLS MYACCT VN	\$293.11	CHAD BERGO
06/16/2012	06/18/2012	THE HOME DEPOT 2801	\$33.14	BRIAN BIERDEMAN
06/28/2012	06/29/2012	GAL*GALLS INC	\$42.49	JOHN BOHL
06/18/2012	06/19/2012	DICK'S CLOTHING&SPORTING	\$32.08	NEIL BRENEMAN
06/22/2012	06/25/2012	OAKDALE RENTAL CENTER	\$207.82	BRENT BUCKLEY
06/22/2012	06/25/2012	OAKDALE RENTAL CENTER	\$207.82	BRENT BUCKLEY
06/14/2012	06/18/2012	OFFICE DEPOT #1090	\$65.22	SARAH BURLINGAME
06/19/2012	06/21/2012	OFFICE DEPOT #1090	(\$30.64)	SARAH BURLINGAME
06/19/2012	06/21/2012	OFFICE DEPOT #1090	\$55.39	SARAH BURLINGAME
06/22/2012	06/27/2012	CANAL PARK LODGE	\$168.92	SARAH BURLINGAME
06/25/2012	06/26/2012	CHILI'S-MAPLEWOOD	\$124.23	SARAH BURLINGAME
06/19/2012	06/21/2012	TACTIC TAILOR INC	\$24.90	DAN BUSACK
06/20/2012	06/22/2012	ED ROEHR SAFETY PRODUCTS	\$426.66	DAN BUSACK
06/14/2012	06/18/2012	TOUSLEY FORD I27228006	\$35.90	SCOTT CHRISTENSON
06/19/2012	06/20/2012	VIKING ELECTRIC - CREDIT	\$230.42	SCOTT CHRISTENSON
06/19/2012	06/20/2012	VIKING ELECTRIC - CREDIT	\$11.73	SCOTT CHRISTENSON
06/22/2012	06/25/2012	MENARDS 3059	\$4.16	SCOTT CHRISTENSON
06/25/2012	06/26/2012	WESCO - # 7649	\$91.35	SCOTT CHRISTENSON
06/25/2012	06/26/2012	WESCO - # 7649	\$61.57	SCOTT CHRISTENSON
06/27/2012	06/28/2012	WESCO - # 7649	\$18.27	SCOTT CHRISTENSON
06/18/2012	06/19/2012	COMOPARK ANIMAL HOSPITAL	\$652.31	KERRY CROTTY
06/22/2012	06/25/2012	RYCO SUPPLY COMPANY	\$121.51	CHARLES DEAVER
06/22/2012	06/25/2012	MENARDS 3022	\$26.68	CHARLES DEAVER
06/23/2012	06/25/2012	FRATTALLONES WOODBURY AC	\$6.42	CHARLES DEAVER
06/27/2012	06/28/2012	MENARDS 3022	\$44.23	CHARLES DEAVER
06/14/2012	06/18/2012	GRUBERS POWER EQUIPMENT	\$9.62	THOMAS DEBILZAN
06/19/2012	06/21/2012	GRUBERS POWER EQUIPMENT	\$2.35	THOMAS DEBILZAN
06/22/2012	06/25/2012	RED WING SHOE STORE	\$174.99	THOMAS DEBILZAN
06/25/2012	06/27/2012	SUBWAY 00070524	\$56.29	RICHARD DOBLAR
06/15/2012	06/18/2012	THE HOME DEPOT 2801	\$24.80	TOM DOUGLASS
06/18/2012	06/20/2012	THE HOME DEPOT 2801	\$5.46	TOM DOUGLASS
06/21/2012	06/22/2012	TRI DIM FILTER CORP	\$632.63	TOM DOUGLASS
06/21/2012	06/25/2012	THE HOME DEPOT 2801	\$186.75	TOM DOUGLASS
06/26/2012	06/27/2012	HENRIKSEN ACE HARDWARE	\$4.29	TOM DOUGLASS
06/26/2012	06/28/2012	THE HOME DEPOT 2801	\$27.52	TOM DOUGLASS
06/26/2012	06/28/2012	ADVANCE SHORING COMPANY	\$106.88	DOUG EDGE
06/26/2012	06/28/2012	THE HOME DEPOT 2801	\$25.57	DOUG EDGE
06/27/2012	06/29/2012	OAKDALE RENTAL CENTER	\$164.97	DOUG EDGE
06/27/2012	06/29/2012	ADVANCE SHORING COMPANY	\$417.59	DOUG EDGE
06/19/2012	06/20/2012	MENARDS 3059	\$48.15	DAVE EDSON
06/25/2012	06/26/2012	HENRIKSEN ACE HARDWARE	\$10.79	DAVE EDSON
06/27/2012	06/29/2012	CARQUEST 01021229	\$38.95	DAVE EDSON
06/27/2012	06/29/2012	THE HOME DEPOT 2801	\$86.44	DAVE EDSON
06/26/2012	06/28/2012	THE HOME DEPOT 2801	\$12.77	PAUL E EVERSON
06/17/2012	06/18/2012	TARGET 00024067	\$173.93	LARRY FARR
06/18/2012	06/19/2012	MENARDS 3022	\$246.31	LARRY FARR

06/19/2012	06/20/2012	DISPLAYS2GOCOM	\$241.98	LARRY FARR
06/20/2012	06/22/2012	SPORTS AUTHORI00007112	\$103.61	LARRY FARR
06/21/2012	06/22/2012	US FOODS CULINARY E AND S	\$72.07	LARRY FARR
06/21/2012	06/25/2012	DAVIS LOCK & SAFE	\$122.91	LARRY FARR
06/22/2012	06/25/2012	PALEN/KIMBALL LLC	\$2,555.44	LARRY FARR
06/22/2012	06/25/2012	GITAR CENTER #394	\$21.40	LARRY FARR
06/22/2012	06/25/2012	ELECTRO WATCHMAN INC	\$3,782.73	LARRY FARR
06/25/2012	06/26/2012	AQUA LOGICS INC	\$2,010.46	LARRY FARR
06/19/2012	06/20/2012	ORBIS CORPORATION	\$550.00	SHANN FINWALL
06/27/2012	06/29/2012	THE HOME DEPOT 2801	\$17.86	TIM FLOR
06/21/2012	06/21/2012	COMCAST CABLE COMM	\$54.00	MYCHAL FOWLDS
06/27/2012	06/28/2012	ASSET RECOVERY	\$26.56	MYCHAL FOWLDS
06/27/2012	06/29/2012	VERIPIC	\$4,433.20	MYCHAL FOWLDS
06/27/2012	06/29/2012	SAGE SOFTWARE INC	\$1,455.45	MYCHAL FOWLDS
06/28/2012	06/29/2012	ACCESSABILITY	\$137.23	MYCHAL FOWLDS
06/14/2012	06/18/2012	MP3CAR INC	\$34.19	NICK FRANZEN
06/15/2012	06/18/2012	IDU*PUBLIC SECTOR	\$2,839.61	NICK FRANZEN
06/22/2012	06/25/2012	CDW GOVERNMENT	\$1,029.11	NICK FRANZEN
06/26/2012	06/27/2012	SYX*TIGERDIRECT.COM	\$183.84	NICK FRANZEN
06/27/2012	06/28/2012	BUY.COM*	\$1,002.99	NICK FRANZEN
06/25/2012	06/26/2012	SMARTPAK	\$39.95	CAROLE GERNES
06/19/2012	06/20/2012	NFPA NATL FIRE PROTECT	\$236.63	CLARENCE GERVAIS
06/26/2012	06/28/2012	BECKER FIRE & SAFETY SERV	(\$4.00)	CLARENCE GERVAIS
06/18/2012	06/20/2012	OFFICE DEPOT #1090	\$66.63	JEAN GLASS
06/19/2012	06/19/2012	HWAYSILVERSNEAKERS	\$57.50	JEAN GLASS
06/21/2012	06/22/2012	BEST BUY MHT 00000109	\$1,103.32	KAREN GUILFOILE
06/21/2012	06/25/2012	OFFICE MAX	\$74.50	KAREN GUILFOILE
06/14/2012	06/18/2012	MIKES LP GAS INC	\$49.22	MARK HAAG
06/22/2012	06/25/2012	UNIFORMS UNLIMITED INC.	\$67.85	PHENG HER
06/19/2012	06/20/2012	HENRIKSEN ACE HARDWARE	\$24.49	GARY HINNENKAMP
06/21/2012	06/22/2012	THE LIFEGUARD STORE	\$40.85	RON HORWATH
06/21/2012	06/22/2012	SWIMOUTLET.COM	\$84.75	RON HORWATH
06/26/2012	06/27/2012	ARC*SERVICES/TRAINING	\$19.00	RON HORWATH
06/20/2012	06/21/2012	TOSHIBA BUSINESS SOLUTION	\$199.10	ANN HUTCHINSON
06/18/2012	06/19/2012	CORPORATE MARK INC.	\$147.50	TOM KALKA
06/21/2012	06/25/2012	SHELL OIL 57444610000	\$27.00	TOM KALKA
06/20/2012	06/20/2012	COMCAST CABLE COMM	\$143.80	DUWAYNE KONEWKO
06/25/2012	06/27/2012	NRPA/AMERICAS BACKYARD	\$360.00	DUWAYNE KONEWKO
06/28/2012	06/29/2012	LIFE FITNESS	\$723.36	DUWAYNE KONEWKO
06/20/2012	06/20/2012	HP DIRECT-PUBLICSECTOR	\$149.98	JASON KREGER
06/15/2012	06/18/2012	DON'S PAINT & COLLISION	\$2,270.43	DAVID KVAM
06/15/2012	06/18/2012	UNIFORMS UNLIMITED INC.	\$79.61	DAVID KVAM
06/20/2012	06/21/2012	SPARTAN PROMOTIONAL GRP	\$590.72	DAVID KVAM
06/25/2012	06/26/2012	UNIFORMS UNLIMITED INC.	\$31.00	DAVID KVAM
06/27/2012	06/28/2012	ACCESSDATA GROUP, LLC	\$297.97	DAVID KVAM
06/27/2012	06/28/2012	ACCESSDATA GROUP, LLC	\$4,182.00	DAVID KVAM
06/27/2012	06/29/2012	STREICHER'S MO	\$203.01	DAVID KVAM
06/28/2012	06/29/2012	SPARTAN PROMOTIONAL GRP	\$576.13	DAVID KVAM
06/28/2012	06/29/2012	SPARTAN PROMOTIONAL GRP	\$300.86	DAVID KVAM
06/15/2012	06/18/2012	METRO FIRE	\$587.61	STEVE LUKIN
06/18/2012	06/20/2012	ASPEN MILLS INC.	\$48.95	STEVE LUKIN
06/18/2012	06/20/2012	ASPEN MILLS INC.	\$119.44	STEVE LUKIN
06/18/2012	06/20/2012	ASPEN MILLS INC.	\$48.95	STEVE LUKIN
06/22/2012	06/27/2012	AUTOZONE3948	\$6.42	STEVE LUKIN
06/22/2012	06/27/2012	AUTOZONE3948	\$5.35	STEVE LUKIN
06/25/2012	06/26/2012	ADVANCED GRAPHIX INC	\$850.00	STEVE LUKIN

06/28/2012	06/29/2012	EMERGENCY APPARATUS MAINT	\$1,052.03	STEVE LUKIN
06/25/2012	06/26/2012	ROSEMOUNT BP	\$97.79	CITY OF MAPLEWOOD
06/19/2012	06/20/2012	UNIFORMS UNLIMITED INC.	\$134.05	JASON MARINO
06/16/2012	06/18/2012	BOUND TREE MEDICAL LLC	\$12.40	MICHAEL MONDOR
06/18/2012	06/20/2012	PRIMARY PRODUCTS COMPANY	\$406.00	MICHAEL MONDOR
06/20/2012	06/22/2012	BOUND TREE MEDICAL LLC	(\$36.85)	MICHAEL MONDOR
06/20/2012	06/22/2012	BOUND TREE MEDICAL LLC	\$413.10	MICHAEL MONDOR
06/21/2012	06/22/2012	HAWK LABELING SYSTEMS	\$111.20	MICHAEL MONDOR
06/22/2012	06/25/2012	BOUND TREE MEDICAL LLC	\$750.27	MICHAEL MONDOR
06/25/2012	06/27/2012	BOUND TREE MEDICAL LLC	\$34.20	MICHAEL MONDOR
06/25/2012	06/27/2012	BOUND TREE MEDICAL LLC	\$306.00	MICHAEL MONDOR
06/27/2012	06/29/2012	BOUND TREE MEDICAL LLC	\$94.30	MICHAEL MONDOR
06/19/2012	06/21/2012	SWPS.COM/210-590-9363	\$294.41	MICHAEL NYE
06/19/2012	06/22/2012	EMP MEDIA	\$24.99	MICHAEL NYE
06/21/2012	06/25/2012	RED WING SHOE STORE	\$152.99	JORDAN ORE
06/14/2012	06/18/2012	OAKDALE RENTAL CENTER	\$207.82	ERICK OSWALD
06/18/2012	06/20/2012	OAKDALE RENTAL CENTER	\$394.22	ERICK OSWALD
06/20/2012	06/22/2012	OFFICE MAX	\$60.91	MARY KAY PALANK
06/22/2012	06/25/2012	OFFICE DEPOT #1090	\$73.07	MARY KAY PALANK
06/27/2012	06/29/2012	OFFICE DEPOT #1090	\$54.68	MARY KAY PALANK
06/15/2012	06/19/2012	VICTORY CORPS	\$114.73	CHRISTINE PENN
06/21/2012	06/22/2012	CANDYWAREHOUSE.COM, INC.	\$98.97	CHRISTINE PENN
06/25/2012	06/26/2012	CLEAN N PRESS STILLWATER	\$256.37	CHRISTINE PENN
06/26/2012	06/27/2012	PARTY CITY #768	\$142.36	CHRISTINE PENN
06/27/2012	06/28/2012	INTER PARTNER ASSISTA	\$115.40	CHRISTINE PENN
06/28/2012	06/28/2012	A DAIGGER & COMPANY, I	\$100.67	PHILIP F POWELL
06/15/2012	06/18/2012	7 CORNERS ACE HARDWARE	\$43.96	STEVEN PRIEM
06/18/2012	06/19/2012	AUTO PLUS NO ST PAUL	\$70.10	STEVEN PRIEM
06/19/2012	06/20/2012	FACTORY MTR PTS #1	\$349.35	STEVEN PRIEM
06/19/2012	06/20/2012	AUTO PLUS NO ST PAUL	\$35.09	STEVEN PRIEM
06/19/2012	06/20/2012	AUTO PLUS NO ST PAUL	\$19.24	STEVEN PRIEM
06/19/2012	06/20/2012	OREILLY AUTO 00020743	\$84.63	STEVEN PRIEM
06/19/2012	06/20/2012	WINNICK SUPPLY	\$291.90	STEVEN PRIEM
06/19/2012	06/20/2012	AMERICAN FASTENER AND SUP	\$29.77	STEVEN PRIEM
06/20/2012	06/21/2012	POMPS TIRE SERVICE, INC	\$1,542.46	STEVEN PRIEM
06/20/2012	06/21/2012	FACTORY MTR PTS #1	\$218.18	STEVEN PRIEM
06/20/2012	06/21/2012	AUTO PLUS NO ST PAUL	\$222.25	STEVEN PRIEM
06/21/2012	06/22/2012	AUTO PLUS NO ST PAUL	\$2.63	STEVEN PRIEM
06/21/2012	06/22/2012	AUTO PLUS NO ST PAUL	\$5.18	STEVEN PRIEM
06/21/2012	06/22/2012	NUSS TRUCK AND EQUIPT	\$65.97	STEVEN PRIEM
06/22/2012	06/25/2012	AUTO PLUS NO ST PAUL	\$4.92	STEVEN PRIEM
06/22/2012	06/25/2012	HENRIKSEN ACE HARDWARE	\$3.20	STEVEN PRIEM
06/22/2012	06/25/2012	ZIEGLER INC COLUMBUS	\$150.73	STEVEN PRIEM
06/22/2012	06/26/2012	TRI-STATE BOBCAT INC.	\$342.61	STEVEN PRIEM
06/25/2012	06/26/2012	MINNESOTA TRUCKING ASS	\$90.00	STEVEN PRIEM
06/25/2012	06/28/2012	TURF WERKS SIOUX FALLS	\$1,130.75	STEVEN PRIEM
06/26/2012	06/27/2012	FACTORY MTR PTS #1	(\$32.31)	STEVEN PRIEM
06/26/2012	06/27/2012	AUTO PLUS NO ST PAUL	\$97.28	STEVEN PRIEM
06/26/2012	06/28/2012	NORTHERN POWER PRODUCTS	\$100.00	STEVEN PRIEM
06/27/2012	06/28/2012	MTI	\$205.85	STEVEN PRIEM
06/27/2012	06/29/2012	TOUSLEY FORD I27228006	\$113.92	STEVEN PRIEM
06/27/2012	06/29/2012	TOUSLEY FORD I27228006	\$35.76	STEVEN PRIEM
06/27/2012	06/29/2012	TOUSLEY FORD I27228006	\$75.47	STEVEN PRIEM
06/15/2012	06/18/2012	MUSKA ELECTRIC CO.	\$609.00	KELLY PRINS
06/19/2012	06/20/2012	TARGET 00011858	\$21.02	KELLY PRINS
06/19/2012	06/20/2012	VIKING ELECTRIC - CREDIT	\$52.58	KELLY PRINS

06/22/2012	06/25/2012 THE HOME DEPOT 2801	\$103.01	KELLY PRINS
06/27/2012	06/29/2012 THE HOME DEPOT 2801	(\$35.09)	KELLY PRINS
06/27/2012	06/29/2012 THE HOME DEPOT 2801	\$56.15	KELLY PRINS
06/27/2012	06/29/2012 THE HOME DEPOT 2801	\$35.54	KELLY PRINS
06/13/2012	06/20/2012 DALCO ENTERPRISES, INC	\$86.37	MICHAEL REILLY
06/19/2012	06/20/2012 HILLYARD INC MINNEAPOLIS	\$891.75	MICHAEL REILLY
06/25/2012	06/26/2012 HILLYARD INC MINNEAPOLIS	\$1,167.03	MICHAEL REILLY
06/16/2012	06/18/2012 TARGET 00011858	\$22.42	AUDRA ROBBINS
06/16/2012	06/18/2012 THE HOME DEPOT 2801	\$4.06	AUDRA ROBBINS
06/18/2012	06/19/2012 TARGET 00021014	\$21.68	AUDRA ROBBINS
06/19/2012	06/21/2012 SKY ZONE - PLYMOUTH	(\$100.00)	AUDRA ROBBINS
06/19/2012	06/21/2012 ORIENTAL TRADING CO	\$160.38	AUDRA ROBBINS
06/20/2012	06/22/2012 S&S WORLDWIDE	\$73.51	AUDRA ROBBINS
06/21/2012	06/25/2012 OFFICE DEPOT #1090	\$126.30	AUDRA ROBBINS
06/21/2012	06/25/2012 OFFICE DEPOT #1105	\$18.70	AUDRA ROBBINS
06/22/2012	06/25/2012 CVS PHARMACY #1751 Q03	\$21.45	AUDRA ROBBINS
06/25/2012	06/26/2012 WWW COMMED ISD622 ORG	\$890.00	AUDRA ROBBINS
06/27/2012	06/28/2012 CUB FOODS, INC.	\$20.57	AUDRA ROBBINS
06/27/2012	06/29/2012 HOLIDAY INN ELK RIVER	\$423.23	AUDRA ROBBINS
06/18/2012	06/19/2012 AUTO PLUS NO ST PAUL	\$15.23	ROBERT RUNNING
06/15/2012	06/18/2012 OFFICE DEPOT #1090	\$80.84	DEB SCHMIDT
06/19/2012	06/20/2012 LILLIE SUBURBAN NEWSPAPE	\$1,512.00	DEB SCHMIDT
06/19/2012	06/20/2012 IIMC	\$75.00	DEB SCHMIDT
06/19/2012	06/21/2012 PAKOR, INC.	\$238.84	DEB SCHMIDT
06/21/2012	06/25/2012 OFFICE DEPOT #1090	\$67.24	DEB SCHMIDT
06/28/2012	06/29/2012 LILLIE SUBURBAN NEWSPAPE	\$313.50	DEB SCHMIDT
06/20/2012	06/21/2012 TRUGREEN # 5635	\$1,795.58	SCOTT SCHULTZ
06/27/2012	06/28/2012 VIKING INDUSTRIAL CENTER	\$109.55	SCOTT SCHULTZ
06/22/2012	06/25/2012 LILLIE SUBURBAN NEWSPAPE	\$198.00	CAITLIN SHERRILL
06/26/2012	06/29/2012 KALAHARI.COM	\$6.15	CAITLIN SHERRILL
06/26/2012	06/27/2012 AMAZON MKTPLACE PMTS	\$3.87	MICHAEL SHORTREED
06/15/2012	06/18/2012 TARGET 00011858	\$17.32	CHRISTINE SOUTTER
06/15/2012	06/18/2012 METRO SALES INC	\$648.00	JOANNE SVENDSEN
06/15/2012	06/18/2012 NITERIDER TECHNIC01 OF 01	\$336.07	PAUL THIENES
06/14/2012	06/18/2012 IACP	\$275.00	DAVID THOMALLA
06/14/2012	06/18/2012 FRONTIER AI 4227068973108	\$197.60	DAVID THOMALLA
06/20/2012	06/22/2012 EXPRESS # 0691	\$27.99	JOSEPH TRAN
06/20/2012	06/22/2012 OFFICE DEPOT #1090	\$70.26	TAMMY YOUNG
06/26/2012	06/27/2012 BLUE SKY THE COLOR OF IMA	\$21.49	TAMMY YOUNG
06/26/2012	06/28/2012 COLEPARMER 00106013	\$104.61	TAMMY YOUNG
06/25/2012	06/27/2012 MINN FIRE SVC CERT BOARD	\$40.00	SUSAN ZWIEG

\$63,278.50

**Check Register
City of Maplewood**

07/12/2012

<u>Check</u>	<u>Date</u>	<u>Vendor</u>	<u>Description</u>	<u>Amount</u>	
87492	07/17/2012	04842	MARY JOSEPHINE ANDERSON	ZUMBA INSTRUCTION - JUNE	150.00
87493	07/17/2012	02149	HEIDI CAREY	2ND QTR COMMISSIONS	204.18
87494	07/17/2012	04374	EMS TECHNOLOGY SOLUTIONS, LLC	AMBUTRAK LICENSE FEE	399.00
87495	07/17/2012	01973	ERICKSON OIL PRODUCTS INC	CAR WASHES - JUNE	72.00
87496	07/17/2012	04944	HILLCREST VENTURES LLC	BANQUET ROOM ORDERS - JUNE	861.35
	07/17/2012	04944	HILLCREST VENTURES LLC	BANQUET ROOM ORDERS - MAY	367.77
87497	07/17/2012	02728	KIMLEY-HORN & ASSOCIATES INC	PROJ 09-08 PROF SRVS THRU 05/31	86,196.38
	07/17/2012	02728	KIMLEY-HORN & ASSOCIATES INC	PROJ 04-21 PROF SRVS THRU 05/31	20,220.79
	07/17/2012	02728	KIMLEY-HORN & ASSOCIATES INC	PROJ 02-07 PROF SRVS THRU 05/31	3,000.36
87498	07/17/2012	00393	DEPT OF LABOR & INDUSTRY	MONTHLY SURTAX - JUNE 14608123035	3,038.12
87499	07/17/2012	04917	LUNDA CONSTRUCTION CO.	PROJ 04-21 GLADSTONE I PARTPMT#8	237,934.92
87500	07/17/2012	01337	RAMSEY COUNTY-PROP REC & REV	911 DISPATCH SERVICES - JUNE	27,409.41
	07/17/2012	01337	RAMSEY COUNTY-PROP REC & REV	FLEET SUPPORT FEE - JUNE	455.52
87501	07/17/2012	01574	T.A. SCHIFSKY & SONS, INC	BITUMINOUS MATERIALS NOT TO EXCEED	635.33
87502	07/17/2012	04192	TRANS-MEDIC	EMS BILLING - JUNE	3,380.40
87503	07/17/2012	01190	XCEL ENERGY	ELECTRIC & GAS UTILITY	1,067.74
87504	07/17/2012	01798	YOCUM OIL CO.	CONTRACT GASOLINE - JUNE	17,349.45
87505	07/17/2012	00211	BRAUN INTERTEC CORP.	PROJ 11-15 PROF SRVS THRU 6/15	10,109.38
87506	07/17/2012	00309	COMMISSIONER OF TRANSPORTATION	PROJ 04-21 TESTING & INSPECTION	999.49
87507	07/17/2012	04915	HOANG DAO	ESCROW RELEASE 344 TOENJES	1,008.22
87508	07/17/2012	02750	RICHARD DAWSON	REIMB FOR WORKOUT SHOES 6/21	64.99
87509	07/17/2012	03619	DRAIN KING INC	PROJ 11-14 SEWER TELEVISIONING/CLEAN	225.00
87510	07/17/2012	00479	EULL'S MANUFACTURING CO., INC.	CATCH-BASIN REBUILDING MATERIALS	1,001.42
87511	07/17/2012	04846	HEALTHEAST	MEDICAL SUPPLIES	115.15
87512	07/17/2012	02995	INTEGRATED LOSS CONTROL INC	SAFETY TRAINING PUBLIC WORKS	435.00
87513	07/17/2012	00827	L M C I T	CLAIM DEDUCTIBLE C0013509	243.48
87514	07/17/2012	02336	M A TAYLOR INC	FITNESS CONSULTANT SRVS - 2ND QTR	1,100.00
87515	07/17/2012	05027	MIDLAND TITLE	PROJ 02-07 LEGAL FEES PLATTLING	415.00
87516	07/17/2012	01089	MN UC FUND	UNEMPLOYMENT - 2ND QTR	1,398.13
87517	07/17/2012	00001	ONE TIME VENDOR	REFUND GEICO TRANS MEDIC PATIENT	2,108.48
87518	07/17/2012	00001	ONE TIME VENDOR	REFUND L GRUETT BAL OF MEMBERSHIP	228.56
87519	07/17/2012	00001	ONE TIME VENDOR	REFUND F IVORY MEDICA BENEFIT	180.00
87520	07/17/2012	00396	DEPT OF PUBLIC SAFETY	SRVS (CJDN) PROVIDED TO PD-2ND QTR	1,920.00
87521	07/17/2012	01836	CITY OF ST PAUL	TRAINING EVOC COURSE JUNE 15-25	1,350.00
	07/17/2012	01836	CITY OF ST PAUL	RIVER PRINT SCHOOL FLYERS	431.83
87522	07/17/2012	04528	SARA M. R. THOMPSON	ZUMBA INSTRUCTION - JUNE	250.50
	07/17/2012	04528	SARA M. R. THOMPSON	ZUMBA INSTRUCTION - MAY	216.00
87523	07/17/2012	04104	TRANE U.S. INC.	RENTAL AGREEMENT MCC CONDENSER	9,689.16
87524	07/17/2012	01669	TWIN CITIES TRANSPORT &	FORFEITED VEHICLE TOWING - JUNE	780.36
87525	07/17/2012	02464	US BANK	PAYING AGENT FEES	425.00
87526	07/17/2012	01807	SUSAN ZWIEG	REIMB FOR STATION SUPPLIES 7/3	79.43
				437,517.30	

35 Checks in this report.

CITY OF MAPLEWOOD
Disbursements via Debits to Checking account

Settlement			
<u>Date</u>	<u>Payee</u>	<u>Description</u>	<u>Amount</u>
7/9/2012	MN State Treasurer	Drivers License/Deputy Registrar	19,491.31
7/9/2012	MN Dept of Natural Resources	DNR electronic licenses	1,656.74
7/9/2012	U.S. Treasurer	Federal Payroll Tax	96,761.03
7/9/2012	P.E.R.A.	P.E.R.A.	88,226.08
7/10/2012	MN State Treasurer	Drivers License/Deputy Registrar	49,837.04
7/10/2012	MidAmerica - ING	HRA Flex plan	14,102.38
7/10/2012	Labor Unions	Union Dues	2,114.90
7/11/2012	MN State Treasurer	Drivers License/Deputy Registrar	34,642.49
7/11/2012	MN State Treasurer	State Payroll Tax	20,826.29
7/12/2012	MN State Treasurer	Drivers License/Deputy Registrar	27,516.83
7/13/2012	MN State Treasurer	Drivers License/Deputy Registrar	70,509.77
7/13/2012	MN Dept of Natural Resources	DNR electronic licenses	1,062.50
7/13/2012	Optum Health	DCRP & Flex plan payments	4,843.92
TOTAL			<u><u>431,591.28</u></u>

<u>CHECK #</u>	<u>CHECK DATE</u>	<u>EMPLOYEE E NAME</u>	<u>AMOUNT</u>
	07/06/12	CARDINAL, ROBERT	435.16
	07/06/12	JUENEMANN, KATHLEEN	435.16
	07/06/12	KOPPEN, MARVIN	435.16
	07/06/12	LLANAS, JAMES	435.16
	07/06/12	ROSSBACH, WILLIAM	494.44
	07/06/12	VALLE, EDWARD	263.75
	07/06/12	AHL, R. CHARLES	5,408.64
	07/06/12	ANTONEN, JAMES	5,852.58
	07/06/12	BURLINGAME, SARAH	2,074.90
	07/06/12	KANTRUD, HUGH	184.62
	07/06/12	CHRISTENSON, SCOTT	2,288.15
	07/06/12	FARR, LARRY	3,061.16
	07/06/12	JAHN, DAVID	1,860.28
	07/06/12	KONEWKO, SOPHIA	140.00
	07/06/12	RAMEAUX, THERESE	3,061.20
	07/06/12	BAUMAN, GAYLE	4,386.17
	07/06/12	ANDERSON, CAROLE	981.19
	07/06/12	DEBILZAN, JUDY	1,327.92
	07/06/12	JACKSON, MARY	2,126.08
	07/06/12	KELSEY, CONNIE	2,594.80
	07/06/12	RUEB, JOSEPH	2,642.60
	07/06/12	SINDT, ANDREA	2,113.80
	07/06/12	ARNOLD, AJLA	1,550.89
	07/06/12	GUILFOILE, KAREN	4,407.64
	07/06/12	SCHMIDT, DEBORAH	2,884.82
	07/06/12	SPANGLER, EDNA	1,300.57
	07/06/12	THOMALLA, ASHLEY	498.00
	07/06/12	CORTESI, LUANNE	1,109.01
	07/06/12	LARSON, MICHELLE	1,827.75
	07/06/12	MECHELKE, SHERRIE	1,140.33
	07/06/12	MOY, PAMELA	1,520.44
	07/06/12	OSTER, ANDREA	1,907.48
	07/06/12	RICHTER, CHARLENE	941.61
	07/06/12	SCHOENECKER, LEIGH	1,590.77
	07/06/12	WEAVER, KRISTINE	2,356.55
	07/06/12	CORCORAN, THERESA	1,900.55
	07/06/12	KVAM, DAVID	4,209.55
	07/06/12	PALANK, MARY	1,905.17
	07/06/12	POWELL, PHILIP	2,932.46
	07/06/12	SVENDSEN, JOANNE	2,101.79
	07/06/12	THOMALLA, DAVID	4,961.38
	07/06/12	THOMFORDE, FAITH	1,497.35
	07/06/12	ABEL, CLINT	2,878.21

07/06/12	ALDRIDGE, MARK	3,115.26
07/06/12	BAKKE, LONN	3,099.69
07/06/12	BARTZ, PAUL	3,849.63
07/06/12	BELDE, STANLEY	2,990.84
07/06/12	BENJAMIN, MARKESE	2,819.55
07/06/12	BIERDEMAN, BRIAN	3,654.97
07/06/12	BOHL, JOHN	3,151.33
07/06/12	BUSACK, DANIEL	3,461.21
07/06/12	CARNES, JOHN	1,918.52
07/06/12	COFFEY, KEVIN	3,077.51
07/06/12	CROTTY, KERRY	3,611.20
07/06/12	DEMULLING, JOSEPH	2,819.55
07/06/12	DOBLAR, RICHARD	4,005.46
07/06/12	DUGAS, MICHAEL	4,595.36
07/06/12	ERICKSON, VIRGINIA	3,384.25
07/06/12	FLOR, TIMOTHY	3,725.17
07/06/12	FORSYTHE, MARCUS	2,216.23
07/06/12	FRASER, JOHN	3,323.27
07/06/12	FRITZE, DEREK	2,819.55
07/06/12	GABRIEL, ANTHONY	3,232.37
07/06/12	HAWKINSON JR, TIMOTHY	2,819.55
07/06/12	HER, PHENG	3,092.75
07/06/12	HIEBERT, STEVEN	2,990.84
07/06/12	JOHNSON, KEVIN	3,844.06
07/06/12	KALKA, THOMAS	940.28
07/06/12	KONG, TOMMY	2,937.06
07/06/12	KREKELER, NICHOLAS	876.00
07/06/12	KROLL, BRETT	2,878.21
07/06/12	LANGNER, SCOTT	3,092.20
07/06/12	LANGNER, TODD	2,980.04
07/06/12	LU, JOHNNIE	2,957.86
07/06/12	LYNCH, KATHERINE	2,588.89
07/06/12	MARINO, JASON	3,104.06
07/06/12	MARTIN, JERROLD	3,268.60
07/06/12	MCCARTY, GLEN	3,092.20
07/06/12	METRY, ALESIA	3,038.70
07/06/12	NYE, MICHAEL	3,251.18
07/06/12	OLSON, JULIE	2,937.06
07/06/12	PARKER, JAMES	2,186.00
07/06/12	REZNY, BRADLEY	2,953.29
07/06/12	RHUDE, MATTHEW	2,858.73
07/06/12	SHORTREED, MICHAEL	4,091.18
07/06/12	STEINER, JOSEPH	3,417.61
07/06/12	SYPNIEWSKI, WILLIAM	2,845.55
07/06/12	SZCZEPANSKI, THOMAS	3,101.27
07/06/12	TAUZELL, BRIAN	2,746.04
07/06/12	THEISEN, PAUL	3,263.16
07/06/12	THIENES, PAUL	3,514.02
07/06/12	TRAN, JOSEPH	3,038.70
07/06/12	WENZEL, JAY	3,140.53
07/06/12	XIONG, KAO	2,891.66
07/06/12	ANDERSON, BRIAN	192.00

07/06/12	ARKSEY, CHARLES	267.00
07/06/12	BAHL, DAVID	238.00
07/06/12	BASSETT, BRENT	108.00
07/06/12	BAUMAN, ANDREW	2,600.61
07/06/12	BIGELBACH, ANTHONY	81.00
07/06/12	BOURQUIN, RON	424.00
07/06/12	BRESIN, ROBERT	192.00
07/06/12	CAPISTRANT, JACOB	435.00
07/06/12	CAPISTRANT, JOHN	616.00
07/06/12	CRAWFORD, RAYMOND	435.00
07/06/12	CRUMMY, CHARLES	363.00
07/06/12	DAWSON, RICHARD	3,895.33
07/06/12	EATON, PAUL	720.00
07/06/12	EVERSON, PAUL	2,986.11
07/06/12	FASULO, WALTER	195.00
07/06/12	FOSSUM, ANDREW	2,780.84
07/06/12	HAGEN, MICHAEL	534.00
07/06/12	HALE, JOSEPH	462.00
07/06/12	HALWEG, JODI	2,709.52
07/06/12	HAWTHORNE, ROCHELLE	2,136.30
07/06/12	HENDRICKSON, NICHOLAS	2,571.17
07/06/12	HUTCHINSON, JAMES	560.00
07/06/12	IMM, TRACY	147.00
07/06/12	JANSEN, CHAD	171.00
07/06/12	JONES, JONATHAN	279.00
07/06/12	KANE, ROBERT	724.50
07/06/12	KARRAS, JAMIE	252.00
07/06/12	KERSKA, JOSEPH	258.00
07/06/12	KONDER, RONALD	282.00
07/06/12	KUBAT, ERIC	2,486.27
07/06/12	LINDER, TIMOTHY	2,719.26
07/06/12	LOCHEN, MICHAEL	388.00
07/06/12	MILLER, LADD	231.00
07/06/12	MILLER, NICHOLAS	378.00
07/06/12	MONDOR, MICHAEL	3,259.74
07/06/12	MONSON, PETER	258.00
07/06/12	MORGAN, JEFFERY	318.50
07/06/12	NIELSEN, KENNETH	264.00
07/06/12	NOVAK, JEROME	2,848.62
07/06/12	NOWICKI, PAUL	273.00
07/06/12	OLSON, JAMES	3,023.08
07/06/12	OPHEIM, JOHN	203.00
07/06/12	PACHECO, ALPHONSE	135.00
07/06/12	PETERSON, MARK	696.50
07/06/12	PETERSON, ROBERT	2,824.12
07/06/12	POWERS, KENNETH	315.00
07/06/12	RAINEY, JAMES	672.00
07/06/12	RANK, NATHAN	468.00
07/06/12	RANK, PAUL	315.00
07/06/12	RAVENWALD, CORINNE	384.00
07/06/12	REYNOSO, ANGEL	288.00
07/06/12	RICE, CHRISTOPHER	532.00

07/06/12	RODRIGUEZ, ROBERTO	183.00
07/06/12	SCHULTZ, JEROME	432.00
07/06/12	SEDLACEK, JEFFREY	2,674.17
07/06/12	STREFF, MICHAEL	2,668.41
07/06/12	SVENDSEN, RONALD	3,005.13
07/06/12	WESSELS, TIMOTHY	216.00
07/06/12	WHITE, JOEL	171.00
07/06/12	GERVAIS-JR, CLARENCE	3,985.69
07/06/12	LUKIN, STEVEN	4,616.93
07/06/12	ZWIEG, SUSAN	1,706.92
07/06/12	KNUTSON, LOIS	2,054.95
07/06/12	NIVEN, AMY	1,425.42
07/06/12	AHL, GREGORY	840.00
07/06/12	BRINK, TROY	2,356.55
07/06/12	BUCKLEY, BRENT	2,797.29
07/06/12	DEBILZAN, THOMAS	2,146.17
07/06/12	EDGE, DOUGLAS	2,125.00
07/06/12	JONES, DONALD	2,146.15
07/06/12	MEISSNER, BRENT	2,006.15
07/06/12	NAGEL, BRYAN	3,560.40
07/06/12	OSWALD, ERICK	2,448.97
07/06/12	RUIZ, RICARDO	1,539.75
07/06/12	RUNNING, ROBERT	2,356.55
07/06/12	TEVLIN, TODD	2,146.15
07/06/12	BURLINGAME, NATHAN	2,087.20
07/06/12	DUCHARME, JOHN	2,740.37
07/06/12	ENGSTROM, ANDREW	2,555.78
07/06/12	JACOBSON, SCOTT	2,509.60
07/06/12	JAROSCH, JONATHAN	2,960.05
07/06/12	KREGER, JASON	2,257.80
07/06/12	KUMMER, STEVEN	3,301.18
07/06/12	LINDBLOM, RANDAL	2,740.37
07/06/12	LOVE, STEVEN	3,446.91
07/06/12	THOMPSON, MICHAEL	4,657.33
07/06/12	ZIEMAN, SCOTT	1,136.00
07/06/12	JANASZAK, MEGHAN	1,497.35
07/06/12	KONEWKO, DUWAYNE	4,613.24
07/06/12	BUTTWEILER, TYLER	840.00
07/06/12	EDSON, DAVID	2,191.39
07/06/12	GUNDERSON, ANDREW	1,080.00
07/06/12	GUNDERSON, THOMAS	840.00
07/06/12	HAMRE, MILES	1,597.64
07/06/12	HAYS, TAMARA	1,539.75
07/06/12	HINNENKAMP, GARY	2,268.46
07/06/12	NAUGHTON, JOHN	2,163.43
07/06/12	NORDQUIST, RICHARD	2,266.60
07/06/12	BIESANZ, OAKLEY	1,407.32
07/06/12	DEAVER, CHARLES	764.73
07/06/12	GERNES, CAROLE	689.08
07/06/12	HAYMAN, JANET	940.43
07/06/12	HUTCHINSON, ANN	2,649.16
07/06/12	SOUTTER, CHRISTINE	893.84

07/06/12	WACHAL, KAREN	887.48
07/06/12	GAYNOR, VIRGINIA	3,244.09
07/06/12	ERICSON, MICHAEL	800.00
07/06/12	KROLL, LISA	1,900.55
07/06/12	SWANSON, CHRIS	480.00
07/06/12	THOMPSON, DEBRA	760.22
07/06/12	YOUNG, TAMELA	2,015.75
07/06/12	EKSTRAND, THOMAS	3,829.34
07/06/12	FINWALL, SHANN	3,233.35
07/06/12	MARTIN, MICHAEL	2,709.35
07/06/12	BRASH, JASON	2,393.35
07/06/12	CARVER, NICHOLAS	3,244.09
07/06/12	FISHER, DAVID	3,807.86
07/06/12	SWAN, DAVID	2,766.15
07/06/12	WELLENS, MOLLY	1,810.61
07/06/12	BERGER, STEPHANIE	760.00
07/06/12	BETHEL III, CHARLES	51.00
07/06/12	BJORK, BRANDON	1,120.00
07/06/12	BRENEMAN, NEIL	2,159.70
07/06/12	GERMAIN, BRADY	46.00
07/06/12	KHOURY, SARAH	800.00
07/06/12	KOHLMAN, JENNIFER	28.50
07/06/12	LARSON, KATELYN	210.00
07/06/12	MALLET, AMANDA	720.00
07/06/12	MARTIN, ARIELLE	296.00
07/06/12	ROBBINS, AUDRA	3,019.96
07/06/12	ROBBINS, CAMDEN	97.75
07/06/12	RYCHLICKI, NICHOLE	135.00
07/06/12	SCHALLER, SCOTT	239.19
07/06/12	TAYLOR, JAMES	2,738.98
07/06/12	VUKICH, CANDACE	77.50
07/06/12	ADAMS, DAVID	1,928.21
07/06/12	GERMAIN, DAVID	2,155.40
07/06/12	HAAG, MARK	2,356.55
07/06/12	ORE, JORDAN	1,539.75
07/06/12	SCHULTZ, SCOTT	3,090.82
07/06/12	ANZALDI, MANDY	1,467.38
07/06/12	CRAWFORD - JR, RAYMOND	350.06
07/06/12	EVANS, CHRISTINE	1,369.02
07/06/12	GLASS, JEAN	2,125.10
07/06/12	HER, PETER	399.80
07/06/12	HOFMEISTER, MARY	1,142.37
07/06/12	HOFMEISTER, TIMOTHY	378.75
07/06/12	KULHANEK-DIONNE, ANN	387.50
07/06/12	PELOQUIN, PENNYE	559.74
07/06/12	PENN, CHRISTINE	2,332.74
07/06/12	SHERRILL, CAITLIN	638.68
07/06/12	VUE, LOR PAO	289.00
07/06/12	AICHELE, MEGAN	307.80
07/06/12	ANDERSON, JOSHUA	478.80
07/06/12	ANDERSON, MAXWELL	130.38
07/06/12	BAETZOLD, SETH	141.38

07/06/12	BAUDE, SARAH	109.50
07/06/12	BRUSOE, AMY	534.98
07/06/12	BUCKLEY, BRITTANY	412.50
07/06/12	BUTLER, ANGELA	78.75
07/06/12	COSTA, JOSEPH	259.50
07/06/12	CRANDALL, KRISTA	206.69
07/06/12	DEMPSEY, BETH	176.75
07/06/12	DIONNE, DANIELLE	203.10
07/06/12	DUNN, RYAN	1,041.67
07/06/12	ERICKSON-CLARK, CAROL	49.00
07/06/12	FONTAINE, KIM	617.88
07/06/12	FOX, KELLY	110.00
07/06/12	FRAMPTON, SAMANTHA	363.00
07/06/12	GADOW, VERONIKA	169.65
07/06/12	GIEL, NICOLE	152.00
07/06/12	GIPPLE, TRISHA	244.99
07/06/12	GRAY, MEGAN	565.36
07/06/12	GRUENHAGEN, LINDA	157.70
07/06/12	HAGSTROM, EMILY	35.18
07/06/12	HANSEN, HANNAH	570.65
07/06/12	HEINRICH, SHEILA	579.00
07/06/12	HOLMBERG, LADONNA	448.00
07/06/12	HORWATH, RONALD	2,614.56
07/06/12	JANSON, ANGELA	43.50
07/06/12	JOHNSON, BARBARA	151.42
07/06/12	JOYER, ANTHONY	22.20
07/06/12	JOYER, JENNA	16.90
07/06/12	KOHLER, ROCHELLE	72.00
07/06/12	KRONHOLM, KATHRYN	1,026.39
07/06/12	LAMEYER, BRENT	25.19
07/06/12	LAMEYER, ZACHARY	354.62
07/06/12	LAMSON, ELIANA	27.00
07/06/12	MCCANN, NATALIE	29.00
07/06/12	MCCORMACK, MELISSA	202.13
07/06/12	NADEAU, KELLY	676.23
07/06/12	NADEAU, TAYLOR	269.68
07/06/12	NORTHOUSE, KATHERINE	206.88
07/06/12	POVLITZKI, MARINA	8.50
07/06/12	PROESCH, ANDY	1,010.41
07/06/12	QUANT, JENNA	31.20
07/06/12	RANEY, COURTNEY	326.00
07/06/12	RESENDIZ, LORI	1,463.16
07/06/12	RICHTER, DANIEL	103.05
07/06/12	RONNING, ISAIAH	154.00
07/06/12	RUIZ, MARIA	46.00
07/06/12	SCHREIER, ROSEMARIE	274.00
07/06/12	SCHREINER, MARK	54.75
07/06/12	SCHREINER, MICHELLE	112.88
07/06/12	SCHUNEMAN, GREGORY	326.98
07/06/12	SKAAR, SAMANTHA	70.00
07/06/12	SKUNES, KELLY	477.75
07/06/12	SMITH, CASEY	184.56

	07/06/12	SMITLEY, SHARON	348.70
	07/06/12	TREPANIER, TODD	396.00
	07/06/12	TRUE, ANDREW	581.45
	07/06/12	TUPY, HEIDE	29.45
	07/06/12	TUPY, MARCUS	243.62
	07/06/12	WARNER, CAROLYN	110.40
	07/06/12	HITE, ANDREA	445.50
	07/06/12	KENN, MADELINE	42.00
	07/06/12	BORCHERT, JONATHAN	183.06
	07/06/12	DOUGLASS, TOM	1,981.04
	07/06/12	MALONEY, SHAUNA	187.50
	07/06/12	PRINS, KELLY	1,690.16
	07/06/12	REILLY, MICHAEL	1,934.15
	07/06/12	SCHULZE, KEVIN	528.00
	07/06/12	THOMPSON, BENJAMIN	375.50
	07/06/12	VANG, GEORGE	246.50
	07/06/12	COUNTRYMAN, BRENDA	1,170.00
	07/06/12	AICHELE, CRAIG	2,379.65
	07/06/12	PRIEM, STEVEN	2,415.66
	07/06/12	WOEHRLE, MATTHEW	2,213.51
	07/06/12	BERGO, CHAD	2,707.66
	07/06/12	FOWLDS, MYCHAL	3,991.22
	07/06/12	FRANZEN, NICHOLAS	2,623.62
9987301	07/06/12	BEGGS, REGAN	771.77
9987302	07/06/12	BENNETT, ERIN	28.00
9987303	07/06/12	O'BRIEN, ELIZABETH	260.56
9987304	07/06/12	SHERWOOD, CHRISTIAN	880.00
9987305	07/06/12	VANG, TIM	468.00
9987306	07/06/12	MCLAURIN, CHRISTOPHER	351.90
9987307	07/06/12	MCPAHON, MICHAEL	130.35
9987308	07/06/12	SCOTT, HALEY	18.38
9987309	07/06/12	WALES, ABIGAIL	201.75
9987310	07/06/12	WEINHAGEN, SHELBY	227.57
9987311	07/06/12	MORGAN, LINDSEY	67.06
9987312	07/06/12	STEFFEN, MICHAEL	87.00
			520,507.15

AGENDA REPORT

TO: Jim Antonen, City Manager
FROM: Steve Lukin, Fire Chief
SUBJECT: Approval to Accept the Ramsey County All-Hazard Mitigation Plan Resolution
DATE: July 17, 2012

INTRODUCTION

Ramsey County Emergency Management is required by the federal government to update the County mitigation plan on an ongoing basis. This is necessary in order to be able to apply for federal funding, as well as federal aid in the event of a disaster. Maplewood, along with all the other cities within Ramsey County, is a part of the Ramsey County Emergency Operation Plan (EOP) which requires us to review and adopt the All-Hazard Mitigation Plan.

RECOMMENDATION

I recommend that the city council approve the adoption of the Ramsey County All-Hazard Mitigation Plan Resolution.

RESOLUTION OF THE CITY OF MAPLEWOOD

ADOPTION OF THE
RAMSEY COUNTY ALL-HAZARD MITIGATION PLAN

WHEREAS, the city of Maplewood has participated in the hazard mitigation planning process as established under the Disaster Mitigation Act of 2000, and

WHEREAS, the Act establishes a framework for the development of a multi-jurisdictional County Hazard Mitigation Plan; and

WHEREAS, the Act as part of the planning process requires public involvement and local coordination among neighboring local units of government and businesses; and

WHEREAS, the Ramsey County Plan includes a risk assessment including past hazards, hazards that threaten the County, an estimate of structures at risk, a general description of land uses and development trends;

WHEREAS, the Ramsey County Plan includes a mitigation strategy including goals and objectives and an action plan identifying specific mitigation projects and costs; and

WHEREAS, the Ramsey County Plan includes a maintenance or implementation process including plan updates, integration of the Plan into other planning documents and how Ramsey County will maintain public participation and coordination; and

WHEREAS, the Plan has been shared with the Minnesota Division of homeland Security and Emergency Management and the Federal Emergency Management Agency for review and comment; and

WHEREAS, the Ramsey County All-Hazard Mitigation Plan will make the county and participating jurisdictions eligible to receive FEMA hazard mitigation assistance grants; and

WHEREAS, this is a multi-jurisdictional Plan and cities that participated in the planning process may choose to also adopt the County Plan.

NOW THEREFORE BE IT RESOLVED that the city of Maplewood supports the hazard mitigation effort and wishes to adopt the Ramsey County All-Hazard Mitigation Plan.

This Resolution was declared duly passed and adopted and was signed by the _____ and attested to by the _____ this _____ day of _____, 2012.

Attest:

MEMORANDUM

TO: Jim Antonen, City Manager

FROM: DuWayne Konewko, Parks & Recreation Director
Lori Resendiz, Fitness Supervisor

DATE: July 10, 2012 for the July 23rd City Council Meeting

SUBJECT: Consider Authorizing Lease Agreement with Life Fitness for Replacement of Cardio Equipment

INTRODUCTION

At the May 14th city council meeting, council approved the Request for Proposals (RFP) for the leasing of cardio equipment at the Maplewood Community Center. The lease agreement will be for a period of five-years and will include an option for the city to purchase the cardio equipment for one-dollar at the conclusion of the agreement. Pending council approval to proceed, staff is looking at the first week of September for delivery and installation.

BACKGROUND

The Maplewood Community Center strives to meet the needs of Maplewood and surrounding communities by offering programs that elevate the importance of wellness for all ages. It seems we have reached a plateau in our membership growth. In order to attract new members and retain current members we must offer cutting edge programs and attractive equipment.

The primary goal of the initiative is to increase the number and variety of cardiovascular machines, and upgrade all cardiovascular equipment that is over 7 years old. In addition, the Maplewood Community Center reserves the right without prejudice to reject any or all proposals and the Community Center reserves the right to evaluate proposals based on **best value** for the center and, as a result, does not guarantee the contract to the lowest bidder.

Many of the facilities we compete with for memberships have already transitioned into leasing cardiovascular equipment. The Maplewood Community Center must offer the same quality and cutting edge equipment when our members walk through the doors in order to compete. This speaks directly to one of the goals staff has going forward – increase the number of members who elect to renew their membership – **RETAIN!**

The city received three (sealed bids) proposals in response to the RFP. The following table illustrates the name of the vendor who submitted the bid, the equipment cost/five-year extended warranty/tax and installation charges, annual interest rate, and the monthly lease payment.

CARDIO EQUIPMENT/RFP BID PROPOSALS

Vendor	Equipment Cost 5 year Extended Warranty, Tax and Installation	Annual Interest Rate	60 Month Lease Payment
Life Fitness Carol L. Grahl, III	\$250,338.66	2.273%	\$4409.45
OneSource Fitness Scott Sigety	\$251,780.49	4.650%	\$4692.94
TechnoGym USA James Chasteen	\$240,848.03	3.790%	\$4412.82

DISCUSSION

Based on the following reasons, staff is recommending that council authorize a five –year lease agreement with Life Fitness for the replacement of the cardio equipment at the MCC:

- Life Fitness is the world's largest manufacturer of commercial cardiovascular and strength training equipment with \$635 million in sales in 2011;
- Because Life Fitness is the largest manufacturer, it carries brand name recognition and user familiarity which will appeal to our current members and attract new members;
- The Residual Value on Life Fitness equipment is highest in the industry. This is important when considering product turn-over at the end of 60 month period;
- Life Fitness offers the lowest annual interest rate which resulted in the lowest monthly lease payment;
- Life Fitness has guaranteed member satisfaction by offering on-site training for our members and our staff. They have local representatives who offer support for our trainers as we introduce the new equipment to our members;
- Maintenance staff has familiarity with Life Fitness equipment;
- References were also contacted and staff received positive feedback on equipment durability and service.

In addition, the Maplewood Community Center Building Maintenance Operating Budget (602-614) will see a reduction of approximately \$24k for 2013 (\$2k/month). These monies in the past were allocated for parts and labor for maintenance of the existing cardio equipment. The actual net lease payment will be approximately \$2,600. This number is lower than the \$5k a month payment staff was budgeting for replacement costs.

RECOMMENDATION

Staff recommends that the city council authorize the City Manager to execute a lease agreement, monthly lease payment not to exceed \$4500, with Life Fitness for a period of five-years for the replacement of the cardio equipment at the MCC. Monies for this expenditure are included in the proposed 2013 budget.

ATTACHMENT:

- 1. Life Fitness Lease Agreement**

Documentation Instructions

The instructions listed below should be followed when completing the enclosed documentation. Documentation completed improperly will delay funding. If you have any questions regarding the Conditions to Funding, instructions or the documentation, please call us at (630) 512-0066.

I. GOVERNMENT OBLIGATION CONTRACT

1. **The CONTRACT**
 - An authorized individual that is with the Obligor should sign on the first space provided.
2. **Exhibit A - DESCRIPTION OF EQUIPMENT**
 - Review equipment description. Complete serial number/VIN if applicable.
 - List the location where the equipment will be located after delivery/installation.
3. **Exhibit B - PAYMENT SCHEDULE**
 - Sign and print name and title
4. **Exhibit C- CERTIFICATE OF ACCEPTANCE**
 - Sign and print name and title
 - Please list the Source of Funds for the Contract Payments.
5. **Exhibit D – OBLIGOR RESOLUTION**
 - Type in the date of the meeting in which the purchase was approved.
 - Print or type the name and title of the individual(s) who is authorized to execute the Contract
 - The secretary, chairman or other authorized board member of the Obligor must sign the resolution where indicated.
 - A different individual must attest the Resolution where indicated.
6. **Exhibit E – BANK QUALIFIED CERTIFICATE**
 - Sign and print name and title
7. **INSURANCE REQUIREMENTS FORM**
 - Complete insurance company contact information where indicated.
8. **8038 - IRS Form**
 - Please read 8038 Review Form
 - In Box 2, type Employer Identification Number
 - Sign and print name and title

II. ADDITIONAL DOCUMENTATION REQUIRED FOR FUNDING:

- First payment check as stated on attached invoice
- Vendor invoice for the amount to finance listing applicable SN/VIN, down payment, trade, etc.
- Insurance Certificate
- Notice of Assignment

CONDITIONS TO FUNDING

If, for any reason: (i) the required documentation is not returned by September 11, 2012, is incomplete, or has unresolved issues relating thereto, or (ii) on, or prior to the return of the documentation, there is a change of circumstance which adversely affects the expectations, rights or security of the Obligee or its assignees; then Obligee or its assignees reserve the right to adjust the quoted interest rate or withdraw/void its offer to fund this transaction in its entirety.

All documentation should be returned to:

American Capital Financial Services, Inc.
2015 Ogden Avenue, Suite 400
Lisle, Illinois 60532

GOVERNMENT OBLIGATION CONTRACT

Obligor
City of Maplewood, Minnesota
1830 County Road B East
Maplewood, Minnesota 55109

Obligee
American Capital Financial Services, Inc.
2015 Ogden Avenue, Suite 400
Lisle, Illinois 60532

Dated as of July 12, 2012

This Government Obligation Contract dated as of the date listed above is between Obligee and Obligor listed directly above. Obligee desires to finance the purchase of the Equipment described in Exhibit "A" to Obligor and Obligor desires to finance the purchase of the Equipment from Obligee subject to the terms and conditions of this Contract which are set forth below.

I. Definitions:

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Additional Schedule" refers to the proper execution of additional Schedules to Exhibit A, Exhibit B, Exhibit C and Exhibit D as well as other exhibits or documents that may be required by the Obligee all of which relate to financing of additional Equipment.

"Budget Year" means the Obligor's fiscal year.

"Commencement Date" is the date when Obligor's obligation to pay Contract Payments begins.

"Contract" means this Government Obligation Contract, all Exhibits, and all documents relied upon by Obligee prior to execution of this Contract.

"Contract Payments" means the payments Obligor is required to make under this Contract as set forth on Exhibit "B".

"Contract Term" means the Original Term and all Renewal Terms.

"Equipment" means all of the items of Equipment which are either sold by or supplied by a third party vendor and which are listed on Exhibit "A" and all replacements, restorations, modifications and improvements.

"Government" as used in the title hereof means a State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended ("Code"), or a constituted authority or district authorized to issue obligations of on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b), or a qualified volunteer fire company within the meaning of section 150(e)(1) of the Code.

"Obligee" means the entity originally listed above as Obligee or any of its assignees.

"Obligor" means the entity listed above as Obligor and which is financing the Equipment from Obligee under the provisions of this Contract.

"Original Term" means the period from the Commencement Date until the end of the Budget Year of Obligor.

"Renewal Term" means the annual term which begins at the end of the Original Term and which is simultaneous with Obligor's Budget Year.

"State" means the state in which Obligor is located.

II. Obligor Warranties

Section 2.01. Obligor represents, warrants and covenants as follows for the benefit of Obligee or its assignees:

- (a) Obligor is an "issuer of tax exempt obligations" because Obligor is the State or a political subdivision of the State within the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended, (the "Code") or because Obligor is a constituted authority or district authorized to issue obligations on behalf of the State or political subdivision of the State within the meaning of Treasury Regulation 1.103-1(b).
- (b) Obligor is authorized under the Constitution and laws of the State to enter into this Contract, and has used such authority to properly execute and deliver this Contract. Obligor has followed all proper procedures of its governing body in executing this Contract. The Officer of Obligor executing this Contract has the authority to execute and deliver this Contract. This Contract constitutes a legal, valid, binding and enforceable obligation of the Obligor in accordance with its terms.
- (c) Obligor has complied with all statutory laws and regulations that may be applicable to the execution of this Contract.
- (d) Obligor shall use the Equipment only for essential, traditional government purposes.
- (e) Should the IRS disallow the tax-exempt status of the Interest Portion of the Contract Payments as a result of the failure of the Obligor to use the Equipment for governmental purposes, then Obligor shall be required to pay additional sums to the Obligee or its assignees so as to bring the after tax yield to the same level as the Obligee or its assignees would attain if the transaction continued to be tax-exempt.
- (f) Should the Obligor cease to be an issuer of tax exempt obligations or if the obligation of Obligor created under this Contract ceases to be a tax exempt obligation for any reason, then Obligor shall be required to pay additional sums to the Obligee or its assignees so as to bring the after tax yield on this Contract to the same level as the Obligee or its assignees would attain if the transaction continued to be tax-exempt.
- (g) Obligor has never non-appropriated funds under an Contract similar to this Contract.
- (h) Obligor will submit to the Secretary of the Treasury an information reporting statement as required by the Code.
- (i) Upon request by Obligee, Obligor will provide Obligee with current financial statements, reports, budgets or other relevant fiscal information.
- (j) Obligor shall retain the Equipment free of any hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. as amended and supplemented.
- (k) Obligor presently intends to continue this Contract for the Original Term and all Renewal Terms as set forth on Exhibit "B" hereto. The official of Obligor responsible for budget preparation will include in the budget request for each Budget Year the Contract Payments to become due in such Budget Year, and will use all reasonable and lawful means available to secure the appropriation of money for such Budget Year sufficient to pay the Contract Payments coming due therein. Obligor reasonably believes that moneys can and will lawfully be appropriated and made available for this purpose.

Section 2.02. Escrow Contract. In the event both Obligee and Obligor mutually agree to utilize an Escrow Account, then immediately following the execution and delivery of this Contract, Obligee and Obligor agree to execute and deliver and to cause Escrow Agent to execute and deliver the Escrow Contract. This Contract shall take effect only upon execution and delivery of the Escrow Contract by the parties thereto. Obligee shall deposit or cause to be deposited with the Escrow agent for credit to the Equipment Acquisition Fund the sum of \$N/A, which shall be held, invested and disbursed in accordance with the Escrow Contract.

III. Acquisition of Equipment, Contract Payments and the Purchase Option Price

Section 3.01. Acquisition and Acceptance. Obligor shall be solely responsible for the ordering of the Equipment and for the delivery and installation of the Equipment. Execution of the Acceptance Certificate by an employee, official or agent of the Obligor having managerial, supervisory or procurement authority with respect to the Equipment shall constitute acceptance of the Equipment on behalf of the Obligor.

Section 3.02. Contract Payments. Obligor shall pay Contract Payments exclusively to Obligee or its assignees in lawful, legally available money of the United States of America. The Contract Payments shall be sent to the location specified by the Obligee or its assignees. The Contract Payments shall constitute a current expense of the Obligor and shall not constitute an indebtedness of the Obligor. The Contract Payments are due as set forth on Exhibit B. Obligee shall have the option to charge interest at the highest lawful rate on any Contract Payment received later than the due date for the number of days that the Contract Payment(s) were late, plus any additional accrual on the outstanding balance for the number of days that the Contract Payment(s) were late. Obligee shall also have the option, on monthly payments only, to charge a late fee of up to 10% of the monthly Contract Payment that is past due. The Contract Payments will be payable without notice or demand. Furthermore, Obligor agrees to pay any additional fees/costs incurred by Obligee relating to Obligor's requirement that a certain payment mechanism be utilized.

Section 3.03. Contract Payments Unconditional. Except as provided under Section 4.01, THE OBLIGATIONS OF OBLIGOR TO MAKE CONTRACT PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS CONTAINED IN THIS CONTRACT SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE.

Section 3.04. Purchase Option Price. Upon thirty (30) days written notice, Obligor shall have the option to pay, in addition to the Contract Payment, the corresponding Purchase Option Price which is listed on the same line on Exhibit B. This option is only available to the Obligor on the Contract Payment date and no partial prepayments are allowed. If Obligor chooses this option and pays the Purchase Option Price to Obligee then Obligee will transfer any and all of its rights, title and interest in the Equipment to Obligor.

Section 3.05. Contract Term. The Contract Term of the Contract shall be the Original Term and all Renewal Terms until all the Contract Payments are paid as set forth on Exhibit B except as provided under Section 4.01 and Section 9.01 below. If, after the end of the budgeting process which occurs at the end of the Original Term or any Renewal Term, Obligor has not non-appropriated as provided for in this Contract then the Contract Term shall be extended into the next Renewal Term and the Obligor shall be obligated to make all the Contract Payments that come due during such Renewal Term.

Section 3.06. Disclaimer of Warranties. OBLIGEE MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER WARRANTY WITH RESPECT TO THE EQUIPMENT. OBLIGEE SHALL NOT

BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE ARISING OUT OF THE INSTALLATION, OPERATION, POSSESSION, STORAGE OR USE OF THE EQUIPMENT BY OBLIGOR.

IV. Non-Appropriation

Section 4.01. Non-Appropriation. In accordance with Minn. Stat. Ann. Section 465.71 Obligor has the right to terminate this Contract at the end of any Budget Year during the Contract Term by not appropriating the funds to make the Contract Payments for the next Renewal Term. Such non-appropriation shall be evidenced by the passage of an ordinance or resolution by the governing body of Obligor specifically prohibiting Obligor from performing its obligations under this Contract and from using any moneys to pay the Contract Payments due under this Contract for a designated Budget Year and all subsequent Budget Years. If Obligor non-appropriates under this section, then all obligations of the Obligor under this Contract regarding Contract Payments for all remaining Renewal Terms shall be terminated at the end of the then current Original Term or Renewal Term without penalty or liability to the Obligor of any kind provided that if Obligor has not delivered possession of the Equipment to Obligees as provided herein and conveyed to Obligees or released its interest in the Equipment by the end of the last Budget Year for which Contract Payments were paid, the termination shall nevertheless be effective but Obligor shall be responsible for the payment of damages in an amount equal to the amount of the Contract Payments thereafter coming due under Exhibit "B" which are attributable to the number of days after such Budget Year during which Obligor fails to take such actions and for any other loss suffered by Obligees as a result of Obligor's failure to take such actions as required. Obligor shall immediately notify the Obligees as soon as the decision to non-appropriate is made. If such non-appropriation occurs, then Obligor shall deliver the Equipment to Obligees as provided below in Section 9.04. Obligor shall be liable for all damage to the Equipment other than normal wear and tear. If Obligor fails to deliver the Equipment to Obligees, then Obligees may enter the premises where the Equipment is located and take possession of the Equipment and charge Obligor for costs incurred.

V. Insurance, Damage, Insufficiency of Proceeds

Section 5.01. Insurance. Obligor shall maintain both casualty insurance and liability insurance at its own expense with respect to the Equipment. Obligor shall be solely responsible for selecting the insurer(s) and for making all premium payments and ensuring that all policies are continuously kept in effect during the period when Obligor is required to make Contract Payments. Obligor shall provide Obligees with a Certificate of Insurance which lists the Obligees and/or assigns as a loss payee and an additional insured on the policies with respect to the Equipment.

- (a) Obligor shall insure the Equipment against any loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Obligees in an amount at least equal to the then applicable Purchase Option Price of the Equipment. Alternatively, Obligor may insure the Equipment under a blanket insurance policy or policies.
- (b) The liability insurance shall insure Obligees from liability and property damage in any form and amount satisfactory to Obligees.
- (c) Obligor may self-insure against the casualty risks and liability risks described above. If Obligor chooses this option, Obligor must furnish Obligees with a certificate and/or other documents which evidences such coverage.
- (d) All insurance policies issued or affected by this Section shall be so written or endorsed such that the Obligees and its assignees are named additional insureds and loss payees and that all losses are payable to Obligor and Obligees or its assignees as their interests may appear. Each policy issued or affected by this Section shall contain a provision that the insurance company shall not cancel or materially modify the policy without first giving thirty (30) days advance notice to Obligees or its assignees. Obligor shall furnish to Obligees certificates evidencing such coverage throughout the Contract Term.

Section 5.02. Damage to or Destruction of Equipment. Obligor assumes the risk of loss or damage to the Equipment. If the Equipment or any portion thereof is lost, stolen, damaged, or destroyed by fire or other casualty, Obligor will immediately report all such losses to all possible insurers and take the proper procedures to attain all insurance proceeds. At the option of Obligees, Obligor shall either (1) apply the Net Proceeds to replace, repair or restore the Equipment or (2) apply the Net Proceeds to the applicable Purchase Option Price. For purposes of this Section and Section 5.03, the term Net Proceeds shall mean the amount of insurance proceeds collected from all applicable insurance policies after deducting all expenses incurred in the collection thereof.

Section 5.03. Insufficiency of Net Proceeds. If there are no Net Proceeds for whatever reason or if the Net Proceeds are insufficient to pay in full the cost of any replacement, repair, restoration, modification or improvement of the Equipment, then Obligor shall, at the option of Obligees, either (1) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds or (2) apply the Net Proceeds to the Purchase Option Price and pay the deficiency, if any, to the Obligees.

Section 5.04. Obligor Negligence. Obligor assumes all risks and liabilities, whether or not covered by insurance, for loss or damage to the Equipment and for injury to or death of any person or damage to any property whether such injury or death be with respect to agents or employees of Obligor or of third parties, and whether such property damage be to Obligor's property or the property of others (including, without limitation, liabilities for loss or damage related to the release or threatened release of hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act or similar or successor law or any state or local equivalent now existing or hereinafter enacted which in any manner arise out of or are incident to any possession, use, operation, condition or storage of any Equipment by Obligor) which is proximately caused by the negligent conduct of Obligor, its officers, employees and agents. Obligor hereby assumes responsibility for and agrees to reimburse Obligees for all liabilities, obligations, losses, damages, penalties, claims, actions, costs and expenses (including reasonable attorneys' fees) of whatsoever kind and nature, imposed on, incurred by or asserted against Obligees that in any way relate to or arise out of a claim, suit or proceeding, based in whole or in part upon the negligent conduct of Obligor, its officers, employees and agents, to the maximum extent permitted by law.

VI. Title and Security Interest

Section 6.01. Title. Title to the Equipment shall vest in the Obligor when Obligor acquires and accepts the Equipment from the vendor of the Equipment. Title to the Equipment will automatically transfer to the Obligees in the event Obligor non-appropriates under Section 4.01 or in the event Obligor defaults under Section 9.01. In either of such events, Obligor shall execute and deliver to Obligees such documents as Obligees may request to evidence the passage of title to the Obligees. For purposes of satisfying Minn. Stat. Ann. Section 465.71, Obligor hereby assigns the title to the Equipment to the Obligees as security for the purchase price. Once Obligees has received all Contract Payments and other amounts that may be owed or once Obligees receives the applicable Purchase Option Price, Obligees will be deemed to have assigned the title to the Equipment for purposes of the above referenced statute back to Obligor.

Section 6.02. Security Interest. To secure the payment of all Obligor's obligations under this Contract, as well as all other obligations, debts and liabilities, whether now existing or subsequently created, Obligor hereby grants to Obligees a security interest under the Uniform Commercial Code constituting a first lien on the Equipment described more fully on Exhibit "A". Furthermore, Obligor agrees that any and all Equipment listed on any other Exhibit A, whether prior to or subsequent hereto, secures all obligations, debts and liabilities of every kind and character, plus interest thereon, whether now existing or hereafter arising. Obligor agrees that any Equipment listed on Exhibit "A" will remain personal property and will not become a fixture even if attached to real property. The security interest established by this section includes not only additions, attachments, repairs and replacements, to the Equipment but also all proceeds therefrom. Obligor authorizes Obligees to prepare and record any Financing Statement required under the Uniform Commercial Code to perfect the security interest created hereunder.

VII. Assignment

Section 7.01. Assignment by Obligees. All of Obligees's rights, title and/or interest in and to this Contract may be assigned and reassigned in whole or in part to one or more assignees or sub-assignees (including a Registered Owner for Participation Certificates) by Obligees at any time without the consent of Obligor. No such assignment shall be effective as against Obligor until the assignor shall have filed with Obligor written notice of assignment identifying the assignee. Obligor shall pay all Contract Payments due hereunder relating to such Equipment to or at the direction of Obligees or the assignee named in the notice of assignment. Obligor shall keep a complete and accurate record of all such assignments.

Section 7.02. Assignment by Obligor. None of Obligor's right, title and interest under this Contract and in the Equipment may be assigned by Obligor unless Obligees approves of such assignment in writing before such assignment occurs and only after Obligor first obtains an opinion from nationally recognized counsel stating that such assignment will not jeopardize the tax-exempt status of the obligation.

VIII. Maintenance of Equipment

Section 8.01. Obligor shall keep the Equipment in good repair and working order. Obligees shall have no obligation to inspect, test, service, maintain, repair or make improvements or additions to the Equipment under any circumstances. Obligor will be liable for all damage to the Equipment, other than normal wear and tear, caused by Obligor, its employees or its agents. Obligor shall pay for and obtain all permits, licenses and taxes necessary for the installation, operation, possession, storage or use of the Equipment. If the Equipment includes any titled vehicle(s), then Obligor is responsible for obtaining such title(s) from the State and also for ensuring that Obligees is listed as First Lienholder on all of the title(s). Obligor shall not use the Equipment to haul, convey or transport hazardous waste as defined in the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. Obligor shall not during the term of this Contract create, incur or assume any levies, liens or encumbrances of any kind with respect to the Equipment except those created by this Contract. Obligor agrees that Obligees or its Assignee may execute any additional documents including financing statements, affidavits, notices, and similar instruments, for and on behalf of Obligor which Obligees deems necessary or appropriate to protect Obligees's interest in the Equipment and in this Contract. The Equipment is and shall at all times be and remain personal property. Obligor shall allow Obligees to examine and inspect the Equipment at all reasonable times.

IX. Default

Section 9.01. Events of Default defined. The following events shall constitute an "Event of Default" under this Contract:

- (a) Failure by Obligor to pay any Contract Payment listed on Exhibit "B" for fifteen (15) days after such payment is due according to the Payment Date listed on Exhibit "B".

- (b) Failure to pay any other payment required to be paid under this Contract at the time specified herein and a continuation of said failure for a period of fifteen (15) days after written notice by Obligees that such payment must be made. If Obligor continues to fail to pay any payment after such period, then Obligees may, but will not be obligated to, make such payments and charge Obligor for all costs incurred plus interest at the highest lawful rate.
- (c) Failure by Obligor to observe and perform any warranty, covenant, condition, promise or duty under this Contract for a period of thirty (30) days after written notice specifying such failure is given to Obligor by Obligees, unless Obligees agrees in writing to an extension of time. Obligees will not unreasonably withhold its consent to an extension of time if corrective action is instituted by Obligor. Subsection (c) does not apply to Contract Payments and other payments discussed above.
- (d) Any statement, material omission, representation or warranty made by Obligor in or pursuant to this Contract which proves to be false, incorrect or misleading on the date when made regardless of Obligor's intent and which materially adversely affects the rights or security of Obligees under this Contract.
- (e) Any provision of this Contract which ceases to be valid for whatever reason and the loss of such provision would materially adversely affect the rights or security of Obligees.
- (f) Obligor admits in writing its inability to pay its obligations. Obligor defaults on one or more of its other obligations. Obligor applies or consents to the appointment of a receiver or a custodian to manage its affairs. Obligor makes a general assignment for the benefit of creditors.

Section 9.02. Remedies on Default. Whenever any Event of Default exists, Obligees shall have the right to take one or any combination of the following remedial steps:

- (a) With or without terminating this Contract, Obligees may declare all Contract Payments and other amounts payable by Obligor hereunder to the end of the then current Budget Year to be immediately due and payable.
- (b) With or without terminating this Contract, Obligees may require Obligor at Obligor's expense to redeliver any or all of the Equipment to Obligees as provided below in Section 9.04. Such delivery shall take place within fifteen (15) days after the event of default occurs. If Obligor fails to deliver the Equipment, Obligees may enter the premises where the Equipment is located and take possession of the Equipment and charge Obligor for cost incurred. Notwithstanding that Obligees has taken possession of the Equipment, Obligor shall still be obligated to pay the remaining Contract Payments due up until the end of the then current Original Term or Renewal Term. Obligor will be liable for any damage to the Equipment caused by Obligor or its employees or agents.
- (c) Obligees may take whatever action at law or in equity that may appear necessary or desirable to enforce its rights. Obligor shall be responsible to Obligees for all costs incurred by Obligees in the enforcement of its rights under this Contract including, but not limited to, reasonable attorney fees.

Section 9.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Obligees is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or shall be construed to be a waiver thereof.

Section 9.04. Return of Equipment and Storage.

- (a) **Surrender:** The Obligor shall, at its own expense, surrender the Equipment to the Obligees in the event of a default or a non-appropriation by delivering the Equipment to the Obligees to a location accessible by common carrier and designated by Obligees. In the case that any of the Equipment consists of software, Obligor shall destroy all intangible items constituting such software and shall deliver to Obligees all tangible items constituting such software. At Obligees request, Obligor shall also certify in a form acceptable to Obligees that Obligor has complied with the above software return provisions and that they will immediately cease using the software and that they shall permit Obligees and/or the vendor of the software to inspect Obligor's locations to verify compliance with the terms hereto.
- (b) **Delivery:** The Equipment shall be delivered to the location designated by the Obligees by a common carrier unless the Obligees agrees in writing that a common carrier is not needed. When the Equipment is delivered into the custody of a common carrier, the Obligor shall arrange for the shipping of the item and its insurance in transit in accordance with the Obligees's instructions and at the Obligor's sole expense. Obligor at its expense shall completely sever and disconnect the Equipment or its component parts from the Obligor's property all without liability to the Obligees. Obligor shall pack or crate the Equipment and all of the component parts of the Equipment carefully and in accordance with any recommendations of the manufacturer. The Obligor shall deliver to the Obligees the plans, specifications operation manuals or other warranties and documents furnished by the manufacturer or vendor on the Equipment and such other documents in the Obligor's possession relating to the maintenance and methods of operation of such Equipment.
- (c) **Condition:** When the Equipment is surrendered to the Obligees it shall be in the condition and repair required to be maintained under this Contract. It will also meet all legal regulatory conditions necessary for the Obligees to sell or lease it to a third party and be free of all liens. If Obligees reasonably determines that the Equipment or an item of the Equipment, once it is returned, is not in the condition required hereby, Obligees may cause the repair, service, upgrade, modification or overhaul of the Equipment or an item of the Equipment to achieve such condition and upon demand, Obligor shall promptly reimburse Obligees for all amounts reasonable expended in connection with the foregoing.
- (d) **Storage:** Upon written request by the Obligees, the Obligor shall provide free storage for the Equipment or any item of the Equipment for a period not to exceed 60 days after the expiration of its Contract Term before returning it to the Obligees. The Obligor shall arrange for the insurance described to continue in full force and effect with respect to such item during its storage period and the Obligees shall reimburse the Obligor on demand for the incremental premium cost of providing such insurance.

X. Miscellaneous

Section 10.01. Notices. All notices shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at their respective places of business as first set forth herein or as the parties shall designate hereafter in writing.

Section 10.02. Binding Effect. Obligor acknowledges this Contract is not binding upon the Obligees or its assignees unless the Conditions to Funding listed on the Documentation Instructions have been met to Obligees's satisfaction, and Obligees has executed the Contract. Thereafter, this Contract shall inure to the benefit of and shall be binding upon Obligees and Obligor and their respective successors and assigns.

Section 10.03. Severability. In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.04. Amendments, Addenda, Changes or Modifications. This Contract may be amended, added to, changed or modified by written agreement duly executed by Obligees and Obligor. Furthermore, Obligees reserves the right to directly charge or amortize into the remaining balance due from Obligor, a reasonable fee, to be determined at that time, as compensation to Obligees for the additional administrative expense resulting from such amendment, addenda, change or modification.

Section 10.05. Execution in Counterparts. This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.06. Captions. The captions or headings in this Contract do not define, limit or describe the scope or intent of any provisions or sections of this Contract.

Section 10.07. Master Contract. This Contract can be utilized as a Master Contract. This means that the Obligees and the Obligor may agree to the financing of additional Equipment under this Contract at some point in the future by executing one or more Additional Schedules to Exhibit A, Exhibit B, Exhibit C and Exhibit D as well as other exhibits or documents that may be required by Obligees. Additional Schedules will be consecutively numbered on each of the exhibits which make up the Additional Schedule and all the terms and conditions of the Contract shall govern each Additional Schedule.

Section 10.08. Entire Writing. This Contract constitutes the entire writing between Obligees and Obligor. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. There are no understandings, Contracts, representations, conditions, or warranties, express or implied, which are not specified herein regarding this Contract or the Equipment financed hereunder. Any terms and conditions of any purchase order or other documents submitted by Obligor in connection with this Contract which are in addition to or inconsistent with the terms and conditions of this Contract will not be binding on Obligees and will not apply to this Contract.

Obligees and Obligor have caused this Contract to be executed in their names by their duly authorized representatives listed below.

CITY OF MAPLEWOOD, MINNESOTA

AMERICAN CAPITAL FINANCIAL SERVICES, INC.

Signature

Signature

Typed Name and Title

Typed Name and Title

EXHIBIT A

DESCRIPTION OF EQUIPMENT

RE: Government Obligation Contract dated as of July 12, 2012, between American Capital Financial Services, Inc. (Obligee) and City of Maplewood, Minnesota (Obligor)

Below is a detailed description of all the items of Equipment including quantity, model number and serial number where applicable:

Twelve (12) New LifeFitness Treadmills, Six (6) New LifeFitness Cross Trainers, Four (4) New LifeFitness Upright Bikes, Six (6) New LifeFitness Recumbent Bikes, Four (4) New LifeFitness Summit Trainers, Four (4) New LifeFitness Steppers, Two (2) New LifeFitness Adjustable Pulley Functional Trainer, Twenty-One (21) New LifeFitness Group Life Cycles, and Three (3) New LifeFitness Concept II Rowers

Location of Equipment: 2100 White Bear Avenue, Maplewood, MN 55109

EXHIBIT B

PAYMENT SCHEDULE

RE: Government Obligation Contract dated as of July 12, 2012, between American Capital Financial Services, Inc. (Obligee) and City of Maplewood, Minnesota (Obligor)

Date of First Payment:	At Closing
Original Balance:	\$242,888.04
Total Number of Payments:	Sixty (60)
Number of Payments Per Year:	Twelve (12)

Pmt No.	Due Date	Contract Payment	Applied to Interest	Applied to Principal	*Purchase Option Price
1	At Closing	\$4,409.45	\$0.00	\$4,409.45	Not Available
2	1-Oct-12	\$4,409.45	\$702.66	\$3,706.79	\$239,178.06
3	1-Nov-12	\$4,409.45	\$691.74	\$3,717.71	\$235,318.32
4	1-Dec-12	\$4,409.45	\$680.78	\$3,728.67	\$231,449.71
5	1-Jan-13	\$4,409.45	\$669.80	\$3,739.65	\$227,572.21
6	1-Feb-13	\$4,409.45	\$658.78	\$3,750.67	\$223,685.80
7	1-Mar-13	\$4,409.45	\$647.73	\$3,761.72	\$219,790.45
8	1-Apr-13	\$4,409.45	\$636.64	\$3,772.81	\$215,886.15
9	1-May-13	\$4,409.45	\$625.53	\$3,783.92	\$211,972.88
10	1-Jun-13	\$4,409.45	\$614.38	\$3,795.07	\$208,050.61
11	1-Jul-13	\$4,409.45	\$603.20	\$3,806.25	\$204,119.33
12	1-Aug-13	\$4,409.45	\$591.98	\$3,817.47	\$200,179.01
13	1-Sep-13	\$4,409.45	\$580.73	\$3,828.72	\$196,229.64
14	1-Oct-13	\$4,409.45	\$569.45	\$3,840.00	\$192,271.19
15	1-Nov-13	\$4,409.45	\$558.14	\$3,851.31	\$188,303.64
16	1-Dec-13	\$4,409.45	\$546.79	\$3,862.66	\$184,326.97
17	1-Jan-14	\$4,409.45	\$535.41	\$3,874.04	\$180,341.16
18	1-Feb-14	\$4,409.45	\$523.99	\$3,885.46	\$176,346.19
19	1-Mar-14	\$4,409.45	\$512.55	\$3,896.90	\$172,342.04
20	1-Apr-14	\$4,409.45	\$501.06	\$3,908.39	\$168,328.69
21	1-May-14	\$4,409.45	\$489.55	\$3,919.90	\$164,306.12
22	1-Jun-14	\$4,409.45	\$478.00	\$3,931.45	\$160,274.30
23	1-Jul-14	\$4,409.45	\$466.42	\$3,943.03	\$156,233.21
24	1-Aug-14	\$4,409.45	\$454.80	\$3,954.65	\$152,182.84
25	1-Sep-14	\$4,409.45	\$443.15	\$3,966.30	\$148,123.16
26	1-Oct-14	\$4,409.45	\$431.46	\$3,977.99	\$144,054.15
27	1-Nov-14	\$4,409.45	\$419.74	\$3,989.71	\$139,975.78
28	1-Dec-14	\$4,409.45	\$407.98	\$4,001.47	\$135,888.04
29	1-Jan-15	\$4,409.45	\$396.19	\$4,013.26	\$131,790.91
30	1-Feb-15	\$4,409.45	\$384.37	\$4,025.08	\$127,684.36
31	1-Mar-15	\$4,409.45	\$372.51	\$4,036.94	\$123,568.37
32	1-Apr-15	\$4,409.45	\$360.61	\$4,048.84	\$119,442.92

EXHIBIT B

**PAYMENT SCHEDULE
(Continued)**

RE: Government Obligation Contract dated as of July 12, 2012, between American Capital Financial Services, Inc. (Obligee) and City of Maplewood, Minnesota (Obligor)

Pmt No.	Due Date	Contract Payment	Applied to Interest	Applied to Principal	*Purchase Option Price
33	1-May-15	\$4,409.45	\$348.68	\$4,060.77	\$115,307.99
34	1-Jun-15	\$4,409.45	\$336.72	\$4,072.73	\$111,163.56
35	1-Jul-15	\$4,409.45	\$324.72	\$4,084.73	\$107,009.60
36	1-Aug-15	\$4,409.45	\$312.68	\$4,096.77	\$102,846.09
37	1-Sep-15	\$4,409.45	\$300.61	\$4,108.84	\$98,673.01
38	1-Oct-15	\$4,409.45	\$288.51	\$4,120.94	\$94,490.34
39	1-Nov-15	\$4,409.45	\$276.37	\$4,133.08	\$90,298.06
40	1-Dec-15	\$4,409.45	\$264.19	\$4,145.26	\$86,096.15
41	1-Jan-16	\$4,409.45	\$251.97	\$4,157.48	\$81,884.58
42	1-Feb-16	\$4,409.45	\$239.72	\$4,169.73	\$77,663.33
43	1-Mar-16	\$4,409.45	\$227.44	\$4,182.01	\$73,432.38
44	1-Apr-16	\$4,409.45	\$215.12	\$4,194.33	\$69,191.70
45	1-May-16	\$4,409.45	\$202.76	\$4,206.69	\$64,941.28
46	1-Jun-16	\$4,409.45	\$190.36	\$4,219.09	\$60,681.09
47	1-Jul-16	\$4,409.45	\$177.93	\$4,231.52	\$56,411.11
48	1-Aug-16	\$4,409.45	\$165.46	\$4,243.99	\$52,131.31
49	1-Sep-16	\$4,409.45	\$152.96	\$4,256.49	\$47,841.68
50	1-Oct-16	\$4,409.45	\$140.42	\$4,269.03	\$43,542.19
51	1-Nov-16	\$4,409.45	\$127.84	\$4,281.61	\$39,232.81
52	1-Dec-16	\$4,409.45	\$115.22	\$4,294.23	\$34,913.53
53	1-Jan-17	\$4,409.45	\$102.57	\$4,306.88	\$30,584.32
54	1-Feb-17	\$4,409.45	\$89.88	\$4,319.57	\$26,245.16
55	1-Mar-17	\$4,409.45	\$77.15	\$4,332.30	\$21,896.03
56	1-Apr-17	\$4,409.45	\$64.39	\$4,345.06	\$17,536.90
57	1-May-17	\$4,409.45	\$51.59	\$4,357.86	\$13,167.76
58	1-Jun-17	\$4,409.45	\$38.75	\$4,370.70	\$8,788.57
59	1-Jul-17	\$4,409.45	\$25.87	\$4,383.58	\$4,399.32
60	1-Aug-17	\$4,409.45	\$12.96	\$4,396.49	\$0.00

City of Maplewood, Minnesota

Signature

Typed Name and Title

**Assumes all Contract Payments due to date are paid*

EXHIBIT C

CERTIFICATE OF ACCEPTANCE

RE: Government Obligation Contract dated as of July 12, 2012, between American Capital Financial Services, Inc. (Obligee) and City of Maplewood, Minnesota (Obligor)

I, the undersigned, hereby certify that I am a duly qualified representative of Obligor and that I have been given the authority by the Governing Body of Obligor to sign this Certificate of Acceptance with respect to the above referenced Contract. I hereby certify that:

1. The Equipment described on Exhibit A has been delivered and installed in accordance with Obligor's specifications.
2. Obligor has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
3. Obligor has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Contract Payments required to be paid under the Contract during the current Budget Year of Obligor, and such moneys will be applied in payment of all Contract Payments due and payable during such current Budget Year.
4. Obligor has obtained insurance coverage as required under the Contract from an insurer qualified to do business in the State.
5. No event or condition that constitutes or would constitute an Event of Default exists as of the date hereof.
6. The governing body of Obligor has approved the authorization, execution and delivery of this Contract on its behalf by the authorized representative of Obligor who signed the Contract.
7. Please list the Source of Funds (Fund Item in Budget) for the Contract Payments that come due under Exhibit B of this Contract.

If the above Source of Funds is solely a grant type fund, then the Obligor, by signing below, hereby authorizes the General Fund of the Obligor as a backup source of funds from which the Contract Payments can be made.

City of Maplewood, Minnesota

Signature

Typed Name and Title

EXHIBIT D

OBLIGOR RESOLUTION

RE: Government Obligation Contract dated as of July 12, 2012, between American Capital Financial Services, Inc. (Obligee) and City of Maplewood, Minnesota (Obligor)

At a duly called meeting of the Governing Body of the Obligor (as defined in the Contract) held on _____ the following resolution was introduced and adopted:

BE IT RESOLVED by the Governing Body of Obligor as follows:

1. **Determination of Need.** The Governing Body of Obligor has determined that a true and very real need exists for the acquisition of the Equipment described on Exhibit A of the Government Obligation Contract dated as of July 12, 2012, between City of Maplewood, Minnesota (Obligor) and American Capital Financial Services, Inc. (Obligee).
2. **Approval and Authorization.** The Governing Body of Obligor has determined that the Contract, substantially in the form presented to this meeting, is in the best interests of the Obligor for the acquisition of such Equipment, and the Governing Body hereby approves the entering into of the Contract by the Obligor and hereby designates and authorizes the following person(s) to execute and deliver the Contract on Obligor's behalf with such changes thereto as such person(s) deem(s) appropriate, and any related documents, including any Escrow Contract, necessary to the consummation of the transaction contemplated by the Contract.

Authorized Individual(s): _____
(Printed or Typed Name and Title of individual(s) authorized to execute the Contract)

3. **Adoption of Resolution.** The signatures below from the designated individuals from the Governing Body of the Obligor evidence the adoption by the Governing Body of this Resolution.

Signature: _____
(Signature of Secretary, Board Chairman or other member of the Governing Body)

Typed Name & Title _____
(Typed Name and Title of individual who signed directly above)

Attested By: _____
(Signature of one additional person who can witness the passage of this Resolution)

Typed Name & Title: _____
(Typed name of individual who signed directly above)

EXHIBIT E

BANK QUALIFIED CERTIFICATE

RE: Government Obligation Contract dated as of July 12, 2012, between American Capital Financial Services, Inc. (Obligee) and City of Maplewood, Minnesota (Obligor)

Whereas, Obligor hereby represents that it is a "Bank Qualified" Issuer for the calendar year in which this Contract is executed by making the following designations with respect to Section 265 of the Internal Revenue Code. (A "Bank Qualified Issuer" is an issuer that issues less than ten million (\$10,000,000) dollars of tax-exempt obligations during the calendar year).

Now, therefor, Obligor hereby designates this Contract as follows:

- 1. Designation as Qualified Tax-Exempt Obligation.** Pursuant to Section 265(b)(3)(B)(i) of the Internal Revenue Code of 1986 as amended (the "Code"), the Obligor hereby specifically designates the Contract as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code. In compliance with Section 265(b)(3)(D) of the Code, the Obligor hereby represents that the Obligor will not designate more than \$10,000,000 of obligations issued by the Obligor in the calendar year during which the Contract is executed and delivered as such "qualified tax-exempt obligations".
- 2. Issuance Limitation.** In compliance with the requirements of Section 265(b)(3)(C) of the Code, the Obligor hereby represents that the Obligor (including all subordinate entities of the Obligor within the meaning of Section 265(b)(3)(E) of the Code) reasonably anticipates not to issue in the calendar year during which the Contract is executed and delivered, obligations bearing interest exempt from federal income taxation under Section 103 of the Code (other than "private activity bonds" as defined in Section 141 of the Code) in an amount greater than \$10,000,000.

City of Maplewood, Minnesota

Signature

Typed Name and Title

NOTICE OF ASSIGNMENT

July 12, 2012

American Capital Financial Services, Inc. (Obligee/Assignor) hereby gives notice of an Assignment between Obligee/Assignor and Kansas State Bank of Manhattan (Assignee) of the Government Obligation Contract (Contract) between Obligee/Assignor and City of Maplewood, Minnesota, dated as of July 12, 2012.

All Contract Payments coming due pursuant to the Contract shall be made to:

Kansas State Bank of Manhattan
1010 Westloop, P.O. Box 69
Manhattan, Kansas 66505-0069

American Capital Financial Services, Inc., Obligee/Assignor

Signature

Typed Name and Title

ACKNOWLEDGEMENT OF AND CONSENT TO ASSIGNMENT

City of Maplewood, Minnesota (Obligor) as party to a Government Obligation Contract dated as of July 12, 2012 between Obligor and American Capital Financial Services, Inc. (Obligee), hereby acknowledges receipt of a Notice of Assignment dated July 12, 2012 whereby Obligee gave notice of its assignment to Kansas State Bank of Manhattan of its right to receive all Contract Payments due from Obligor under the Contract and hereby consents to that Assignment. Pursuant to the Notice of Assignment from Obligee, Obligor agrees to deliver all Contract Payments coming due under the Contract to:

Kansas State Bank of Manhattan
1010 Westloop, P.O. Box 69
Manhattan, Kansas 66505-0069

City of Maplewood, Minnesota

Signature

Typed Name and Title

INSURANCE REQUIREMENTS

Pursuant to Article V of the Government Obligation Contract, you have agreed to provide us evidence of insurance covering the Equipment. A Certificate of Insurance listing the information stated below should be sent to us no later than the date on which the equipment is delivered.

Insured:

City of Maplewood, Minnesota
1830 County Road B East
Maplewood, Minnesota 55109

Certificate Holder:

Kansas State Bank of Manhattan
1010 Westloop, P.O. Box 69
Manhattan, Kansas 66505-0069

- ✓ **LIABILITY:** Minimum Combined Single Limit of \$1,000,000.00 combined single-limit on bodily injury and property damage.
- ✓ **PHYSICAL DAMAGE:** All risk coverage to guarantee proceeds of at least \$242,888.04.
- ✓ **Kansas State Bank and/or Its Assigns MUST be listed as additional insured and loss payee.**
- ✓ **Equipment Description:** Twelve (12) New LifeFitness Treadmills, Six (6) New LifeFitness Cross Trainers, Four (4) New LifeFitness Upright Bikes, Six (6) New LifeFitness Recumbent Bikes, Four (4) New LifeFitness Summit Trainers, Four (4) New LifeFitness Steppers, Two (2) New LifeFitness Adjustable Pulley Functional Trainer, Twenty-One (21) New LifeFitness Group Life Cycles, and Three (3) New LifeFitness Concept II Rowers. Please include all applicable VIN's, serial numbers, etc.

PLEASE FORWARD THE CERTIFICATE TO US AS SOON AS POSSIBLE EITHER BY FAX TO (630) 512-0070 OR BY EMAIL AT JMARQUARDT@AMERICANCAPITAL1.COM, AND MAIL THE ORIGINAL TO THE ADDRESS LISTED ABOVE.

PLEASE COMPLETE THE INFORMATION BELOW AND RETURN THIS FORM ALONG WITH THE CONTRACT.

City of Maplewood, Minnesota

Insurance Company: _____

Agent's Name: _____

Telephone #: _____

Fax #: _____

Address, City, State & Zip: _____



INVOICE

BILL TO:

City of Maplewood, Minnesota
 Attn: Accounts Payable
 1830 County Road B East
 Maplewood, Minnesota 55109

INVOICE DATE: July 12, 2012
CONTRACT NUMBER: 3343787
PAYMENT AMOUNT: \$4,409.45
PAYMENT DUE DATE: At Closing

DESCRIPTION

AMOUNT

<p>Contract Payment</p> <p>Government Obligation Contract Dated as of July 12, 2012 for Twelve (12) New LifeFitness Treadmills, Six (6) New LifeFitness Cross Trainers, Four (4) New LifeFitness Upright Bikes, Six (6) New LifeFitness Recumbent Bikes, Four (4) New LifeFitness Summit Trainers, Four (4) New LifeFitness Steppers, Two (2) New LifeFitness Adjustable Pulley Functional Trainer, Twenty-One (21) New LifeFitness Group Life Cycles, and Three (3) New LifeFitness Concept II Rowers</p> <p>Additional interest will be assessed on any payment received after the due date</p>	<p>\$4,409.45</p>
	<p>\$4,409.45</p> <p>TOTAL DUE</p>

Please remit payment to: KANSAS STATE BANK
 GOVERNMENT FINANCE DEPT.
 P.O. Box 69
 MANHATTAN, KS 66505-0069

For inquiries (630) 512-0066



INVOICE

BILL TO:

City of Maplewood, Minnesota
 Attn: Accounts Payable
 1830 County Road B East
 Maplewood, Minnesota 55109

INVOICE DATE: July 12, 2012
CONTRACT NUMBER: 3343787
PAYMENT AMOUNT: \$4,409.45
PAYMENT DUE DATE: October 1, 2012

DESCRIPTION

AMOUNT

<p>Contract Payment</p> <p>Government Obligation Contract Dated as of July 12, 2012 for Twelve (12) New LifeFitness Treadmills, Six (6) New LifeFitness Cross Trainers, Four (4) New LifeFitness Upright Bikes, Six (6) New LifeFitness Recumbent Bikes, Four (4) New LifeFitness Summit Trainers, Four (4) New LifeFitness Steppers, Two (2) New LifeFitness Adjustable Pulley Functional Trainer, Twenty-One (21) New LifeFitness Group Life Cycles, and Three (3) New LifeFitness Concept II Rowers</p> <p>Additional interest will be assessed on any payment received after the due date</p>	<p>\$4,409.45</p>
	<p>\$4,409.45</p> <p>TOTAL DUE</p>

Please remit payment to: KANSAS STATE BANK
 GOVERNMENT FINANCE DEPT.
 P.O. BOX 69
 MANHATTAN, KS 66505-0069

For inquiries (630) 512-0066

Form **8038-G**
 (Rev. September 2011)
 Department of the Treasury
 Internal Revenue Service

Information Return for Tax-Exempt Governmental Obligations

Under Internal Revenue Code section 149(a).
 See separate instructions.
 Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

Part I Reporting Authority If Amended Return, check here

1 Issuer's name City of Maplewood, Minnesota		2 Issuer's employer identification number (EIN) 41-6008920	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions)		3b Telephone number of other person shown on 3a	
4 Number and street (or P.O. box if mail is not delivered to street address) 1830 County Road B East	Room/suite	5 Report number (For IRS Use Only) 3	
6 City, town, or post office, state, and ZIP code Maplewood, MN 55109		7 Date of issue 09/01/2012	
8 Name of issue Government Obligation Contract		9 CUSIP number None	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions)		10b Telephone number of officer or other employee shown on 10a	

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.

11 Education	11		
12 Health and hospital	12		
13 Transportation	13		
14 Public safety	14		
15 Environment (including sewage bonds)	15		
16 Housing	16		
17 Utilities	17		
18 Other. Describe Exercise Equipment	18		
19 If obligations are TANs or RANs, check only box 19a <input type="checkbox"/>			
If obligations are BANs, check only box 19b <input type="checkbox"/>			
20 If obligations are in the form of a lease or installment sale, check box <input checked="" type="checkbox"/>			

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21	09/01/2017	\$	\$ N/A	5 years	%

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)

22 Proceeds used for accrued interest	22		
23 Issue price of entire issue (enter amount from line 21, column (b))	23		
24 Proceeds used for bond issuance costs (including underwriters' discount)	24		
25 Proceeds used for credit enhancement	25		
26 Proceeds allocated to reasonably required reserve or replacement fund	26		
27 Proceeds used to currently refund prior issues	27		
28 Proceeds used to advance refund prior issues	28		
29 Total (add lines 24 through 28)	29		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30		

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.

31 Enter the remaining weighted average maturity of the bonds to be currently refunded _____ years

32 Enter the remaining weighted average maturity of the bonds to be advance refunded _____ years

33 Enter the last date on which the refunded bonds will be called (MM/DD/YYYY) _____

34 Enter the date(s) the refunded bonds were issued (MM/DD/YYYY) _____

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 63773S

Form **8038-G** (Rev. 9-2011)

Part VI Miscellaneous

35	Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35		
36a	Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC) (see instructions)	36a		
b	Enter the final maturity date of the GIC ▶ _____			
c	Enter the name of the GIC provider ▶ _____			
37	Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units	37		
38a	If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the following information:			
b	Enter the date of the master pool obligation ▶ _____			
c	Enter the EIN of the issuer of the master pool obligation ▶ _____			
d	Enter the name of the issuer of the master pool obligation ▶ _____			
39	If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box			<input checked="" type="checkbox"/>
40	If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box			<input type="checkbox"/>
41a	If the issuer has identified a hedge, check here <input type="checkbox"/> and enter the following information:			
b	Name of hedge provider ▶ _____			
c	Type of hedge ▶ _____			
d	Term of hedge ▶ _____			
42	If the issuer has superintegrated the hedge, check box			<input type="checkbox"/>
43	If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box			<input type="checkbox"/>
44	If the issuer has established written procedures to monitor the requirements of section 148, check box			<input type="checkbox"/>
45a	If some portion of the proceeds was used to reimburse expenditures, check here <input type="checkbox"/> and enter the amount of reimbursement ▶ _____			
b	Enter the date the official intent was adopted ▶ _____			

Signature and Consent	Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.			
	▶ _____ Signature of issuer's authorized representative		▶ _____ Date	
Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed
	H. Evan Howe	<i>H. Evan Howe</i>	7/12/2012	PTIN P01438994
	Firm's name ▶ Baystone Financial LLC	Firm's EIN ▶ 48-1223987		
	Firm's address ▶ 5350 College Blvd., Overland Park, KS 66211	Phone no. 800-752-3562		

AGENDA REPORT

TO: James Antonen, City Manager
FROM: DuWayne Konewko, Director of Parks and Recreation
 Jim Taylor, Park Manager
SUBJECT: **Lions Park Improvements, Project 08-09**
a) Resolution Directing Modification of Existing Construction Contract, Change Order No. 2
b) Resolution Approving Final Payment and Acceptance of Project
DATE: July 13, 2012

INTRODUCTION

The city council will consider approving the attached resolutions directing the modification of the existing construction contract and approving final payment and acceptance of project for the Lions Park Improvements, City Project 08-09. The change order reflects a decrease in the construction contract amount for site modifications and maintenance work that City staff will complete instead of the contractor.

BACKGROUND

On August 23, 2010, the council awarded Fitol Hintz Construction, Inc. (Fitol Hintz) a construction contract for park and drainage system improvements in the amount of \$499,642.80.

Change Order #1:	\$19,263.00	Approved 11/08/2011
Change Order #2	(\$14,405.72)	Pending Approval 07/23/2012

Total Net Change Orders to Date: \$4,857.28

DISCUSSION

A summary of the necessary changes under Change Order No. 2 are as follows:

Item 1. Deleting Turf Maintenance -- (\$1,405.72)

The specifications and original contract called for a 3-year extended maintenance period on the prairie seeded turf areas at a contract unit price of \$5,000. City staff has reviewed the turf conditions and found that conditions are generally acceptable and that City parks staff will be able to complete the ongoing annual maintenance from this point forward. The \$1,405.72 amount represents a credit for the portion of the work not completed as of July 2012 by the contractor.

Item 2. Deleting Work to be Performed by City – (\$13,000.00)

Due to a number of factors, several areas of the site have needed or will need some additional work to get the site as a whole to where the City would like to see it. Based on discussions with the contractor on how best to complete this work, staff has concluded that the most efficient approach is to have City staff complete the remaining items and obtain a credit from the contractor for these work items. These items include: replacement of an estimated 17 trees damaged by deer activity during the fall of 2011; a change to the design of the main inlet channel from a vegetated channel to rock-lined channel; and restoration of the first rainwater garden to remove accumulated sediment. City

staff has already completed some of this work and will continue to monitor the condition of the trees. The credit for these items is \$13,000.

The additional work within Change Order No. 2 amounts to a credit of \$14,405.72, decreasing the overall construction contract amount as follows:

Original Contract	\$499,642.80
Net Change Orders Nos. 1 to 2	\$ 4,857.28
Revised Contract Amount Proposed	\$504,500.08

CONTRACT CLOSURE AND ACCEPTANCE

The contractor, Fitol Hintz Construction, Inc., has completed the project improvements called for in the contract and as modified in Change Orders 1 and 2. On June 28, 2010, the council ordered the improvements. On August 23rd, 2010, the council awarded a contract to Fitol Hintz in the amount of \$499,642.80. The final construction contract cost with Fitol Hintz is \$504,500.08.

BUDGET IMPACT

Approval of Change Order No. 2 will decrease the current project construction contract amount to \$504,500.08. **Since City staff will be completing the remaining work items described previously, the overall project construction budget remains unchanged from the \$518,905.80 approved by Council on November 8, 2011.** Once all financial transactions have been completed, staff will bring back the final financial plan and recommend closure of the project fund.

RECOMMENDATION

Staff recommends that the council approve the attached Resolution Directing Modification of Existing Construction Contract, Change Order No. 2, for the Lions Park Improvements, City Project 08-09. It is also recommend that the council approve the attached resolution for the Lions Park Improvements, City Project 08-09, Approving Final Payment and Acceptance of Project.

Attachments:

1. Resolution Directing Modification of Existing Construction Contract, Change Order No. 2
2. Resolution Approving Final Payment and Acceptance of Project
3. Change Order Form
4. Final Payment Application

**RESOLUTION
DIRECTING MODIFICATION OF EXISTING CONSTRUCTION CONTRACT
PROJECT 08-09, CHANGE ORDER NO. 2**

WHEREAS, the City Council of Maplewood, Minnesota has heretofore ordered made Improvements Project 08-09, Lions Park Improvements, and has let a construction contract pursuant to Minnesota Statutes, Chapter 429, and

WHEREAS, it is now necessary and expedient that said contract be modified and designated as Improvement Project 08-09, Change Order No. 2

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA, that:

1. The mayor and city clerk are hereby authorized and directed to modify the existing contract by executing said Change Order No. 2 which is (\$14,405.72)

The revised contract amount is \$504,500.08

Approved this 23rd day of July 2012.

**RESOLUTION
APPROVING FINAL PAYMENT AND ACCEPTANCE OF PROJECT
PROJECT 08-09**

WHEREAS, the City Council of Maplewood, Minnesota has heretofore ordered Improvement Project 08-09, the Lions Park Improvements, and has let a construction contract pursuant to Minnesota Statutes, Chapter 429, and

WHEREAS, the Director of Parks and Recreation for the City of Maplewood has determined that the Lions Park Improvements, City Project 08-09, is complete and recommends acceptance of the project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA, that

1. City Project 08-09 is complete and maintenance of these improvements is accepted by the city; and the final construction cost is \$504,500.08. Final payment to Fitol Hintz, Inc., and the release of any retainage or escrow is hereby authorized.

Approved this 23rd day of July 2012.

Fitol-Hintz Construction, Inc.

Agenda Item G4

817 VANDALIA ST., ST. PAUL, MN 55114 - TELEPHONE (651) 645-9321 - FAX (651) 645-9322 - E-mail: FHCINC@msn.com

Change Order Proposal

Name / Address

Proposal # 278

City of Maplewood

Date: 6/18/2012

Terms

Project

Lions Park

Qty	Description	Cost	Total
1	Delete Turf Maintenance being done by city	- 1,405.72	- 1,405.72
1	Delete work being performed by city	- 13,000.00	- 13,000.00
		Total	- \$14,405.72

Proposed



APPLICATION and CERTIFICATE for PAYMENT

To: City of Maplewood
1830 East County Road B
Maplewood, MN 55109

From: Fitol Hintz Construction Inc
817 Vandalia Street
St Paul MN 55114

Project: Lions Park Improvements
Maplewood, MN 55109
City Project No. 08-09
SEH No. MAPLE103414

Application No: 9
App. Date: June 14, 2012
Period to: June 14, 2012
Project Nos: City No. 08-09
Contract Date: August 26, 2010

Contract For: Park Improvements
Via Architect: Ronald B. Leaf

Distribution to:
 OWNER
 CONSTRUCTION MGR.
 ARCHITECT
 CONTRACTOR
 OTHER

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

1. ORIGINAL CONTRACT SUM 499,842.80
2. Net Change By Change Orders 19,263.00
3. CONTRACT SUM TO DATE 518,905.80
4. TOTAL COMPLETED AND STORED TO DATE 518,905.80

5. RETAINAGE:

- a. 05% of Completed Work 14,405.72
- b. 05% of Stored Material 504,500.08

Total Retainage 492,945.27

6. TOTAL EARNED LESS RETAINAGE 11,554.81
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT 14,405.72
8. CURRENT PAYMENT DUE
9. BALANCE TO FINISH, INCLUDING RETAINAGE

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	19,263.00	0.00
Total approval this Month	0.00	
TOTALS	\$ 19,263.00	\$ 0.00
NET CHANGES by Change Order	\$ 19,263.00	

Parks and Recreation Director
X1 [Signature]

CONTRACTOR: *[Signature]* Fitol-Hintz Construction Inc
By: *[Signature]* Rudolph C Fitol Date: June 14, 2012
State of: Minnesota County of: Ramsey

Subscribed and sworn before me this 14th day of June, 2012

Rudolph C Fitol personally appeared before me, the undersigned notary public, and provided satisfactory evidence of identification to be the person who signed this document in my presence and swore or affirmed to me that the contents of this document are true and accurate to the best of his/her knowledge and belief.

Notary Public: *[Signature]* My Comm. Expires Jan 31, 2015
JAMIE HINTZ
Notary Public - Minnesota
My Commission Expires Jan 31, 2015

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 11,554.81

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

ARCHITECT: *[Signature]* Date: 7/16/2012

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

APPLICATION NUMBER: 9

Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

APPLICATION DATE: June 14, 2012

PERIOD TO: June 14, 2012

Use Column I on Contracts where variable retainage for line items may apply.

PROJECT NUMBER: City No. 08-09

A Item #	B Description of Work	C Scheduled Value	D Work Completed		E Completed This Period	F Materials Presently Stored	G		H Balance to Finish	I Retainage
			From Previous Application(s)				Total Completed and Stored To Date	%		
1	Mobilization and Bond	7,000.00	7,000.00		0.00		7,000.00	100.00	0.00	
2	Sawcut Bituminous Pavement 15 LF	73.50	73.50		0.00		73.50	100.00	0.00	
3	Remove Bituminous Pavement 366 SY	878.40	878.40		0.00		878.40	100.00	0.00	
4	Sawcut Concrete C&G 9 LF	450.00	450.00		0.00		450.00	100.00	0.00	
5	Remove C&G 45 LF	175.50	175.50		0.00		175.50	100.00	0.00	
6	Disconnect/Remove Electrical 3 EA	1,590.00	1,590.00		0.00		1,590.00	100.00	0.00	
7	Deleted	0.00	0.00		0.00		0.00		0.00	
8	Remove Basketball Hoop and Pole 1 EA	195.00	195.00		0.00		195.00	100.00	0.00	
9	Remove Playground Equipment 3 EA	4,965.00	4,965.00		0.00		4,965.00	100.00	0.00	
10	Remove Baseball Benches 2 EA	190.00	190.00		0.00		190.00	100.00	0.00	
11	Remove Fence 100 LF	290.00	290.00		0.00		290.00	100.00	0.00	
12	Remove Existing Baseball Field 1 LS	1,460.00	1,460.00		0.00		1,460.00	100.00	0.00	
13	Remove Sign 2 EA	390.00	390.00		0.00		390.00	100.00	0.00	
14	Common Excavation 1900 CY	11,020.00	11,020.00		0.00		11,020.00	100.00	0.00	
15	Trail Subgrade Excavation 330 CY	2,260.50	2,260.50		0.00		2,260.50	100.00	0.00	
16	Biofiltration Basin Excavation 707 CY	6,893.25	6,893.25		0.00		6,893.25	100.00	0.00	
17	Borrow 300 CY	1,755.00	1,755.00		0.00		1,755.00	100.00	0.00	
18	Class 6 Aggregate 350 CY	14,700.00	14,700.00		0.00		14,700.00	100.00	0.00	
19	Bituminous Trails & Basketball 233 Ton	19,339.00	19,339.00		0.00		19,339.00	100.00	0.00	
20	B618 Concrete Curb & Gutter 56 LF	2,128.00	2,128.00		0.00		2,128.00	100.00	0.00	
21	Timber Bridge Type A 1 EA	7,600.00	7,600.00		0.00		7,600.00	100.00	0.00	
22	Timber Bridge Type B 2 EA	14,400.00	14,400.00		0.00		14,400.00	100.00	0.00	
23	Engineered Infiltration Soil 836 CY	21,945.00	21,945.00		0.00		21,945.00	100.00	0.00	

A=Line Item Number B=Brief Item Description C=Total Value of Item D=Total of D and E From Previous Application(s) (if Any) E=Total Work Completed For This Application
 F=Materials Purchased and Stored for Project G=Total of All Work Completed and Materials Stored for Project H=Remaining Balance of Amount to Finish I=Amount Withheld from G

APPLICATION NUMBER: 9

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APPLICATION DATE: June 14, 2012

PERIOD TO: June 14, 2012

Use Column I on Contracts where variable retainage for line items may apply.

PROJECT NUMBER: City No. 08-09

A Item #	B Description of Work	C Scheduled Value	D Work Completed		E Materials Presently Stored	G		H Balance to Finish	I Retainage
			From Previous Application(s)	This Period		Total Completed and Stored To Date	%		
24	Sand Trench Media 106 CY	2,067.00	2,067.00	0.00		2,067.00	100.00	0.00	
25	Course Filter Aggregate 90 CY	3,600.00	3,600.00	0.00		3,600.00	100.00	0.00	
26	Geotextile Fabric 1425 SY	2,422.50	2,422.50	0.00		2,422.50	100.00	0.00	
27	Silt Fence 310 LF	527.00	527.00	0.00		527.00	100.00	0.00	
28	Inlet Protection 8 EA	1,248.00	1,248.00	0.00		1,248.00	100.00	0.00	
29	Temporary Ditch Check 5 EA	855.00	855.00	0.00		855.00	100.00	0.00	
30	Rock Construction Entrance 1 EA	730.00	730.00	0.00		730.00	100.00	0.00	
31	Connect to Existing Storm Sewer 1 EA	390.00	390.00	0.00		390.00	100.00	0.00	
32	12" HDPE Pipe 330 LF	9,900.00	9,900.00	0.00		9,900.00	100.00	0.00	
33	15" HDPE Pipe 108 LF	3,780.00	3,780.00	0.00		3,780.00	100.00	0.00	
34	24" HDPE Pipe 87 LF	4,263.00	4,263.00	0.00		4,263.00	100.00	0.00	
35	24" Eq. RC Arch Pipe 111 LF	15,207.00	15,207.00	0.00		15,207.00	100.00	0.00	
36	Drainage Structure 18" Nyloplast 4 EA	2,340.00	2,340.00	0.00		2,340.00	100.00	0.00	
37	Drainage Structure 24" Nyloplast 1 EA	878.00	878.00	0.00		878.00	100.00	0.00	
38	Drainage Structure 4020 48" 2 EA	5,364.00	5,364.00	0.00		5,364.00	100.00	0.00	
39	Drainage Structure 4020 60" 1 EA	3,075.00	3,075.00	0.00		3,075.00	100.00	0.00	
40	12" Metal Apron 2 EA	536.00	536.00	0.00		536.00	100.00	0.00	
41	15" Metal Apron 1 EA	317.00	317.00	0.00		317.00	100.00	0.00	
42	24" Eq. RC Arch Apron 1 EA	439.00	439.00	0.00		439.00	100.00	0.00	
43	6" Draintile Perforated 1013 LF	17,727.50	17,727.50	0.00		17,727.50	100.00	0.00	
44	6" Draintile Solid 252 LF	3,780.00	3,780.00	0.00		3,780.00	100.00	0.00	
45	Adjust Casting 8 EA	1,560.00	1,560.00	0.00		1,560.00	100.00	0.00	
46	4" Concrete Shelter & Walk 1246 SF	7,476.00	7,476.00	0.00		7,476.00	100.00	0.00	

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Use Column I on Contracts where variable retainage for line items may apply.

PROJECT NUMBER: City No. 08-09

A Item #	B Description of Work	C Scheduled Value	D Work Completed		E Completed This Period	F Materials Presently Stored	G		H Balance to Finish	I Retainage
			From Previous Application(s)	Work Completed			Total Completed and Stored To Date	%		
47	Concrete Pavers 686 SF	4,802.00	4,802.00	0.00	0.00		4,802.00	100.00	0.00	
48	8" Concrete Ribbon Curb 133 LF	3,657.50	3,657.50	0.00	0.00		3,657.50	100.00	0.00	
49	8" Curb @ Playground 297 LF	8,910.00	8,910.00	0.00	0.00		8,910.00	100.00	0.00	
50	Topsoil Borrow 585 CY	7,897.50	7,897.50	0.00	0.00		7,897.50	100.00	0.00	
51	Planting Soil 116 CY	2,900.00	2,900.00	0.00	0.00		2,900.00	100.00	0.00	
52	Deciduous Trees 2.5" B&B 28 EA	7,140.00	7,140.00	0.00	0.00		7,140.00	100.00	0.00	
53	Ornamental Trees 1.5" B&B 19 EA	2,945.00	2,945.00	0.00	0.00		2,945.00	100.00	0.00	
54	Shrubs #2 Cont. 1020 EA	27,540.00	27,540.00	0.00	0.00		27,540.00	100.00	0.00	
55	Perennials Stream Bed #1 Cont. 200 EA	3,000.00	3,000.00	0.00	0.00		3,000.00	100.00	0.00	
56	Perennials Raingarden 4" Pots 1800 EA	11,250.00	11,250.00	0.00	0.00		11,250.00	100.00	0.00	
57	Perennials Swales 2" Plugs 18 Flat/50	2,016.00	2,016.00	0.00	0.00		2,016.00	100.00	0.00	
58	Shredded Hardwood Mulch 301 CY	8,127.00	8,127.00	0.00	0.00		8,127.00	100.00	0.00	
59	No-Mow Seeding 0.13 ACRE	965.25	965.25	0.00	0.00		965.25	100.00	0.00	
60	Praire Seeding 0.58 ACRE	1,438.40	1,438.40	0.00	0.00		1,438.40	100.00	0.00	
61	Turf Seeding 1.3 ACRE	5,089.50	5,089.50	0.00	0.00		5,089.50	100.00	0.00	
62	Praire Seed 3 Year Maint. 0.58 ACRE	5,000.00	5,000.00	0.00	0.00		5,000.00	100.00	0.00	
63	Monument Sign 1 LS	6,810.00	6,810.00	0.00	0.00		6,810.00	100.00	0.00	
64	Pea Gravel 60 CY	2,400.00	2,400.00	0.00	0.00		2,400.00	100.00	0.00	
65	Cobbles 2"-4" 11 CY	1,100.00	1,100.00	0.00	0.00		1,100.00	100.00	0.00	
66	Boulders 12"-24" Owner Provided 1 TON	300.00	300.00	0.00	0.00		300.00	100.00	0.00	
67	6' Bench Type A Surface Mount 5 EA	6,000.00	6,000.00	0.00	0.00		6,000.00	100.00	0.00	
68	6' Bench Type B Vetter Stone 8 EA	15,200.00	15,200.00	0.00	0.00		15,200.00	100.00	0.00	
69	Bicycle Rack Dero 1 EA	450.00	450.00	0.00	0.00		450.00	100.00	0.00	

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APPLICATION NUMBER: 9

Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

APPLICATION DATE: June 14, 2012

PERIOD TO: June 14, 2012

PROJECT NUMBER: City No. 08-09

Use Column I on Contracts where variable retainage for line items may apply.

A Item #	B Description of Work	C Scheduled Value	D Work Completed		E Work Completed This Period	F Materials Presently Stored	G		H Balance to Finish	I Retainage
			From Previous Application(s)				Total Completed and Stored To Date	%		
70	Litter Receptacle Dumor 4 EA	4,100.00	4,100.00		0.00		4,100.00	100.00	0.00	
71	Coal Bin Wausau Tile 1 EA	775.00	775.00		0.00		775.00	100.00	0.00	
72	Picnic Table Dumor 4 EA	7,200.00	7,200.00		0.00		7,200.00	100.00	0.00	
73	Game Board Table Dumor 2 EA	3,000.00	3,000.00		0.00		3,000.00	100.00	0.00	
74	Grill (double) Dumor 1 EA	850.00	850.00		0.00		850.00	100.00	0.00	
75	42" Eq. RC Arch Pipe 2 EA	6,400.00	6,400.00		0.00		6,400.00	100.00	0.00	
76	Turf Reinforcement Fabric 50 SY	500.00	500.00		0.00		500.00	100.00	0.00	
77	Engineered Wood Fiber Mulch 206 CY	8,240.00	8,240.00		0.00		8,240.00	100.00	0.00	
78	Satellite Binoculars Kompan 1 EA	625.00	625.00		0.00		625.00	100.00	0.00	
79	Stone Abacus Goric 1 EA	4,700.00	4,700.00		0.00		4,700.00	100.00	0.00	
80	Tilia Chimes Goric 1 EA	6,800.00	6,800.00		0.00		6,800.00	100.00	0.00	
81	Single Post Swings Landscape 1 EA	4,175.00	4,175.00		0.00		4,175.00	100.00	0.00	
82	Lady Bug Kompan 2 EA	3,350.00	3,350.00		0.00		3,350.00	100.00	0.00	
83	Garden Seesaw Kompan 1 EA	8,500.00	8,500.00		0.00		8,500.00	100.00	0.00	
84	The Grass Goric 2 EA	11,700.00	11,700.00		0.00		11,700.00	100.00	0.00	
85	Adara Kompan 1 EA	41,450.00	41,450.00		0.00		41,450.00	100.00	0.00	
86	Triple Shifter Kompan 1 EA	12,600.00	12,600.00		0.00		12,600.00	100.00	0.00	
87	Backstop Fence 1 EA	4,875.00	4,875.00		0.00		4,875.00	100.00	0.00	
88	8' Chain-Link Fence 125 LF	3,000.00	3,000.00		0.00		3,000.00	100.00	0.00	
89	Bases & Misc. Field Equipment 1 LS	1,000.00	1,000.00		0.00		1,000.00	100.00	0.00	
90	Red Ball Diamond Aggregate 39 TON	1,521.00	1,521.00		0.00		1,521.00	100.00	0.00	
91	Basketball Hoop 1 EA	2,436.00	2,436.00		0.00		2,436.00	100.00	0.00	
92	Basketball Court Striping 359 LF	897.50	897.50		0.00		897.50	100.00	0.00	

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APPLICATION NUMBER: 9

Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractor's signed Certification is attached.

APPLICATION DATE: June 14, 2012

PERIOD TO: June 14, 2012

Use Column I on Contracts where variable retainage for line items may apply.

PROJECT NUMBER: City No. 08-09

A Item #	B Description of Work	C Scheduled Value	D Work Completed		E This Period	F Materials Presently Stored	G Total Completed and Stored To Date	H Balance to Finish	I Retainage
			From Previous Application(s)						
93	Picnic Shelter 24'x24' 1 EA	16,270.00	16,270.00		0.00		16,270.00	0.00	
94	Concrete Footings Shelter 1 LS	1,560.00	1,560.00		0.00		1,560.00	0.00	
95	C.O. #1 Wood Fiber Play Area	3,800.00	3,800.00		0.00		3,800.00	0.00	
96	C.O. #1 Wood Fiber Play Area	3,700.00	3,700.00		0.00		3,700.00	0.00	
97	C.O. #1 Discount Wood Fiber	-1,875.00	-1,875.00		0.00		-1,875.00	0.00	
98	C.O. #1 207 Ton Aglime Ballfield	8,073.00	8,073.00		0.00		8,073.00	0.00	
99	C.O. #1 Playcurb Changes Labor	3,059.00	3,059.00		0.00		3,059.00	0.00	
100	C.O. #1 Aglime for gravel path	928.00	928.00		0.00		928.00	0.00	
101	C.O. #1 Timber Bridge Materials and Labor	1,500.00	1,500.00		0.00		1,500.00	0.00	
102	C.O. #1 Timber bridge labor	-500.00	-500.00		0.00		-500.00	0.00	
103	C.O. #1 Players Benches Install/reinstall	1,065.00	1,065.00		0.00		1,065.00	0.00	
104	C.O. #1 Deduct Remove benches	-190.00	-190.00		0.00		-190.00	0.00	
105	C.O. #1 Sort and install boulders	5,850.00	5,850.00		0.00		5,850.00	0.00	
106	C.O. #1 Deduct 3 trees #52 on bid	-765.00	-765.00		0.00		-765.00	0.00	
107	C.O. #1 Deduct 16 trees-crabapple	-2,480.00	-2,480.00		0.00		-2,480.00	0.00	
108	C.O. #1 38 CY aggregate base	1,596.00	1,596.00		0.00		1,596.00	0.00	
109	C.O. #1 Extra mulch for plantings	486.00	486.00		0.00		486.00	0.00	
110	C.O. #1 Delete Maintenance	-5,000.00	-5,000.00		0.00		-5,000.00	0.00	
111	C.O. #1	16.00	0.00		16.00		16.00	0.00	
SUBTOTAL:		518,905.80	518,889.80		16.00		518,905.80	0.00	
GRAND TOTAL:		518,905.80	518,889.80		16.00		518,905.80	0.00	14,405.72

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MEMORANDUM

TO: James Antonen, City Manager
 FROM: Michael Martin, AICP, Planner
 Charles Ahl, Assistant City Manager
 SUBJECT: **St. Paul's Priory Planned Unit Development Review**
 DATE: July 16, 2012

INTRODUCTION

The conditional use permit (CUP) for the St. Paul's Monastery planned unit development (PUD) at 2675 Larpenteur Avenue East is due for its annual review. The PUD allowed the development of the monastery property with the following uses:

- A 40-unit senior-housing apartment building to be operated by CommonBond Communities.
- A 50-unit town house development also to be built and operated by CommonBond.
- A conversion of the monastery to a family-violence shelter by the Tubman Family Alliance.
- A future monastery on the north end of the property.

BACKGROUND

May 14, 2007: The city council approved this PUD and the preliminary plat for Century Trails Commons, the town house complex. Refer to the attached city council minutes.

February 12, 2008: The community design review board (CDRB) approved the design plans for the new monastery.

April 14, 2008: The city council approved the final plat for Century Trails Commons.

April 22, 2008: The CDRB approved the design plans for the Century Trails Commons town homes.

July 27, 2009: The city council approved the design plans and a revision to the PUD allowing unit sizes that are less than the required 580-square-foot minimum as stated in the zoning ordinance for the CommonBond Communities senior housing apartment building.

July 12, 2010: The city council approved revised landscape plans.

On July 26, 2010, the city council reviewed the CUP and agreed to review it again in one year.

On July 25, 2011, the city council reviewed the CUP and agreed to review it again in one year.

Code Requirement

Section 44-1100(a) of the zoning code states that CUPs shall be reviewed by the city council within one year of approval. At the one-year review, the council may specify an indefinite term for a subsequent review or a specific term not to exceed five years.

DISCUSSION

The new monastery, 50-unit Trails Edge Town Homes and 40-unit Century Trails Senior Housing Apartments are complete. The Tubman Family Alliance received a building permit last year to begin its internal building remodeling for the family-violence shelter. The internal work is still progressing. The Tubman Family Alliance have already moved offices into the building and constructed their parking lot.

Staff is not aware of any neighborhood complaints or concerns. The city council should review this permit in one year to check on the progress of the remaining elements of this PUD.

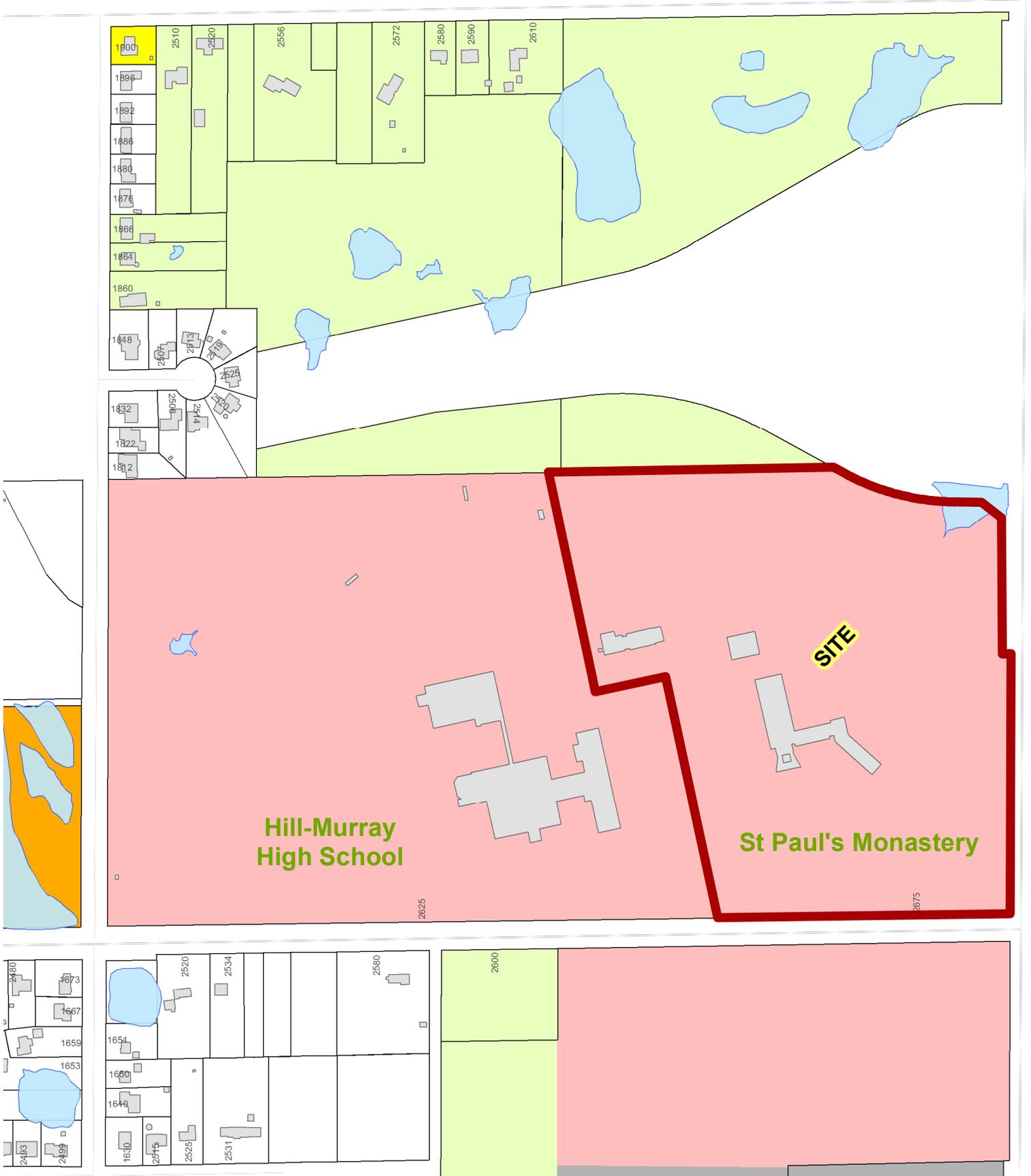
RECOMMENDATION

Review the conditional use permit for the St. Paul's Monastery PUD in one year.

p:\sec13-29\Priory\priory pud annual rev_072312

Attachments:

1. Location Map
2. May 14, 2007 City Council Minutes
3. July 27, 2009 City Council Minutes
4. Site Plan



Location / Zoning Map
2675 Larpenteur Ave E
St Paul's Monastery

**MINUTES
MAPLEWOOD CITY COUNCIL**

7:00 p.m., Monday, May 14, 2007
Council Chambers, City Hall
Meeting No. 07-09

2. St. Paul's Monastery Redevelopment (Century and Larpenteur Avenues) Public Comment on this matter was taken at a Special City Council Meeting on May 7, 2007. Public Comment is now closed. Discussion is limited to City Council questions for City Staff.
 - a. Application for Conditional Use Permit for Planned Unit Development
 - b. Preliminary Plat for Century Trails Commons

Senior Planner Ekstrand presented the report and responded to questions from the council.

Ellen Higgins, in charge of development for Common Bond Communities, addressed the council regarding the proposed affordable housing.

Mayor Longrie thanked Ms. Higgins for her suggestion that a transportation task force be created to work toward increasing public transportation to this site. Mayor Longrie stated her support for increasing transportation on the site and creating a task force to look at these issues.

Councilmember Hjelle moved to adopt the following resolution approving a conditional use permit for a planned unit development for the Sisters of St. Benedict of St. Paul's Monastery.

CONDITIONAL USE PERMIT RESOLUTION 07-05-071

WHEREAS, the Sisters of St. Benedict of St. Paul's Monastery applied for a conditional use permit for a planned unit development to develop their 31.04-acre site with a 50-unit town house development; a 40-unit seniors housing apartment building; to convert the existing monastery building as a multi-use family-violence shelter with 37 housing units, offices and support facilities and to build a future monastery building on the north end of their property.

WHEREAS, Section 44-1092(3) of the city ordinances requires a conditional use permit for institutions of any educational, philanthropic and charitable nature.

WHEREAS, this permit applies to the property located at 2675 Larpenteur Avenue. The legal description is:

That part of the South ½ of the Southeast Quarter of Section 13, Township 29, Range 22, Ramsey County, Minnesota lying east and north of a line described as beginning at a point on the south line of said Southeast Quarter of Section 13 985 feet west of the southeast corner of said Southeast Quarter of Section 13; thence 78 degrees 40 minutes to the right proceeding in a north-northwesterly direction for 620 feet to a point of curve; thence to the left on a curve having a radius of 100 feet a distance of 157.08 feet to a point of tangent; thence 90 degrees to the right, at right angles to the tangent to said curve at said point of

tangent, a distance of 450 feet; thence 90 degrees to the left a distance of 200 feet; thence 90 degrees to the right a distance of 225 feet, more or less, to the north line of said South ½ of the Southeast Quarter of Section 13.

Except that part of the Southeast Quarter of said Southeast Quarter of Section 13 which lies northeasterly of a line parallel with and distant 100 feet southwesterly of a line described as beginning at a point on the east line of said Section 13, distant 1324.13 feet north of the southeast corner thereof; thence run westerly at an angle of 90 degrees with said east section line for 186.63 feet; thence deflect to the right on a 10 degree curve, delta angle 29 degrees 20 minutes, for 293.33 feet; thence on tangent to said curve for 100 feet and there terminating;

together with all that part of the above described tract, adjoining and southerly of the above described strip, which lies easterly of a line run parallel with and distant 60 feet westerly of the following described line: Beginning at the point of intersection of the above described line with the east line of said Section 13; thence run southerly along the east line of said Section 13 for 540 feet and there terminating;

also together with a triangular piece adjoining and southerly of the first above described strip and westerly of the last described strip, which lies northeasterly of the following described line: From a point on the last described line, distant 150 feet southerly of its point of beginning, run westerly at right angles to said line for 60 feet to the point of beginning of the line to be described; thence run northwesterly to a point on the southerly boundary of the first above described strip, distant 100 feet westerly of its intersection with a line run parallel with and distant 33 westerly of the east line of said Section 13.

Which lies easterly, northerly and easterly of a line described as commencing at said southeast corner of the Southeast Quarter of Section 13; thence westerly, along said south line of the Southeast Quarter of Section 13, a distance of 832.02 feet to the point of beginning of the line to be described; thence deflecting to the right 78 degrees 40 minutes 00 seconds a distance of 750.06 feet; thence deflecting to the left 90 degrees 00 minutes 00 seconds a distance of 204.00 feet; thence deflecting to the right 90 degrees 00 minutes 00 seconds a distance of 638.98 feet to said north line of the south half of the Southeast Quarter of Section 13 and said line there terminating.

WHEREAS, the history of this conditional use permit is as follows:

1. On March 20, 2007, the planning commission held a public hearing. The city staff published a notice in the paper and sent notices to the surrounding property owners. The planning commission gave everyone at the hearing a chance to speak and present written statements. The planning commission also considered the reports and recommendation of city staff. The planning commission recommended that the city council approve this permit.
2. On May 7, 2007, the city council considered reports and recommendations of the city staff and planning commission.

NOW, THEREFORE, BE IT RESOLVED that the city council approve the above-described conditional use permit, because:

1. The use would be located, designed, maintained, constructed and operated to be in conformity with the City's Comprehensive Plan and Code of Ordinances.
2. The use would not change the existing or planned character of the surrounding area.
3. The use would not depreciate property values.
4. The use would not involve any activity, process, materials, equipment or methods of operation that would be dangerous, hazardous, detrimental, disturbing or cause a nuisance to any person or property, because of excessive noise, glare, smoke, dust, odor, fumes, water or air pollution, drainage, water run-off, vibration, general unsightliness, electrical interference or other nuisances.
5. The use would generate only minimal vehicular traffic on local streets and would not create traffic congestion or unsafe access on existing or proposed streets.
6. The use would be served by adequate public facilities and services, including streets, police and fire protection, drainage structures, water and sewer systems, schools and parks.
7. The use would not create excessive additional costs for public facilities or services.
8. The use would maximize the preservation of and incorporate the site's natural and scenic features into the development design.
9. The use would cause minimal adverse environmental effects.

Approval is subject to the following conditions:

1. This planned unit development shall follow the concept plans date-stamped January 11, 2007. These plans are considered concept plans because the applicant must submit design plans to the city for approval for the proposed apartments, town houses, future monastery; shelter and any other future use. Staff may approve minor changes.
2. This planned unit development does not give any approvals for Lot 1, Block 1 since this site has not been proposed for any future development and its future use is unknown. The development of this site would require a revision of this planned unit development and must comply with all city development requirements.
3. The proposed construction must be substantially started within one year of council approval or the permit shall become null and void.
4. The city council shall review this permit in one year.
5. The property owner shall be required to dedicate right of way for a roadway to be studied by the City Engineer during the next three to five year period. The final location of the roadway shall be studied by the City Engineer and reported with a recommendation to the city council. The final need for the roadway has not been determined but will likely be necessary if additional development occurs on this property in excess of that currently being proposed or at higher density levels than approved; and also if property sold includes a major expansion of uses that generate significant additional traffic to be generated at Hill-Murray.
6. The applicant must obtain all necessary and required permits from the Minnesota Department of Transportation, Ramsey County and the Ramsey-Washington Metro Watershed District.
7. The applicant must provide a right-turn lane on Century Avenue into the site, subject to MnDOT's approval.
8. The applicant shall comply with all requirements of the engineering reports by Erin Laberee and Michael Thompson dated February 22, 2007 and by R. Charles Ahl dated April 19, 2007.
9. The applicant shall install sidewalks wherever possible along Larpenteur Avenue.
10. Staff may approve minor changes to the plans.

Seconded by Councilmember Rossbach

A friendly amendment was added to the motion requiring the following conditions be included in the resolution:

11. Establish a neighborhood committee of no less than nine members whose membership composite shall be one representative from Hill-Murray administration or trustees, one day care parent from Maple Tree Day Care, one parent whose child

recommendation to the city council. The final need for the roadway has not been determined but will likely be necessary if additional development occurs on this property in excess of that currently being proposed or at higher density levels than approved; and also if property sold includes a major expansion of uses that generate significant additional traffic to be generated at Hill-Murray.

Seconded by Councilmember Rossbach

Ayes-all

MINUTES
MAPLEWOOD CITY COUNCIL
6:30 p.m., Monday, July 27, 2009
Council Chambers, City Hall
Meeting No. 15-09

(THIS ITEM WAS HEARD OUT OF ORDER PER THE COUNCIL MOTION)

L6. Planned Unit Development Revision For Century Trails Apartments By CommonBond Communities

- a. Senior Planner, Tom Ekstrand gave the report and answered questions of the council.

Mayor Longrie asked if anyone wanted to address the council to come forward.

1. Judy Wordock, Housing Development Manager, CommonBond Communities.
2. Paul Holmes, Architect with Pope Architects.
3. Gary Pearson, Planning Commission member gave the planning commission report.
4. Carolyn Peterson, 1801 Gervais Avenue, Maplewood.

Councilmember Nephew moved to approve the Planned Unit Development Revision For Century Trails Apartments By CommonBond Communities. To also include recommendations from the Planning Commission and Community Design Review Board.

RESOLUTION 09-07-225
CONDITIONAL USE PERMIT REVISION RESOLUTION

WHEREAS, CommonBond Communities applied for a revision of the conditional use permit for a planned unit development (PUD) for the St. Paul's Monastery development plan. This PUD included a 40-unit senior housing apartment building as part of the development project.

WHEREAS, CommonBond Communities has requested approval to build apartment units that have unit size reductions ranging from 550 square feet to 575 square feet of gross floor area with a maximum of 540 square feet or net habitable area which is less than the required 580 square foot minimum area stipulated by city ordinance.

WHEREAS, Section 44-1093(b) of the city ordinances states that the city council may grant deviations from the city ordinance as part of a PUD.

WHEREAS, this permit applies to the property located at the southwest corner of Benet Road and Century Avenue. The legal description is:

Lot 1, Block 2, CENTURY TRAILS COMMONS

WHEREAS, the history of this conditional use permit revision is as follows:

1. On July 7, 2009, the planning commission held a public hearing. The city staff published a notice in the paper and sent notices to the surrounding property owners. The planning commission gave everyone at the hearing a chance to speak and present written statements. The planning commission also considered the reports and recommendation of city staff. The planning commission recommended that the city council approve this permit.
2. On July 27, 2009, the city council considered reports and recommendations of the city staff and planning commission.

NOW, THEREFORE, BE IT RESOLVED that the city council passed the above-described conditional use permit, because:

1. The use would be located, designed, maintained, constructed and operated to be in conformity with the City's Comprehensive Plan and Code of Ordinances.

1. The use would not change the existing or planned character of the surrounding area.

3. The use would not depreciate property values.

4. The use would not involve any activity, process, materials, equipment or methods of operation that would be dangerous, hazardous, detrimental, disturbing or cause a nuisance to any person or property, because of excessive noise, glare, smoke, dust, odor, fumes, water or air pollution, drainage, water run-off, vibration, general unsightliness, electrical interference or other nuisances.

5. The use would generate only minimal vehicular traffic on local streets and would not create traffic congestion or unsafe access on existing or proposed streets.

Seconded by Councilmember Rossbach.

Ayes – All

The motion passed.

MEMORANDUM

TO: James Antonen, City Manager
FROM: Michael Martin, AICP, Planner
Charles Ahl, Assistant City Manager
SUBJECT: **Conditional Use Permit Review, All Metro Glass**
LOCATION: 1357 Cope Avenue
DATE: July 16, 2012

INTRODUCTION

The conditional use permit (CUP) for All Metro Glass at 1357 Cope Avenue is due for its annual review. The CUP allows for a window and door fabrication/installation business. In addition to the CUP, the city council at its meeting on July 25, 2011 approved a parking reduction for this site and design and landscaping plans.

BACKGROUND

On July 25, 2011, the city council approved a conditional use permit, a parking reduction of 66 spaces and design and landscaping plans.

Code Requirement

Section 44-1100(a) of the zoning code states that CUPs shall be reviewed by the city council within one year of approval. At the one-year review, the council may specify an indefinite term for a subsequent review or a specific term not to exceed five years.

DISCUSSION

All Metro Glass has completed all construction and landscaping. There is a decorative screening wall still to be completed. Staff has not heard any neighborhood complaints or concerns. Staff recommends reviewing this permit again in one year to ensure the landscaping has survived and all other conditions of approval continue to be met.

RECOMMENDATION

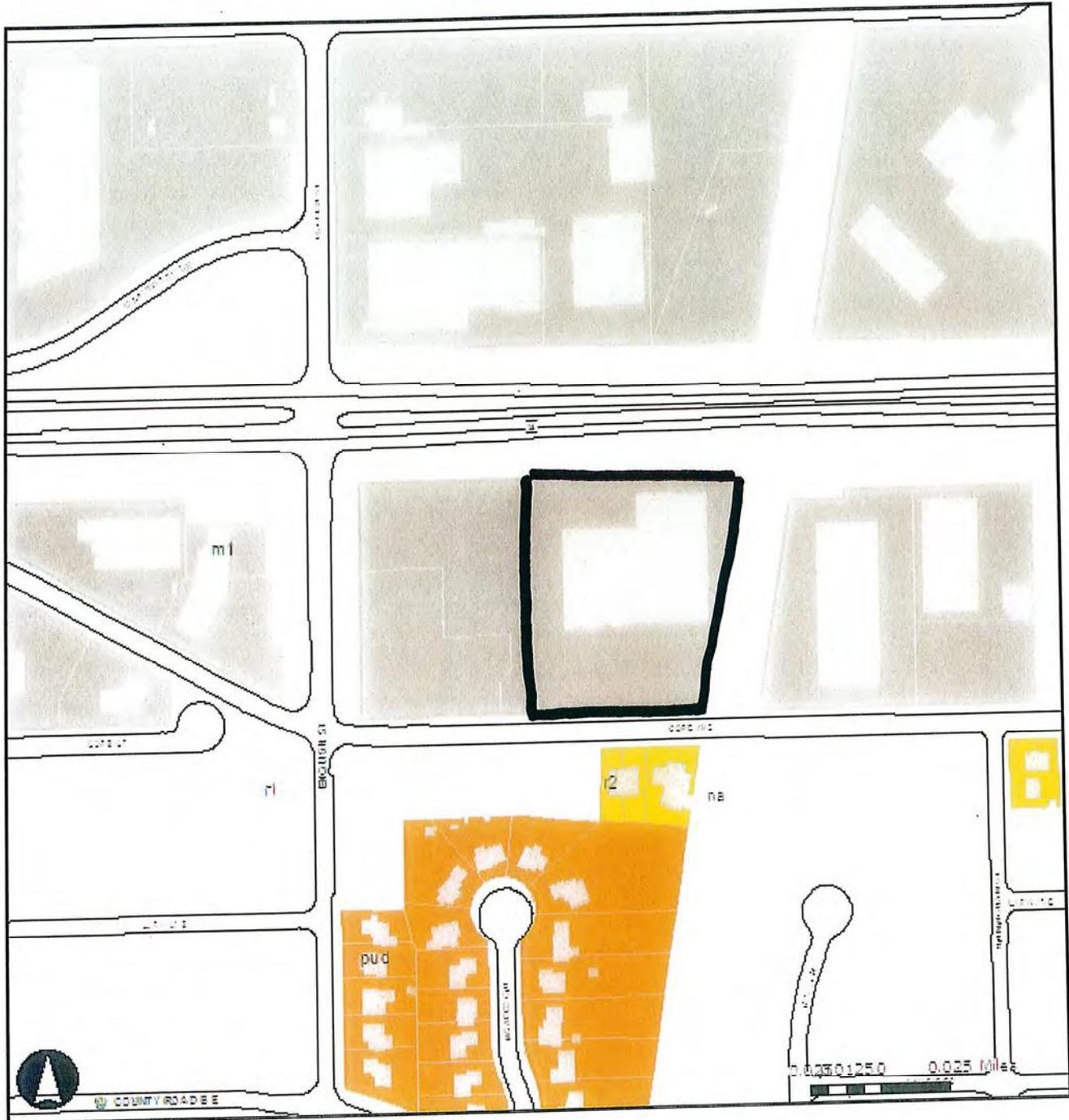
Review the conditional use permit All Metro Glass in one year.

p:sec10/All Metro Glass CUP Review_072312

Attachments:

1. Location/Zoning Map
2. Land Use Plan Map
3. Site/Landscaping Plan
4. City Council Minutes, July 25, 2011
5. CUP Resolution

1357 Cope Avenue



Copyright

MaplewoodBaseMap

Chad Bergo

Parcels: This data set is available to everyone. Fees and policy are published in the Ramsey County Fee Schedule. Charges are variable and are subject to change. See the Ramsey County Fee Schedule for specific information on fees and policy.

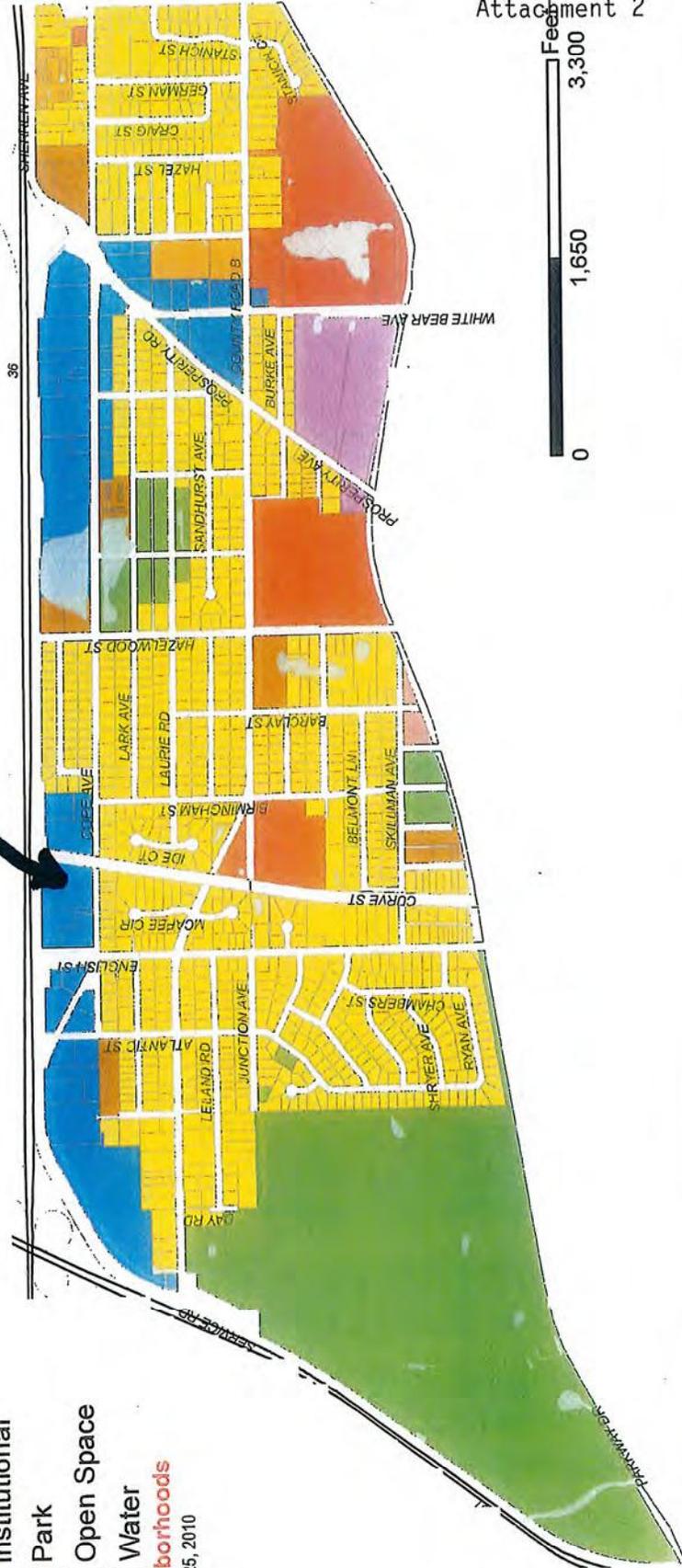
Sherwood Glen - Future Land Use Map

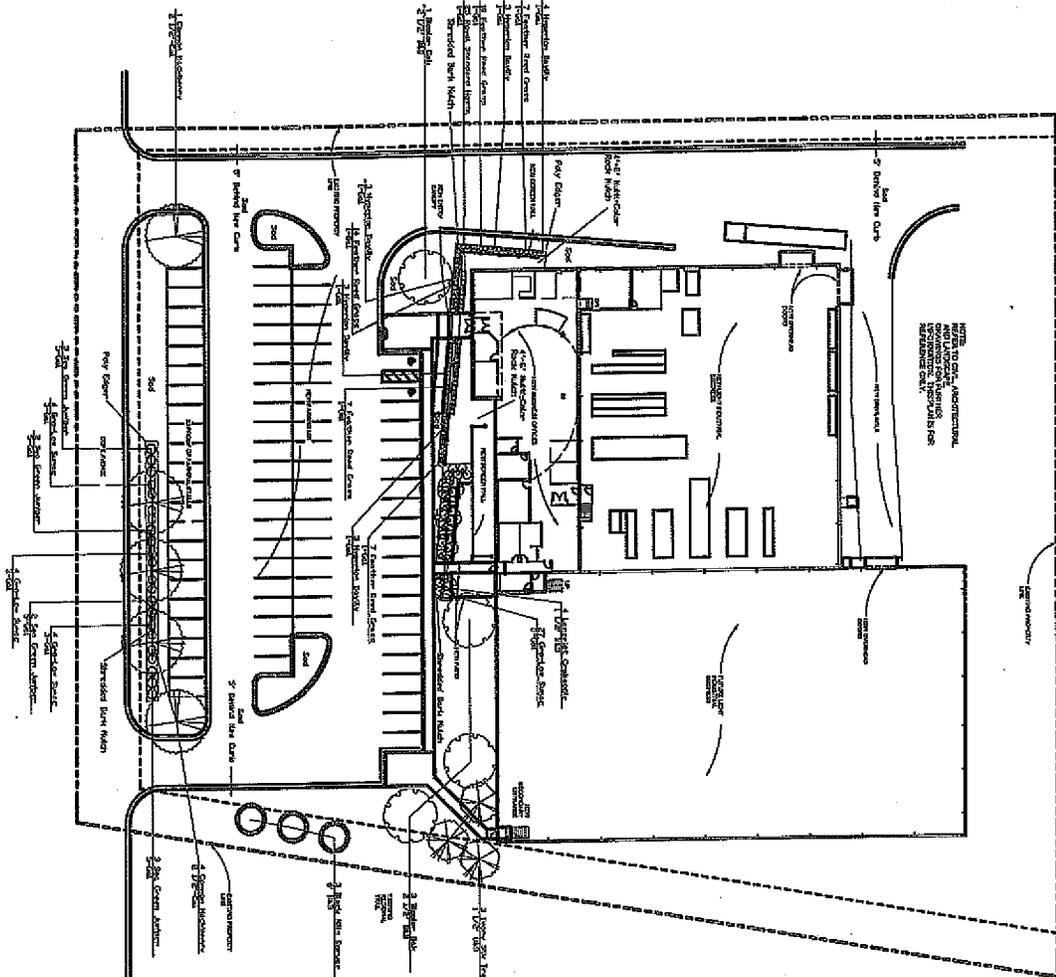
CITY OF MAPLEWOOD
2030
 COMPREHENSIVE PLAN

- Rural/ Low Density Residential (0.5 - 1.5 Units per Acre)
- Low Density Residential (2.6 - 6.0 Units per Acre)
- Medium Density Residential (6.1 - 10.0 Units per Acre)
- High Density Residential (10.1 - 25.0 Units per Acre)
- Mixed Use (6.0 - 31.0 Units per Acre)
- Commercial
- Industrial
- Government
- Institutional
- Park
- Open Space
- Water

Neighborhoods
 January 25, 2010

1357 Cope Avenue





PLANT SCHEDULE

Quantity	Symbol	Scientific Name	Common Name
1	○	1-10 Magnolia	Green Magnolia
2	○	2-10 Green Ash	Green Ash
3	○	3-10 Red Oak	Red Oak
4	○	4-10 White Oak	White Oak
5	○	5-10 Black Oak	Black Oak
6	○	6-10 Bur Oak	Bur Oak
7	○	7-10 Sugar Maple	Sugar Maple
8	○	8-10 Norway Spruce	Norway Spruce
9	○	9-10 Eastern White Pine	Eastern White Pine
10	○	10-10 American Holly	American Holly
11	○	11-10 Japanese Yew	Japanese Yew
12	○	12-10 Japanese Maple	Japanese Maple
13	○	13-10 Japanese Acer	Japanese Acer
14	○	14-10 Japanese Quince	Japanese Quince
15	○	15-10 Japanese Spindle Tree	Japanese Spindle Tree
16	○	16-10 Japanese Dogwood	Japanese Dogwood
17	○	17-10 Japanese Camellia	Japanese Camellia
18	○	18-10 Japanese Lilac	Japanese Lilac
19	○	19-10 Japanese Forsythia	Japanese Forsythia
20	○	20-10 Japanese Weigela	Japanese Weigela
21	○	21-10 Japanese Abutilon	Japanese Abutilon
22	○	22-10 Japanese Clematis	Japanese Clematis
23	○	23-10 Japanese Hydrangea	Japanese Hydrangea
24	○	24-10 Japanese Philadelphus	Japanese Philadelphus
25	○	25-10 Japanese Viburnum	Japanese Viburnum
26	○	26-10 Japanese Cornus	Japanese Cornus
27	○	27-10 Japanese Spirea	Japanese Spirea
28	○	28-10 Japanese Nandina	Japanese Nandina
29	○	29-10 Japanese Ligustrum	Japanese Ligustrum
30	○	30-10 Japanese Euonymus	Japanese Euonymus
31	○	31-10 Japanese Sarcocolla	Japanese Sarcocolla
32	○	32-10 Japanese Picea	Japanese Picea
33	○	33-10 Japanese Juniper	Japanese Juniper
34	○	34-10 Japanese Cypress	Japanese Cypress
35	○	35-10 Japanese Yucca	Japanese Yucca
36	○	36-10 Japanese Agave	Japanese Agave
37	○	37-10 Japanese Cordyline	Japanese Cordyline
38	○	38-10 Japanese Philodendron	Japanese Philodendron
39	○	39-10 Japanese Ficus	Japanese Ficus
40	○	40-10 Japanese Spathoglottis	Japanese Spathoglottis
41	○	41-10 Japanese Clivia	Japanese Clivia
42	○	42-10 Japanese Strelitzia	Japanese Strelitzia
43	○	43-10 Japanese Anthurium	Japanese Anthurium
44	○	44-10 Japanese Begonia	Japanese Begonia
45	○	45-10 Japanese Calceolaria	Japanese Calceolaria
46	○	46-10 Japanese Primula	Japanese Primula
47	○	47-10 Japanese Ranunculus	Japanese Ranunculus
48	○	48-10 Japanese Delphinium	Japanese Delphinium
49	○	49-10 Japanese Aquilegia	Japanese Aquilegia
50	○	50-10 Japanese Ranunculus	Japanese Ranunculus
51	○	51-10 Japanese Anemone	Japanese Anemone
52	○	52-10 Japanese Tulip	Japanese Tulip
53	○	53-10 Japanese Allium	Japanese Allium
54	○	54-10 Japanese Iris	Japanese Iris
55	○	55-10 Japanese Hosta	Japanese Hosta
56	○	56-10 Japanese Philoxera	Japanese Philoxera
57	○	57-10 Japanese Clematis	Japanese Clematis
58	○	58-10 Japanese Hydrangea	Japanese Hydrangea
59	○	59-10 Japanese Philadelphus	Japanese Philadelphus
60	○	60-10 Japanese Viburnum	Japanese Viburnum
61	○	61-10 Japanese Cornus	Japanese Cornus
62	○	62-10 Japanese Spirea	Japanese Spirea
63	○	63-10 Japanese Nandina	Japanese Nandina
64	○	64-10 Japanese Ligustrum	Japanese Ligustrum
65	○	65-10 Japanese Euonymus	Japanese Euonymus
66	○	66-10 Japanese Sarcocolla	Japanese Sarcocolla
67	○	67-10 Japanese Picea	Japanese Picea
68	○	68-10 Japanese Juniper	Japanese Juniper
69	○	69-10 Japanese Cypress	Japanese Cypress
70	○	70-10 Japanese Yucca	Japanese Yucca
71	○	71-10 Japanese Agave	Japanese Agave
72	○	72-10 Japanese Cordyline	Japanese Cordyline
73	○	73-10 Japanese Philodendron	Japanese Philodendron
74	○	74-10 Japanese Ficus	Japanese Ficus
75	○	75-10 Japanese Spathoglottis	Japanese Spathoglottis
76	○	76-10 Japanese Clivia	Japanese Clivia
77	○	77-10 Japanese Strelitzia	Japanese Strelitzia
78	○	78-10 Japanese Anthurium	Japanese Anthurium
79	○	79-10 Japanese Begonia	Japanese Begonia
80	○	80-10 Japanese Calceolaria	Japanese Calceolaria
81	○	81-10 Japanese Primula	Japanese Primula
82	○	82-10 Japanese Ranunculus	Japanese Ranunculus
83	○	83-10 Japanese Delphinium	Japanese Delphinium
84	○	84-10 Japanese Aquilegia	Japanese Aquilegia
85	○	85-10 Japanese Ranunculus	Japanese Ranunculus
86	○	86-10 Japanese Anemone	Japanese Anemone
87	○	87-10 Japanese Tulip	Japanese Tulip
88	○	88-10 Japanese Allium	Japanese Allium
89	○	89-10 Japanese Iris	Japanese Iris
90	○	90-10 Japanese Hosta	Japanese Hosta
91	○	91-10 Japanese Philoxera	Japanese Philoxera
92	○	92-10 Japanese Clematis	Japanese Clematis
93	○	93-10 Japanese Hydrangea	Japanese Hydrangea
94	○	94-10 Japanese Philadelphus	Japanese Philadelphus
95	○	95-10 Japanese Viburnum	Japanese Viburnum
96	○	96-10 Japanese Cornus	Japanese Cornus
97	○	97-10 Japanese Spirea	Japanese Spirea
98	○	98-10 Japanese Nandina	Japanese Nandina
99	○	99-10 Japanese Ligustrum	Japanese Ligustrum
100	○	100-10 Japanese Euonymus	Japanese Euonymus

LANDSCAPE NOTES:
 1. All quantities shall be for 100% plant material to be installed in accordance with the respective nursery standards. No dead or dormant trees or shrubs will be accepted.
 2. Planting shall be in a minimum of 100% shade and 100% sun.
 3. All plants shall be installed in accordance with the respective nursery standards. No dead or dormant trees or shrubs will be accepted.
 4. All plants shall be installed in accordance with the respective nursery standards. No dead or dormant trees or shrubs will be accepted.
 5. All plants shall be installed in accordance with the respective nursery standards. No dead or dormant trees or shrubs will be accepted.
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 8. All plants shall be installed in accordance with the respective nursery standards. No dead or dormant trees or shrubs will be accepted.
 9. All plants shall be installed in accordance with the respective nursery standards. No dead or dormant trees or shrubs will be accepted.
 10. All plants shall be installed in accordance with the respective nursery standards. No dead or dormant trees or shrubs will be accepted.

292 design group
 3101 1/2 Avenue North
 Northbrook, IL 60062
 Tel: 847.577.2929
 Fax: 847.577.2928
 www.292design.com

Alan Whidby
 Landscapes
 P.O. Box 1153
 Northbrook, IL 60062
 Tel: 847.577.2929
 Fax: 847.577.2928
 www.292design.com

ISSUED FOR
 CONSTRUCTION

1357 COPE AVENUE
 L101

MINUTES
MAPLEWOOD CITY COUNCIL
7:00 p.m., Monday, July 25, 2011
Council Chambers, City Hall
Meeting No. 14-11

J. NEW BUSINESS

2. Approval of Conditional Use Permit Revision, Parking Reduction Waiver and Design Review Former Corner Kick Soccer Center, 1357 Cope Avenue

Senior Planner Ekstrand gave the report. Planning Commissioner Al Bierbaum spoke. Matt Ledvina from the Community Design Review Board addressed the council. Mike McGrath, owner of the building located at 1357 Cope Avenue addressed the council.

Councilmember Nephew moved to approve the Conditional Use Permit Revision, Parking Reduction Waiver and Design Review Former Corner Kick Soccer Center, 1357 Cope Avenue with the following condition added. The uses of the building shall be restricted to those that would generate the amount of parking that is available on the site.

Seconded by Councilmember Llanas Ayes – All

The motion passed.

CONDITIONAL USE PERMIT REVISION RESOLUTION

WHEREAS, Mike McGrath requested a revision to the conditional use permit for the former Corner Kick Soccer Center to make exterior building and site renovations because the proposed building improvements are taking place within 350 feet of residential property.

WHEREAS, Section 44-637(b) of the city ordinances requires a conditional use permit for any building or exterior use in the M-1 zoning district if it is within 350 feet of a residential district.

WHEREAS, this permit applies to the property at 1357 Cope Avenue legally described as:

10-29-22-32-00-14

IN SECTION 10, TOWNSHIP 29, RANGE 22, EXCEPT WEST 398 FT; THE PARTS OF HWY 36 & WEST RAILROAD R/W (Bruce Vento Trail) OF THE NW ¼ OF SW 14 (SUBJECT TO ROAD)

WHEREAS, the history of this conditional use permit revision is as follows:

1. On July 5, 2011, the planning commission held a public hearing. The city staff published a notice in the paper and sent notices to the surrounding property owners. The planning commission gave persons at the hearing a chance to speak and present written statements. The commission also considered reports and recommendations of the city staff. The planning commission recommended that the city council approve the conditional use permit revision.
2. On July 25, 2011 the city council discussed the proposed conditional use permit revision. They considered reports and recommendations from the planning commission and city staff.

NOW, THEREFORE, BE IT RESOLVED that the city council approves the above-described conditional use permit revision for the following reasons:

1. The use would be located, designed, maintained, constructed and operated to be in conformity with the City's Comprehensive Plan and Code of Ordinances.
2. The use would not change the existing or planned character of the surrounding area.
3. The use would not depreciate property values.
4. The use would not involve any activity, process, materials, equipment or methods of operation that would be dangerous, hazardous, detrimental, disturbing or cause a nuisance to any person or property, because of excessive noise, glare, smoke, dust, odor, fumes, water or air pollution, drainage, water run-off, vibration, general unsightliness, electrical interference or other nuisances.
5. The use would not exceed the design standards of any affected street.
6. The use would be served by adequate public facilities and services, including streets, police and fire protection, drainage structures, water and sewer systems, schools and parks.
7. The use would not create excessive additional costs for public facilities or services.
8. The use would maximize the preservation of and incorporate the site's natural and scenic features into the development design.

9. The use would cause no more than minimal adverse environmental effects.

Approval is subject to the following conditions:

1. All construction shall follow the plans date-stamped May 17, 2011. The city council shall review any major changes proposed. Staff may approve minor changes.
2. The city council shall review this permit in one year.
3. The applicant shall comply with all conditions of the city engineer, building official and fire marshal.
4. The applicant shall revise the landscaping plan for staff approval to provide for a visual buffer along the frontage of the property between the two driveways to block headlights from shining into neighboring properties. This buffer shall be at least three to four feet tall.
5. Site lights and noise shall be controlled to follow the requirements of the city ordinance.
6. This permit includes a parking waiver for the applicant to provide 60 parking spaces with the potential for 23 additional future spaces. If further spaces are needed, the applicant shall restripe the parking lot to provide at least 15 additional spaces at the ends of the proposed parking rows.

The Maplewood City Council adopted this resolution on July 25, 2011.

MEMORANDUM

TO: James Antonen, City Manager
FROM: Michael Martin, AICP, Planner
Charles Ahl, Assistant City Manager
SUBJECT: **Conditional Use Permit Review, South Metro Human Services Mental Health Care Facility**
LOCATION: 1111 Viking Drive
DATE: July 16, 2012

INTRODUCTION

The conditional use permit (CUP) for South Metro Human Services at 1111 Viking Drive is due for its annual review. The CUP allows South Metro Human Services to operate the Community Foundations program, a mental health care facility with temporary housing for 16 patients, at the former Ethan Allen furniture store. The city ordinance required a CUP for the housing portion of this proposal. The counseling, clinic and office uses are allowed by ordinance.

BACKGROUND

On July 25, 2011, the city council approved a conditional use permit, a parking reduction of 21 spaces and design and landscaping plans.

Code Requirement

Section 44-1100(a) of the zoning code states that CUPs shall be reviewed by the city council within one year of approval. At the one-year review, the council may specify an indefinite term for a subsequent review or a specific term not to exceed five years.

DISCUSSION

South Metro Human Services has received a permit for the renovation work but it is not complete at this point. Staff is not aware of any neighborhood complaints or concerns at this point. Because renovation work is yet to be completed and the site is not fully operational yet, staff recommends reviewing this permit again in one year.

RECOMMENDATION

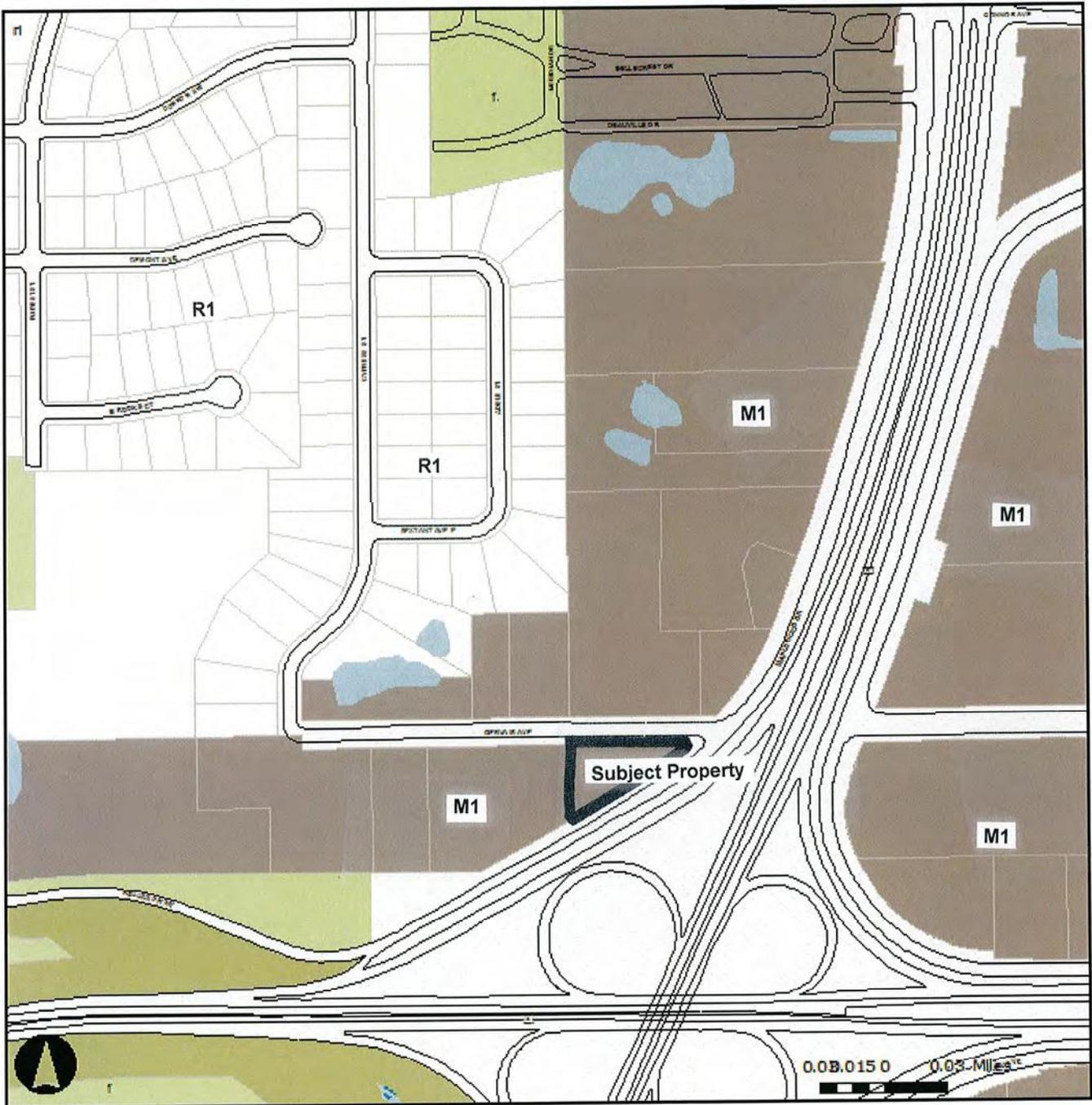
Review the conditional use permit South Metro Human Services in one year.

p:\sec9\South Metro CUP Review_072312

Attachments:

1. Location/Zoning Map
2. Land Use Plan Map
3. Site Plan
4. City Council Minutes, July 25, 2011

Location/Zoning Map



Copyright

MaplewoodBaseMap

Chad Bergo

Parcels: This data set is available to everyone. Fees and policy are published in the Ramsey County Fee Schedule. Charges are variable and are subject to change. See the Ramsey County Fee Schedule for specific information on fees and policy.

Kohlman Lake - Future Land Use Map

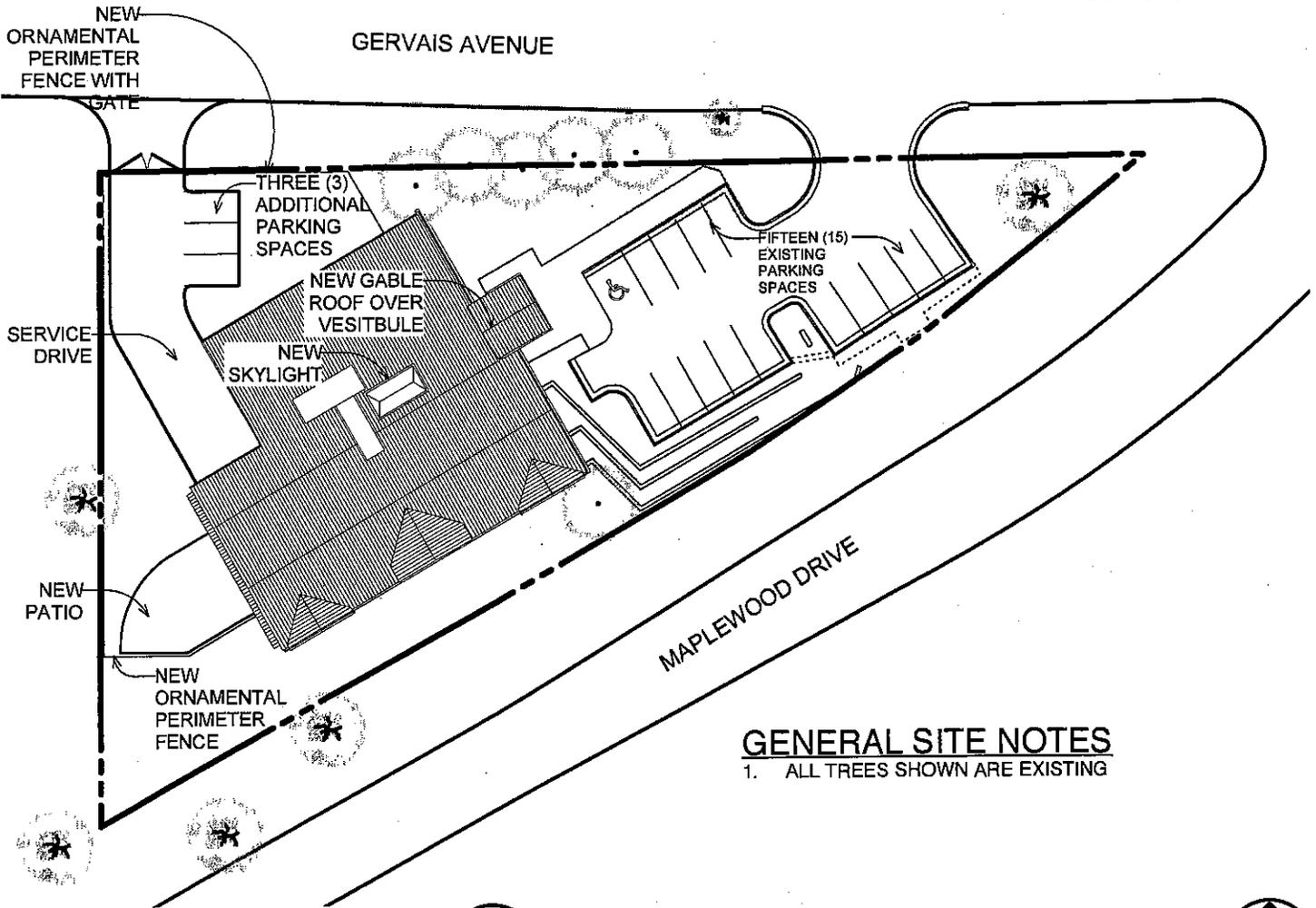
-  Rural/ Low Density Residential (0.5 - 1.5 Units per Acre)
-  Low Density Residential (2.6 - 6.0 Units per Acre)
-  Medium Density Residential (6.1 - 10.0 Units per Acre)
-  High Density Residential (10.1 - 25.0 Units per Acre)
-  Mixed Use (6.0 - 31.0 Units per Acre)

-  Commercial
-  Industrial
-  Government
-  Institutional
-  Park
-  Open Space
-  Water

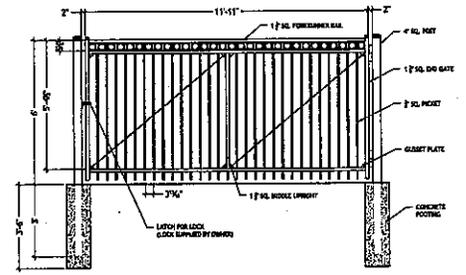
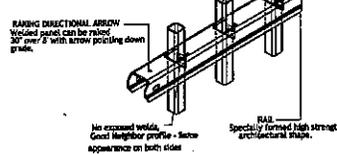
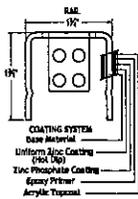
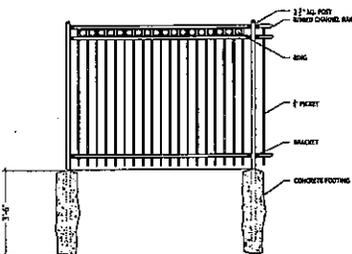
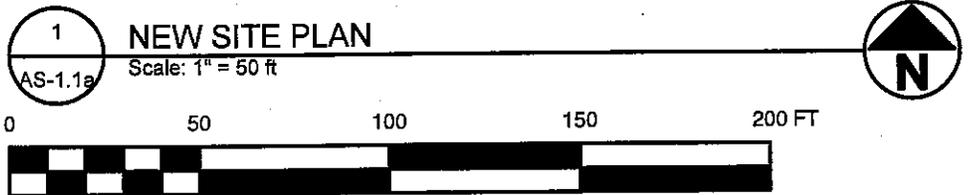
Neighborhoods
January 25, 2010



PROPOSED
COMMUNITY FOUNDATIONS
1111 VIKING DRIVE



GENERAL SITE NOTES
1. ALL TREES SHOWN ARE EXISTING



3 ORNAMENTAL METAL FENCE
Scale: VARIES
AS-1.1a

2 ORNAMENTAL METAL SWING GATE
Scale: 1/8" = 1'-0"
AS-1.1a

No.	Date	Appr.	Revision Notes	Design Firm WINNING WENDE ASSOCIATES, INC. 275 FOURTH STREET EAST, SUITE 620 SAINT PAUL, MN 55101 PHONE: 651.221.0915 FAX: 651.222.8259	Project Title SOUTH METRO HUMAN SERVICES COMMUNITY FOUNDATIONS RELOCATION 1111 VIKING DRIVE EAST MAPLEWOOD, MN 55109	Project Manager SM	Project ID 2009-04
						Drawn By SM	Scale
						Reviewed By RL	Drawing No. AS-1.1a
						Date 20110222	
						CAD File Name 2009-01-South_Metro-Maplewood 3.vwx	

MINUTES
MAPLEWOOD CITY COUNCIL
7:00 p.m., Monday, July 25, 2011
Council Chambers, City Hall
Meeting No. 14-11

J. NEW BUSINESS

**3. Approval of Conditional Use Permit, Design Review and Parking Reduction
Authorization for South Metro Human Services Mental Health Care Facility, 1111
Viking Drive**

Senior Planner Ekstrand gave the report. Planning Commissioner Al Bierbaum spoke. Matt Senior Planner Ekstrand gave the staff report. Matt Ledvina from the Community Design Review Board addressed the council. Planning Commissioner Al Bierbaum spoke. The following people spoke:

1. Ken Frigstad, Maplewood
2. John Wycoff, Maplewood
3. Bob Zick, North St. Paul
4. Don Huot, Maplewood
5. Terry Schneider, Conditional Use Permit Applicant
6. Dick Seppala, Maplewood
7. Ken Frigstad, Maplewood – second appearance

Councilmember Llanas moved to approve the Conditional Use Permit, Design Review and Parking Reduction Authorization for South Metro Human Services Mental Health Care Facility, 1111 Viking Drive as amended.

RESOLUTION 11-7-602A
CONDITIONAL USE PERMIT

WHEREAS, South Metro Human Services has applied for a conditional use permit to operate the Community Foundations program, a mental health care facility with temporary housing for 16 patients.

WHEREAS, Section 44-1092(3) of the city ordinances requires a conditional use permit for residential programs in zoning districts where they are not specifically prohibited.

WHEREAS, this permit applies to the property located at 1111 Viking Drive. The legal description is:

The North 55 rods of the West 32 rods of the Southeast ¼ of Section 9, Township 29, Range 22, except portions taken by the State of Minnesota for highway purposes. Above property is subject to a cartway over and across North 16 feet, more or less, thereof.

WHEREAS, the history of this conditional use permit is as follows:

1. On July 5, 2011, the planning commission held a public hearing. The city staff published a notice in the paper and sent notices to the surrounding property owners. The planning commission gave everyone at the hearing a chance to speak and present written statements. The planning commission also considered the report and recommendation of city staff. The planning commission recommended that the city council approve this permit.

2. On July 25, 2011, the city council considered reports and recommendations of the city staff and planning commission.

NOW, THEREFORE, BE IT RESOLVED that the city council approved the above-described conditional use permit, because:

1. The use would be located, designed, maintained, constructed and operated to be in conformity with the City's Comprehensive Plan and this Code.
2. The use would not change the existing or planned character of the surrounding area.
3. The use would not depreciate property values.
4. The use would not involve any activity, process, materials, equipment or methods of operation that would be dangerous, hazardous, detrimental, disturbing or cause a nuisance to any person or property, because of excessive noise, glare, smoke, dust, odor, fumes, water or air pollution, drainage, water run-off, vibration, general unsightliness, electrical interference or other nuisances.
5. The use would not exceed the design standards of any affected street.
6. The use would be served by adequate public facilities and services, including streets, police and fire protection, drainage structures, water and sewer systems, schools and parks.
7. The use would not create excessive additional costs for public facilities or services.
8. The use would maximize the preservation of and incorporate the site's natural and scenic features into the development design.
9. The use would cause no more than minimal adverse environmental effects.

Approval is subject to the following conditions:

1. All construction shall follow the site plan approved by the city. Staff may approve minor changes.
2. The proposed use must be substantially started within one year of council approval or the permit shall become null and void. The council may extend this deadline for one year.
3. The city council shall review this permit in one year.
4. Before the applicant obtains a building permit, they shall sign an agreement with the city agreeing to pay an annual assessment of \$1,000 per year for ten years to defray the cost of police calls to the facility.

5. Additional housing units cannot be added without a revision of this permit.
6. The applicant shall provide on-site staffing 24 hours a day and 365 days a year, this is to ensure the health and safety of the residents in accordance with Minnesota Statute Section 245A.11.
7. This conditional use permit is granted based on the pertinent requirements of federal and state laws, which are Minnesota Statute Section 245A.11 and the requirements of the FHA, the FHAA and the ADA (the Fair Housing Act, the Fair Housing Act Amendment of 1988 and the American's with Disabilities Act) which all have requirements about accommodations for people with disabilities in various ways.

The Maplewood City Council approved this resolution on July 25, 2011.

Seconded by Councilmember Nephew Ayes – All

The motion passed.

AGENDA REPORT

TO: James Antonen, City Manager
FROM: Michael Thompson, Public Works Director/City Engineer
SUBJECT: **Approval of Resolution Adopting Support for Municipal Agreement Funding Application, County Road D Court Improvements, City Project 10-20**
DATE: July 18, 2012

INTRODUCTION

City staff is planning to pursue Mn/DOT Municipal Agreement funding for County Rd D Court Improvements. The Municipal Agreement program is administered by Mn/DOT and it provides local agencies funding to make improvements that benefit the trunk highway system. A resolution of support from the City Council is necessary for the submittal of the Municipal Agreement funding application.

BACKGROUND

Mn/DOT is currently soliciting applications for the Municipal Agreement program for Fiscal Year (FY) 2014. The Municipal Agreement program provides funding for construction projects that are administered by local agencies and provide a benefit to both the local community and the trunk highway system. The deadline for the submittal of funding application is July 31, 2012, and the application needs to include a resolution of support from the City Council.

The County Road D Court Improvement project, City Project 10-20, is proposed to be submitted for grant funding. Mn/DOT and the City have participated in numerous discussions over the past several years on the County Road D Court access at TH 61. Mn/DOT's desire is to close this access point; however access needs to be maintained to the properties and businesses along County Road D Court. The County Road D Court Improvements project would close the access at TH 61 and provide an alternative access from the County Road D/Hazelwood Street intersection to the east. This TH 61 access closure is eligible for Municipal Agreement funding. The attached exhibit identifies the proposed improvements that would be included in the application.

RECOMMENDATION

It is recommended that the city council approve the attached Resolution in support of the County Road D Court Improvements, C.P. 10-20 – Municipal Agreement Funding application.

Attachments:

1. Resolution: County Road D Court Improvements, C.P. 10-20 - Municipal Agreement Funding
2. County Road D Court Improvements Draft Plan

**CITY OF MAPLEWOOD
RAMSEY COUNTY, MINNESOTA**

**A RESOLUTION SUPPORTING MNDOT MUNICIPAL AGREEMENT APPLICATION
SUBMITTAL FOR THE COUNTY ROAD D COURT IMPROVEMENTS**

RESOLUTION NO. _____

WHEREAS, the City Council of the City of Maplewood is the official governing body; and

WHEREAS, the City of Maplewood is planning for improvements to County Road D Court east of Trunk Highway (TH) 61 which include the closure of the County Road D Court access to TH 61; and

WHEREAS, the City of Maplewood is requesting financial participation for the TH 61 access closure at County Road D Court and associated improvements from the Minnesota Department of Transportation through the Municipal Agreement program; and

WHEREAS, the City of Maplewood would be responsible for paying a portion of the project costs, including any costs ineligible for funding through this program; and

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD,
MINNESOTA:**

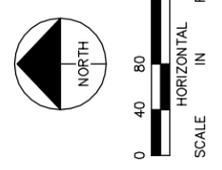
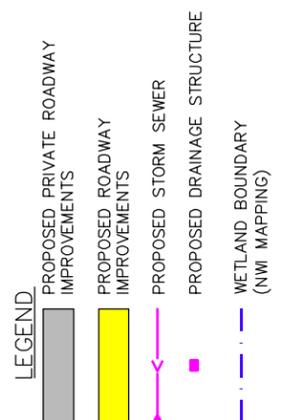
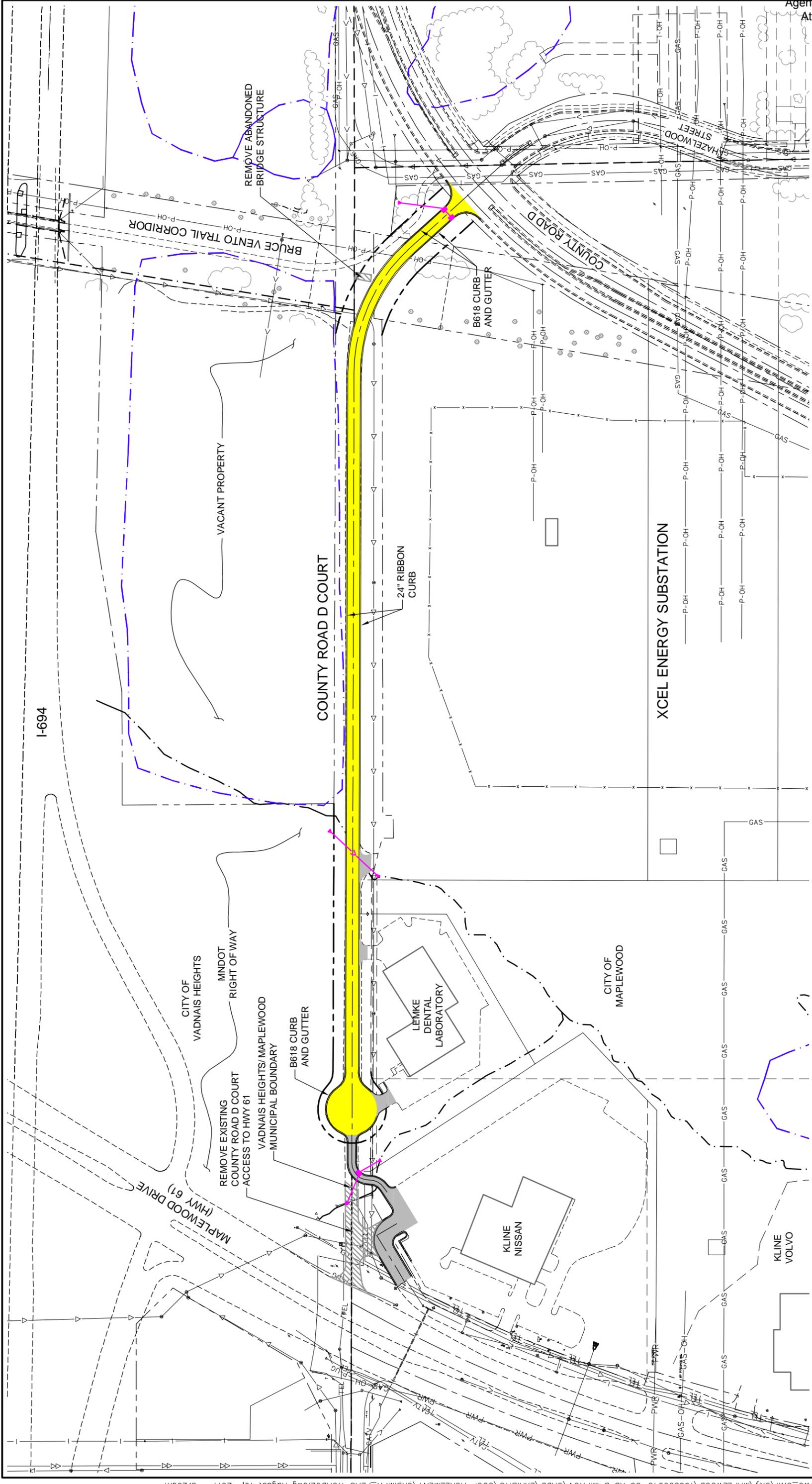
1. The City of Maplewood is hereby authorized to apply for Municipal Agreement funding for City Project 10-20, County Road D Court Improvements.
2. The City of Maplewood is committed to complete this project if Municipal Agreement Funding is provided.

Approved this 23rd day of July 2012.

ATTEST:

Karen Guilfoile, City Clerk

Will Rossbach, Mayor



TH 61 ACCESS CLOSURE AT COUNTY ROAD D COURT
MnDOT MUNICIPAL AGREEMENT APPLICATION
MnDOT FISCAL YEAR 2013

COUNTRY ROAD D COURT IMPROVEMENTS

City of Maplewood, Minnesota
Department of Public Works
Engineering Division

Kimley-Horn
and Associates, Inc.

K:\TWC_civil\city\Maplewood\16050040-CO RD D IMPROV\CADD\EXHIBITS\COOP AGREEMENT\CRDMPR_FAS-ROAD2.dwg August 10, 2011 - 8:29am

AGENDA REPORT

TO: James Antonen, City Manager
FROM: Michael Thompson, City Engineer / Dep. Public Works Director
SUBJECT: **East Metro Public Safety Training Center, City Project 09-09, Approval of Resolution Approving Plans and Specifications and Adverting for Bids (Bid Package 2)**
DATE: July 18, 2012

INTRODUCTION

The council will consider approving final plans and specifications and authorizing advertising for bids for the mass grading and cleanup portion of the project (Bid Package 2). The bid opening for the second bid package for this project is proposed for 10:00 a.m. on August 17, 2012.

BACKGROUND / DISCUSSION

The project is currently on schedule. At the June 25, 2012 council meeting all of the necessary approvals were received to facilitate the work, including the approvals being brought forward by the Community Development Department as a separate report namely: Comprehensive Plan Amendment, Conditional Use Permit for PUD, Design Review, and Wetland Map Amendment. The following is the current schedule.

Bid Package 1 (Utilities)

Bid Package #1 Construction Starts	August 2012
Bid Package #1 Construction Complete	October 2012

Bid Package 2 (Mass Grading/Cleanup)

City Council Approves Bid Package #2 Plans & Specs and Authorizes Ad for Bids.	July 23, 2012
Bid Package #2 Construction Starts	September 2012
Bid Package #2 Construction Complete	November 2012

Bid Package 3 (Facility Improvements/Marshlands)

City Council Approves Bid Package #3 Plans & Specs and Authorizes Ad for Bids	Early 2013
Bid Package #3 Construction Starts	May 2013
Bid Package #3 Construction Complete	September 2013

In addition, the City received the executed property transfer document from MnDOT this week. This approval will allow the Mass Grading and Soil Cleanup to proceed once the utilities have been installed under Bid Package 1.

BUDGET

The total approved budget is \$4,335,000. This action will not affect the approved budget.

RECOMMENDATION

It is recommended that the city council approve the attached resolution for City Project 09-09: Approving Plans and Specification and Advertisement for Bids (Bid Package 2).

Attachments:

1. Resolution Approving Plans and Advertising for Bid
2. Project Location Map

RESOLUTION
APPROVING PLANS
ADVERTISING FOR BIDS
(BID PACKAGE 2)

WHEREAS, pursuant to resolution passed by the city council on May 14, 2012 and June 25, 2012 plans and specifications for the East Metro Public Safety Training Center Improvements, City Project 09-09, have been prepared by (or under the direction of) the city engineer, who has presented such plans and specifications to the council for approval,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD, MINNESOTA:

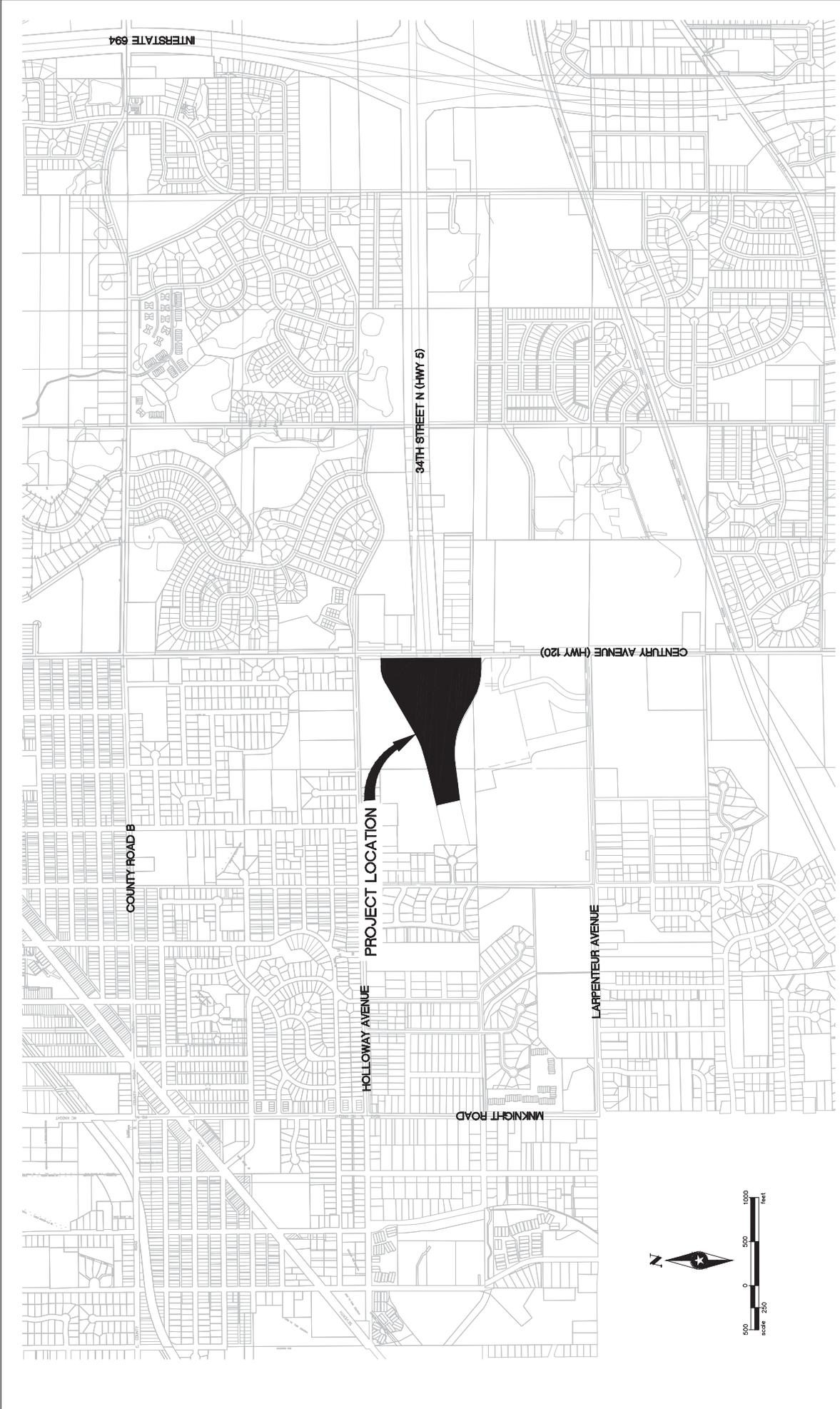
1. Such plans and specifications, a copy of which are attached hereto and made a part hereof, are hereby approved and ordered placed on file in the office of the city engineer.
2. The city clerk or office of the city engineer shall prepare and cause to be inserted in the official paper and in the Construction Bulletin an advertisement for bids upon the making of such improvement under such approved plans and specifications. The advertisement shall be published twice, at least twenty-one days before the date set for bid opening, shall specify the work to be done, shall state that bids will be publicly opened and considered by the council at 10:00 a.m. on the seventeenth day of August, 2012, at city hall and that no bids shall be considered unless sealed and filed with the clerk and accompanied by a certified check or bid bond, payable to the City of Maplewood, Minnesota for five percent of the amount of such bid.
3. The city clerk and city engineer are hereby authorized and instructed to receive, open, and read aloud bids received at the time and place herein noted, and to tabulate the bids received. The council will consider the bids, and the award of a contract, at the regular city council meeting of August 27, 2012.

FIGURE NO. 1

LOCATION MAP
EAST METRO PUBLIC SAFETY TRAINING CENTER
MAPLEWOOD, MINNESOTA

FILE NO.
117956
DATE:
05/01/12

PHONE / 651-490-2000
5535 VADNAS CENTER DR.
ST. PAUL, MN 55110-5196
www.sehinc.com



MEMORANDUM

TO: City Council
FROM: H. Alan Kantrud, General Counsel
SUBJECT: **Agenda Item**
DATE: July 17, 2012

INTRODUCTION

Maplewood was approached in 2010 by Tubman to ‘put-in’ for a grant from the State of Minnesota to improve the Priory/Monastery building for the furtherance of Tubman’s mission (the building will serve as the Tubman office as well as a placement center for their clients). In Order to put the building to these uses, much of the interior needed to be upgraded, including the electrical and sprinkling systems, which is what the request of the State was made to address. The State bonded in 2012 and awarded Maplewood \$2 million dollars for the upgrades. The City must now document the acceptance of the Grant and its relationship with Tubman in administering the money.

BACKGROUND

When the Sisters at the Maplewood Priory decided to construct a new facility to the north on vacant land they owned, they sold their existing building to Tubman. Tubman was deeded the Priory/Monastery located in eastern Maplewood, where Larpenteur and Highway 5 meet, next to Hill-Murray High School. Tubman needed a larger location than the prior headquarters, located in Lake Elmo, and also wanted to integrate a residential shelter program as well. That building suited their needs and is well-situated for their purposes in serving the east metro.

In 2010 Tubman initiated a conversation with the City about serving as a fiscal agent that would be eligible to make a request for bonding dollars from the State of Minnesota. The City of Maplewood agreed to be the “public entity” for bonding purposes and the bill was introduced last year. As you are aware, Maplewood’s proposed fire-training facility and the Maplewood/Tubman facility both received bonding dollars. In the case of Maplewood/Tubman, the commitment was for \$2,000,000.00 worth of proceeds from the GO Bonds issued. That grant was made in the following legislative action:

LAWS 2012, CHAPTER 293, Section 18, Subdivision 3, Sec. 18. HUMAN SERVICES

Subd. 3. Maplewood - Harriet Tubman Center - 2,000,000

For a grant to the city of Maplewood to design, renovate, and equip Harriet Tubman Center East to be used as a regional safety service center for domestic violence shelter, legal services, youth programs, mental and chemical health services, and community education.

DISCUSSION

Due to the public nature of the State’s GO Bonds, only projects conducted by or for the benefit of “governmental programs” are eligible to receive such funds. This is the reason Maplewood agreed to be the proposed beneficiary for purposes of applying for the Grant in the first place.

While Maplewood has no intention of running the Tubman facility, it needs to have a “relationship” to the entity that does (Tubman). This method of channeling public/State dollars into otherwise non-State projects is not new. In fact it happens with great regularity. The most famous of which are the sports facilities that have received public dollars.

In the case of Maplewood, the relationship between the City is Tubman explained thus:

Maplewood supports a general governmental program of providing public safety and protection to residents and visitors through its police and fire programs. Recognizing that domestic violence and the problems associated with it are corrosive to the community, supporting the Tubman service center is therefore in keeping with that general governmental program as it relates to public safety. Minnesota State Statutes, Chapter 412.211 specifically authorizes Statutory Cities to act very broadly as required to serve its mission and deliver to the citizens those programs deemed worthy:

412.211 GENERAL STATUTORY CITY POWERS.

Every city shall be a municipal corporation having the powers and rights and being subject to the duties of municipal corporations at common law. Each shall have perpetual succession, may sue and be sued, may use a corporate seal, may acquire, either within or without its corporate limits, such real and personal property as the purposes of the city may require, by purchase, gift, devise, condemnation, lease or otherwise, and may hold, manage, control, sell, convey, lease, or otherwise dispose of such property as its interests require. The powers listed in this act are not exclusive and other provisions of law granting additional powers to cities or to classes of cities shall apply except where inconsistent with this chapter.

Therefore, in pursuit of that strong goal of the City to provide outstanding public safety, the City will be entering into a Ground Lease with Tubman to “lease” the facility for a period of time equal to 125% of the useful life of the improvements made with the public monies provided. Tubman and the City will also contemporaneously execute a “Use Agreement” whereby it is agreed that the facility shall be operated at all times by Tubman while it is under Lease to the City. Not only do these documents fully-explain the relationship of the parties, they also strictly adhere to the requirements imposed by the State in awarding the Grant.

The documents impose obligations on Tubman, primarily, and call for no payments to be made to either party, but do require Tubman to provide annual accountings to the City, which will in turn be reported to the State on an annual basis regarding the expenditure of the bond proceeds and completion of the project.

RECOMMENDATION

Approve Resolution Accepting and Executing State Grant Agreement and enter into a Ground Lease and Companion Use Agreement with Tubman for purposes of administering the Grant.

Attachments:

- (1) Proposed Resolution
- (2) State Grant Agreement
- (3) Ground Lease
- (4) Use Agreement

A RESOLUTION FOR THE ESTABLISHMENT OF A GOVERNMENTAL PROGRAM IN
CONJUNCTION WITH TUBMAN FOR THE ADMINISTRATION OF THE STATE GRANT
AWARDED THROUGH THE STATE BONDING PROCESS FOR IMPROVEMENTS

WHEREAS, the City of Maplewood has as one of its core goals the maintenance of peace and harmony and justice in its jurisdiction by and through its public safety authority and police power and,

WHEREAS, the City of Maplewood recognizes that the issue of domestic violence and violence towards women and children is a real and corrosive problem in society generally and Maplewood specifically and,

WHEREAS, the City of Maplewood supports Tubman, a non profit dedicated to eradicating domestic violence and reducing its effects on women children and society and,

WHEREAS, Tubman has secured the building and grounds of the former Priory in Maplewood to relocate its headquarters to and provide direct advocacy to victims of domestic violence through on-site victim placement and,

WHEREAS, Tubman has identified a need to extensively renovate the Priory building to allow and provide for their intended use(s), including but not limited to fire, safety and ADA compliance requirements and,

WHEREAS, the City of Maplewood decided that the mission of Tubman qualifies as a "governmental program" such that it furthers the City's public safety mandate and,

WHEREAS, the City of Maplewood in furtherance of that "governmental program" sought and was awarded a State Grant of \$2,000,000.00 for the purposes of renovating the Tubman facility in Maplewood and,

WHEREAS, to satisfy the conditions of the State Grant, The City of Maplewood must own the Tubman facility, but may enter into a use agreement with Tubman under which it will take on responsibility for the operation of the facility and,

WHEREAS, the City has authority under Minnesota Statutes, Section 412.211 to buy, lease or otherwise procure for itself such real property as it needs to further its interests as hereinbefore stated.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MAPLEWOOD:

1. THAT the construction, lease-hold ownership and operation of the Tubman facility in Maplewood will achieve the important public goals of the City as identified above.

2. BE IT FURTHER RESOLVED THAT the acquisition, construction, lease, ownership, financing, lease and operation of the Tubman facility are within the City of Maplewood's inherent statutory authority under Minnesota Statute, Section 412.211
3. BE IT FURTHER RESOLVED THAT the governmental program to be achieved by the City of Maplewood's sponsorship of the Tubman facility will be the enhancement of public safety by and through the reduction and amelioration of the corrosive effects of domestic violence against women and children in its community.
4. BE IT FURTHER RESOLVED THAT the City hereby accepts the grant of \$2,000,000.00 from the State of Minnesota and authorizes the appropriate City officials to execute a grant agreement with the State of Minnesota, a ground lease with Tubman, a master disbursement agreement with the State of Minnesota, Tubman and others, a use/lease agreement with Tubman, and such other documents as necessary to implement the project.

General Obligation Bond Proceeds

Grant Agreement - Construction Grant

for the

«1»

Project

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General Obligation Bond Proceeds
Grant Agreement - Construction Grant
for the
«1»
Project

THIS AGREEMENT shall be effective as of «2», «2», and is between «3», a «4» (the “Public Entity”), and the «5» (the “State Entity”).

RECITALS

A. Under the provisions contained in «6», the Public Entity has been given the authority to «7»; and

B. Under the provisions contained in «8», (the “G.O. Bonding Legislation”) the State of Minnesota has allocated \$ «9» (the “G.O. Grant”), which is to be given to the Public Entity as a grant to assist it in the «10» as authorized by such legislation; and

C. Under the provisions contained in «11», the Public Entity has been given the authority to «12»; (the “Governmental Program”) and

D. The monies allocated to fund the grant to the Public Entity are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution; and

E. The Public Entity’s receipt and use of the G.O. 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 Public Entity’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 “Second 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 March 9, 2010 (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 Public Entity and the State Entity desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Public Entity, 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 State Entity to the Public Entity 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 _____ «1» _____ Project, as such exists on its original date and any amendments, modifications or restatements thereof.

“Approved Debt” – means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will 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.

“Architect”, if any - means _____ «13» _____, which will administer the Construction Contract Documents on behalf of the Public Entity.

“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 the Minnesota Department of Management and Budget, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Second 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 _____, 2010.

“Completion Date” – means _____ «14» _____ 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 State Entity, 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 Public Entity 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.

“Counterparty” - means any entity with which the Public Entity contracts under a Use Contract. *This definition is only needed and only applies if the Public Entity 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 Public Entity’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 Public Entity, or its designee, submits to the State Entity 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 _____ «15», 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 G.O. 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. Bonding Legislation” – means the legislation delineated in Recital B hereinabove as the G.O. Bonding Legislation.

“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 G.O. 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.

“Governmental Program” – means the operation of the Real Property and, if applicable, Facility for the purpose specified and identified in Recital C of this Agreement as the Governmental Program.

“G.O. Grant” - means a grant of monies from the State Entity to the Public Entity in the amount identified as the “G.O. Grant” in Recital B to this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Public Entity’s ownership interest in the Real Property and, if applicable, Facility if the Public Entity 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 State Entity's construction inspector, or its designated consulting engineer.

“Leased/Easement Premises” - means the real estate and structures, if any, that are leased to the Public Entity under a Real Property/Facility Lease or granted to the Public Entity under an easement. *This definition is only needed and only applies if the Public Entity’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 Public Entity’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 the G.O. Grant” – means the portion of the G.O. Grant that has been disbursed to or on behalf of the Public Entity minus any portion thereof previously paid back to the Commissioner of MMB.

“Ownership Value”, if any – means the value, if any, of the Public Entity’s ownership interest in the Real Property and, if applicable, Facility that existed concurrent with the Public Entity’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 State Entity and the Commissioner of MMB. The parties hereto agree and acknowledge that such value is \$_____ or ____ Not Applicable; provided, however, the Commissioner of MMB is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank “Not Applicable” is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created. *(The blank “Not Applicable” should only be selected and checked when a portion of the funds delineated in **Attachment III** attached hereto are to be used to acquire the Public Entity’s ownership interest in the Real Property and, if applicable, Facility, and in such event the value of such ownership interest should be shown in **Attachment III** and not in this definition for Ownership Value).*

“Project” - means the Public Entity’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 Public Entity is not using any portion of the G.O. 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.)*

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

“Real Property” - means the real property located in the County of _____ «16», State of 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 Public Entity as lessee thereunder. *This definition is only needed and only applies if the Public Entity’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.*

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

“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 in 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 State Entity and the Commissioner of MMB.

“Use Contract” - means a lease, management contract or other similar contract between the Public Entity 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 Public Entity 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 (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 State Entity shall make and issue the G.O. Grant to the Public Entity, and disburse the proceeds in accordance with the provisions of this Agreement. The G.O. Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the State Entity or the Commissioner of MMB under certain circumstances.

Section 2.02 **Public Ownership.** The Public Entity acknowledges and agrees that the G.O. 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 Public Entity represents and warrants to the State Entity 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 for the Real Property and, if applicable, for the Facility.)

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: _____.)
- An easement for the Real Property that complies with the requirements contained in Section 2.06.
(If the term of the easement 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 Public Entity shall use the G.O. 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 G.O. Grant for any other purpose.

(Check all appropriate boxes.)

- Acquisition of fee simple title to the Real Property.
- Acquisition of a leasehold interest in the Real Property.
- Acquisition of an easement for the Real Property.
- Improvement of the Real Property.
- Acquisition of fee simple title to the Facility.
- Acquisition of a leasehold interest in the Facility.
- Construction of the Facility.

-
- Renovation of the Facility.
 - _____ «17» _____
(Describe other or additional purposes.)

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

The Public Entity 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 Public Entity 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 State Entity and the Commissioner of MMB.

For those programs, if any, that the Public Entity will directly operate on all or any portion of the Real Property and, if applicable, Facility, the Public Entity covenants with and represents and warrants to the State Entity 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 State Entity, 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 State Entity 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 Public Entity covenants with and represents and warrants to the State Entity 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 State Entity and the Commissioner of MMB certified copies of such resolution and budget.

Section 2.05 **Public Entity Representations and Warranties.** The Public Entity further covenants with, and represents and warrants to the State Entity 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 G.O. Grant for the purpose or purposes described in Recital B of this Agreement.

C. It has legal authority to operate the Governmental Program.

D. This Agreement, the Declaration, and all other documents referred to herein are the legal, valid and binding obligations of the Public Entity enforceable against the Public Entity 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, 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 G.O. Grant, and all of the information it has submitted or will submit to the State Entity or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. 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, if any, contained in Section 7.23.

Q. It will not, without the prior written consent of the State Entity 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 Public Entity'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 State Entity 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 Public Entity'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 Public Entity 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 G.O. 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 filed and delivered, or will promptly file and deliver, a fully executed Declaration to the State Entity that contains all of the filing information.

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

Section 2.06 Ownership by Leasehold or Easement. *This Section shall only apply if the Public Entity'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 Public Entity, 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 Public Entity that if not complied with could result in a termination thereof.

5. It must contain a provision that provides sufficient authority to allow the Public Entity 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 Public Entity'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 State Entity 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 State Entity 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 Public Entity 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 Public Entity'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 Public Entity 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 Public Entity 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 Public Entity to reimburse the State Entity for any portion of the G.O. Grant, and upon such expiration the Public Entity's ownership interest in the Real Property and, if applicable, Facility shall no longer be subject to this Agreement.

D. The Public Entity 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 State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the State Entity or the Commissioner of MMB giving the Public Entity 30 days written notice of such event and the Public Entity'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 Public Entity 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 State Entity and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Public Entity in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to disburse any of the G.O. 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 Public Entity 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 Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the G.O. Bonding Legislation.

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

E. If the Public Entity 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 Public Entity has not filed and delivered, or fails to promptly file and deliver, a fully executed Declaration to the State Entity that contains all of the filing information.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the State Entity and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner of MMB giving the Public Entity 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 State Entity, the State Entity or the Commissioner of MMB may enforce any or all of the following remedies.

A. The State Entity may refrain from disbursing the G.O. Grant; provided, however, the State Entity 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 the provisions of 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 the G.O. Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

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, may demand that the Public Entity pay the amounts that would have been paid

if there had been full and complete compliance with such provisions, and upon such demand the Public Entity shall pay such amount to the Commissioner of MMB.

D. Either the State Entity 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 State Entity or the Commissioner of MMB would otherwise possess.

If the Public Entity 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 Public Entity and in favor of the State Entity and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or offset against any aids or other monies that the Public Entity is entitled to receive from the State of Minnesota.

Section 2.09 Notification of Event of Default. The Public Entity shall furnish to the State Entity 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 Public Entity 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 Governmental 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 G.O. 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 Public Entity and the State Entity may agree in writing, then the State Entity's obligation to fund the G.O. Grant shall terminate. In such event, (i) if none of the G.O. Grant has been disbursed by such dates then the State Entity's obligation to fund any portion of the G.O. 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 G.O. Grant has been disbursed by such dates then the State Entity shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Public Entity'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 Public Entity'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 Public Entity'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 State Entity shall execute, or have executed, and deliver to the Public Entity such documents as are required to release the Public Entity'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 G.O. Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. 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 Public Entity 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 Public Entity 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 Public Entity enters into must comply with the following requirements:

- A. The purpose for which it was entered into must be to operate the Governmental Program in the Real Property and, if applicable, Facility.

B. It must contain a provision setting forth the statutory authority under which the Public Entity 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 Governmental Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the Governmental Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the Governmental 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 Public Entity 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 Governmental Program.

E. It must allow for termination by the Public Entity in the event of a default thereunder by the Counterparty, or in the event that the Governmental 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 Public Entity is operating the Governmental 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 Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If the Public Entity 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 State Entity 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 Public Entity'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 State Entity 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 Public Entity'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 G.O. 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 Public Entity is not required to renew the Use Agreement beyond the original term thereof and that the Public Entity may, at its sole option and discretion, allow the Use Agreement to expire at the end of its original term and thereafter directly operate the governmental program in the Real Property and, if applicable, Facility or contract with some other entity to operate the governmental 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 Public Entity'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 Public Entity must make a determination that renewal will continue to carry out the Governmental 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 Public Entity 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 Public Entity'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 Public Entity does not renew a Use Contract if requested by the Counterparty is not deemed to be a provision that directly or indirectly requires the Public Entity 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 Public Entity, a provision that requires the Public Entity 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 Public Entity does not renew a Use Contract if requested by the Counterparty. If agreed to by the Public Entity, such reimbursement shall be on terms and conditions agreed to by the Public Entity and the Counterparty.

Section 3.04 Receipt of Monies Under a Use Contract. The Public Entity does not anticipate the receipt of any funds under a Use Contract, provided, however, if the Public Entity does receive any monies under a Use Contract in excess of the amount the Public Entity 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 Public Entity to the Commissioner of MMB. The portion of such excess monies that the Public Entity must and shall pay to the Commissioner of MMB shall be determined by 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 G.O. Grant and the denominator of which is sum of the G.O. Grant and the Approved Debt.

Article IV SALE

Section 4.01 Sale. The Public Entity 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 Public Entity determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Governmental 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 Public Entity'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 Public Entity'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 Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the Governmental Program.

Section 4.02 **Proceeds of Sale.** Upon the sale of the Public Entity'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 Public Entity'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. Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the G.O. 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 4.02A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Public Entity 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 State Entity under Section 402.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 State Entity, the Public Entity, 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 State Entity, the Public Entity, 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 State Entity shall be made to the Commissioner of MMB, and the Public Entity 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 Public Entity shall not be required to pay or reimburse the State Entity 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. Grant.

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

Section 5.01 **State Bond Financed Property.** The Public Entity and the State Entity acknowledge and agree that the Public Entity's ownership interest in the Real Property and, if applicable, Facility is, or when acquired by the Public Entity 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 Public Entity'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 Public Entity agrees as follows:

A. It will not use the Real Property or, if applicable, Facility, or use or invest the G.O. 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 deposit into and hold all of the G.O. Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. 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.

D. It will, upon the occurrence of any act or omission by the Public Entity 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.

E. It will not otherwise use any of the G.O. 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 otherwise omit, take, or cause to be taken 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 Public Entity, or if the Public Entity’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 Public Entity the State Entity shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Public Entity’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 State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the G.O. Grant to the Public Entity from time to time in an aggregate total amount not to exceed the amount of the G.O. Grant. If the amount of G.O. Grant that the State Entity cumulatively disburses hereunder to the Public Entity is less than the amount of the G.O. Grant delineated in Section 1.01, then the State Entity and the Public Entity shall enter into and execute whatever documents the State Entity may request in order to amend or modify this Agreement to reduce the amount of the G.O. Grant to the amount actually disbursed. Provided, however, in accordance with the provisions contained in Section 2.11, the State Entity’s obligation to make Advances shall terminate as of the dates specified in such Section even if the entire G.O. 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 State Entity 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 State Entity 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. This requirement is expressed by way of the following two formulas:

Formula #1

Cumulative Advances \leq (G.O. Grant) \times (percentage of matching funds, if any, required under Section 7.23 that have been disbursed)

Formula #2

Cumulative Advances \leq (G.O. Grant) \times (percentage of Project completed)

Section 6.02 **Draw Requisitions.** Whenever the Public Entity desires a disbursement of a portion of the G.O. Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity 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 Public Entity and the State Entity, 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 State Entity, 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 State Entity unless the Public Entity shall advise the State Entity, in writing, of its intention to so store materials prior to their delivery and the State Entity has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to the State Entity such supporting evidence as may be requested by the State Entity 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 Public Entity shall submit to the State Entity: (i) such supporting evidence as may be requested by the State Entity 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 Public Entity has complied with all requirements of this Agreement and the State Entity approves the relevant Draw Requisition and receives a current construction report from the Inspecting Engineer recommending payment, then the State Entity shall disburse the amount of the requested Advance to the Public Entity.

Section 6.03 Additional Funds. If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the G.O. 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 State Entity may send written notice thereof to the Public Entity specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Public Entity 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 State Entity's notice.

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

A. The State Entity 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 G.O. Grant delineated in Section 1.01.

B. The State Entity shall have either received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon, or evidence that such Declaration will promptly be recorded and delivered to the State Entity.

C. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that (i) the Public Entity 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 Public Entity.

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

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

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity possesses the ownership interest delineated in Section 2.02.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, 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 State Entity shall have received evidence, in form and substance acceptable to the State Entity, 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 State Entity shall have received evidence, in form and substance acceptable to the State Entity, 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 State Entity shall have received evidence, in form and substance acceptable to the State Entity, 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 State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Public Entity 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 State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the insurance requirements under Section 7.01 have been satisfied.

M. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, 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 of the Minnesota House of Representatives Capital Investment Committee has, 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 State Entity shall have received evidence, in form and substance acceptable to the State Entity, 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 therefore, 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 State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

P. No determination shall have been made by the State Entity 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 Public Entity under Section 6.03, then the Public Entity 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 State Entity that sufficient funds are available.

Q. The Public Entity has supplied to the State Entity all other items that the State Entity may reasonably require.

Section 6.05 **Construction Inspections.** The Public Entity 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 Public Entity or the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Public Entity shall immediately notify the State Entity, in writing. The State Entity and the Inspecting Engineer, if any, may conduct such inspections of the Construction Items as either may deem necessary for the protection of the State Entity's interest, and that any inspections which may be made of the Project by the State Entity 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 State Entity, and the Public Entity will not rely thereon.

Article VII MISCELLANEOUS

Section 7.01 **Insurance.** The Public Entity 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 Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity under which the State Entity and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity 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 Public Entity 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 Public Entity'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 Public Entity's ownership interest in the Real Property and Facility. If the Public Entity 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 Public Entity.

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

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

The Public Entity may require a Counterparty to provide and maintain any or all of the insurance required under this Section; provided that the Public Entity 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 State Entity or the Commissioner of MMB, the Public Entity shall promptly furnish to the requesting entity all written notices and all paid premium

receipts received by the Public Entity regarding the required insurance, or certificates of insurance evidencing the existence of such required insurance.

If the Public Entity fails to provide and maintain the insurance required under this Section, then the State Entity may, at its sole option and discretion, obtain and maintain insurance of an equivalent nature and any funds expended by the State Entity to obtain or maintain such insurance shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity 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 State Entity to obtain or maintain such insurance, and the State Entity's decision to not obtain or maintain such insurance shall not lessen the Public Entity's duty to obtain and maintain such insurance.

Section 7.02 Condemnation. If after the Public Entity 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 Public Entity can no longer comply with the provisions contained in Section 2.04, then the Public Entity 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 Public Entity 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 Public Entity'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 Public Entity's ownership interest in the remaining Real Property and, if applicable, Facility. If the Public Entity 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 Public Entity.

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

Section 7.03 Use, Maintenance, Repair and Alterations. The Public Entity 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 therefore, (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 Public Entity'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 Public Entity shall not, without the written consent of the State Entity 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 Governmental 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 G.O. 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 Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity 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 State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity 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 State Entity 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 State Entity and bear interest from the date of advancement by the State Entity 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 Public Entity 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, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow the State Entity, auditors for the State Entity, 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 Public Entity 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 State Entity.** Upon reasonable request by the State Entity and without interfering with the normal use of the Real Property and, if applicable, Facility, the Public Entity 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 State Entity to inspect the Real Property and, if applicable, Facility.

Section 7.06 **Data Practices.** The Public Entity agrees with respect to any data that it possesses regarding the G.O. 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 Public Entity 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 Public Entity 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 Public Entity hereby assigns to the State Entity and the Commissioner of MMB all claims it may have for over charges 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 Public Entity 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 Public Entity agrees to comply with the following provisions and requirements if such provisions and requirements are applicable.

A. The Public Entity shall provide all information that the State Entity may request in order for the State Entity 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 Public Entity 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 Public Entity 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 of the Minnesota House of Representatives 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 Public Entity must notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee 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 G.O. 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 Public Entity shall just notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee 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, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, 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 arenas, 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 Public Entity 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 Governmental Program on or in the Real Property and, if applicable, Facility. By agreeing to this provision, the Public Entity is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Governmental Program on or in the Real Property and, if applicable, Facility.

Section 7.12 **Liability.** The Public Entity and the State Entity 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 State Entity 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 Public Entity 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

Public Entity, 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 Public Entity.** The Public Entity 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 State Entity, 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 State Entity, 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 State Entity, 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 Public Entity 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 State Entity, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, 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 Public Entity, 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 Public Entity's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Public Entity, 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 Public Entity, the State Entity, or the Commissioner of MMB, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of the State Entity, 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 Public Entity 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 Public Entity 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 State Entity, 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

Section 7.17 **Waiver.** Neither the failure by the Public Entity, the State Entity, 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 Public Entity, the State Entity, 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 Public Entity, the State Entity, 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 Public Entity and the State Entity, and there are no other agreements, either oral or written, between the Public Entity and the State Entity 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 venued 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 Public Entity must obtain and supply the following matching funds, if any, for the Project:

(If there are no matching funds requirements then insert the word “NONE”.)

Any 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 Public Entity 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 Public Entity represents to the State Entity 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 G.O. 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 Public Entity, 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 that is 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 G.O. 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 Public Entity must provide to the State Entity and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

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

The value of the Public Entity'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 G.O. Bonding Legislation, be provided by either the Public Entity or a Counterparty under a Use Contract.

Section 7.25 **Project Completion Schedule.** The Public Entity represents to the State Entity 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 Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity 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 **Public Entity Tasks.** Any tasks that this Agreement imposes upon the Public Entity may be performed by such other entity as the Public Entity 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 Public Entity.

Section 7.28 **State Entity and Commissioner Required Acts and Approvals.** The State Entity 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 Public Entity'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 Public Entity's ownership interest in the Real Property.

Section 7.30 **E-Verification.** The Public Entity agrees and acknowledges that it is aware of Governor's Executive Order 08-01 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 order and impose a similar requirement in any Use Agreement to which it is a party.

Section 7.31 **Additional Requirements.** The Public Entity and the State Entity 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.

(If there are no additional requirements then insert the word “NONE”.)

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

IN TESTIMONY HEREOF, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the ____
_____«1»_____ Project on the day and date indicated immediately below their respective signatures.

PUBLIC ENTITY:

_____«3»_____,
a _____«4»_____

By: _____

Its: _____«22»_____
_____«23»_____

Dated: _____, _____

And: _____

Its: _____«24»_____
_____«25»_____

Dated: _____, _____

STATE ENTITY:

_____«5»_____,

By: _____

Its: _____«26»_____
_____«27»_____

Dated: _____, _____

Attachment I to Grant Agreement

State of Minnesota General Obligation Bond Financed DECLARATION

The undersigned has the following interest in the real property located in the County of _____, State of Minnesota that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively referred to as the “Restricted Property”):

(Check the appropriate box.)

- a fee simple title,
 a lease, or
 an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in paragraph B below, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, or its successor, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain _____ [Insert title of the general obligation grant agreement] between _____ and _____, dated _____, _____ (the “G.O. Grant Agreement”).

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for as long as the G.O. Grant Agreement is in force and effect; at which time it shall be released therefrom by way of a written release in recordable form signed by both the Commissioner of _____ [Insert the name of the State Entity that provided the grant] and the Commissioner of Minnesota of Management and Budget, or their successors, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota of Management and Budget, or its successor.

(SIGNATURE BLOCK, ACKNOWLEDGMENTS, AND STATEMENT AS TO WHOM IT WAS DRAFTED BY.)

Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL PROPERTY

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

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 G.O. Grant Funds	
G.O. Grant	\$ _____		
Other State Funds			
_____	\$ _____	Purchase of Ownership	\$ _____
_____	\$ _____	Interest	
_____	\$ _____	Other Items of a Capital Nature	
Sub-Total	\$ _____	_____	\$ _____
		_____	\$ _____
Matching Funds		Sub Total	\$ _____
_____	\$ _____		
_____	\$ _____	Items Paid for with Non- G.O. Grant Funds	
Sub Total	\$ _____	_____	\$ _____
		_____	\$ _____
Other Public Entity Funds		Sub Total	\$ _____
_____	\$ _____		
_____	\$ _____		
Sub-Total			
Loans			
_____	\$ _____		
_____	\$ _____		
Sub-Total	\$ _____		
Other Funds			
_____	\$ _____		
_____	\$ _____		
Sub-Total	\$ _____		
Prepaid Project Expenses			
_____	\$ _____		
_____	\$ _____		
Sub-Total	\$ _____		
TOTAL FUNDS	\$ _____	TOTAL PROJECT COSTS	\$ _____

**Attachment IV to Grant Agreement
PROJECT COMPLETION SCHEDULE**

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L&V Draft: 7/5/12

GROUND LEASE
for
Tubman Facility
by and between
Tubman, Landlord
and
City of Maplewood, Tenant

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GROUND LEASE

This Ground Lease (this "**Lease**") is made and entered into as of the ____ day of _____, 2012, by and between the **TUBMAN**, a Minnesota nonprofit corporation ("**Landlord**") and the **CITY OF MAPLEWOOD**, a Minnesota municipal corporation ("**Tenant**").

RECITALS

WHEREAS, Landlord is the owner of certain real property located in the City of Maplewood, County of Hennepin, State of Minnesota, legally described on the attached **Exhibit A** (the "**Premises**").

WHEREAS, Tenant desires to lease the Premises from Landlord.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Landlord and Tenant hereby agree as follows:

1. Definitions.

The following terms shall have the meanings set forth below:

Commissioner. The Commissioner of Minnesota Management and Budget.

Commencement Date. As defined in Section 2.2.

Declaration. As defined in Section 2.1.

Event of Default. As defined in Section 11.1.

G.O. Compliance Legislation. As defined in the Grant Agreement.

Grant Agreement. The General Obligation Bond Proceeds Grant Agreement - Construction Grant for the Tubman Facility Project, dated June __, 2012 relating to a \$2,000,000 grant from the State of Minnesota to the Tenant for design, predesign, construction, furnishing and equipment costs of the Project.

Improvements. All buildings, structures, landscaping, sidewalks, driveways, parking areas, and other improvements that are constructed, placed or located on the Premises during the Term, as the same may from time to time exist.

Landlord Event of Default. As defined in Section 11.3.

Lease/Use Agreement. As defined in Section 2.1.

Notice. As defined in Section 17.

Permitted Encumbrances. The liens and encumbrances set forth on **Exhibit D** attached hereto.

Premises. That certain parcel of real property legally described on **Exhibit A** attached hereto, together with all improvements constructed and to be constructed thereon, all located in the City of Maplewood, Ramsey County, Minnesota, as amended from time to time.

Prior Interests. Those certain interests pursuant to (a) the mortgage in favor of Bremer Bank described at item 7 of Schedule D and other related documents, (b) the mortgage in favor of Minnesota Housing Finance Agency described at items 15 and 16 of Schedule D and other related documents, and/or (c) the interests of Ramsey County, Minnesota described at item 17 of Schedule D and other related documents.

Project or Tubman Facility. The Tubman Facility to be constructed/rehabilitated on the Premises.

Sale. As defined in Section 13.1.

State. Minnesota Department of Employment and Economic Development.

State Grant Proceeds. A state grant in the amount of \$2,000,000 made to Tenant pursuant to the terms of the Grant Agreement.

Taxes. As defined in Section 5.

Term. The term of this Ground Lease shall be for fifty (50) years, as provided in Section 2.2.

Title. As defined in Section 2.4.3.

2. Demise, Term, Title and Conditions Precedent.

2.1 Demise. Landlord hereby demises and leases unto Tenant, and Tenant hereby leases from Landlord, for the consideration and upon the terms and conditions hereinafter set forth, the Premises.

Landlord and Tenant acknowledge that Tenant intends to enter into that certain Lease/Use Agreement with Landlord for the Premises, dated of even date herewith (the "**Lease/Use Agreement**") for an initial term of twenty (20) years and with two renewals

thereafter, the first of which is for twenty (20) years, and the second of which shall be through the end of the Term of this Ground Lease. Pursuant to the Lease/Use Agreement, Landlord will utilize the Premises for construction of renovations to the Tubman Facility and for operation of the Governmental Program and other related purposes, as defined in the Lease/Use Agreement.

Landlord and Tenant acknowledge that Tenant's interest in the Premises pursuant to this Ground Lease will be subject to the Grant Agreement and to the Declaration, dated of even date herewith, by Tenant in favor of the State (the "**Declaration**").

2.2 Term. To have and to hold the Premises for a term (the "Term") commencing on the date hereof (the "Commencement Date") and continuing for fifty (50) years from April 1, 2013, which is the completion date for the Improvements as defined in the Grant Agreement. Landlord and Tenant hereby agree, for the benefit of the State, that this Ground Lease shall not be sooner terminated, modified or amended, except with the prior written consent of the State and the Commissioner.

2.3 Covenant of Quiet Possession. Landlord represents, warrants and covenants that, subject to Landlord's remedies pursuant to Section 11, due to breach of this Ground Lease by Tenant, Tenant shall have and enjoy quiet and undisturbed possession of the Premises during the Term.

2.4 Conditions Precedent. This Ground Lease shall not be valid or of any effect until the occurrence of each and every one of the following conditions precedent:

2.4.1 Construction Grant Agreement. The mutual execution and delivery of the Grant Agreement between the State and the Tenant.

2.4.2 Lease/Use Agreement. The mutual execution and delivery of the Lease/Use Agreement between the Tenant, as Landlord, and Landlord.

2.4.3 Commissioner Consent. Consent in writing by the Commissioner to this Ground Lease and the Lease/Use Agreement.

3. Rent. No rent is required to be paid by Tenant to Landlord for the Term of this Ground Lease.

4. Permitted Use. Tenant may use the Premises solely for Tubman services, such use being described as the Governmental Program in the Lease/Use Agreement. This limitation shall terminate upon the sale of the Tenant's interest pursuant to Section 13.1 of this Ground Lease in the Premises, at which time the permitted uses of the Premises shall be for any lawful purpose.

5. Taxes; Other Charges. "**Taxes**" shall mean and include all ad valorem taxes and special assessments or other governmentally imposed charges with respect

to the Premises and the Improvements. Landlord acknowledges that pursuant to the Lease/Use Agreement, the Landlord is required to pay all Taxes with respect to the Premises and the Improvements.

6. Insurance; Indemnity; Limitation on Liability.

6.1 Fire and Casualty Insurance. Landlord acknowledges that pursuant to the Lease/Use Agreement, the Landlord is required to maintain, in full force, the insurance required pursuant to Section 26 of the Lease/Use Agreement.

6.2 Limitation on Liability. Notwithstanding anything to the contrary in this Ground Lease, it is specifically understood and agreed by Landlord and Tenant, such agreement being a primary consideration for the execution of this Ground Lease by Tenant, that no covenant, provision or agreement of Tenant herein, or any obligation herein or therein imposed upon Tenant or breach thereof, shall give rise to a pecuniary liability of Tenant, its officers, employees, or agents (collectively, "**Tenant Parties**"), or a charge against Tenant's general credit or taxing powers, or, except as otherwise provided in Sections 11.2 and 13 herein, shall obligate the Tenant Parties financially in any way. No failure of Tenant to comply with any term, condition, covenant, or agreement therein shall subject the Tenant Parties to liability for any claim for damages, costs, or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Ground Lease or revenues therefrom. No execution on any claim, demand, cause of action, or judgment shall be levied upon or collected from the general credit, general funds, or taxing powers of Tenant. In making the agreements, provisions, and covenants set forth herein, Tenant has not obligated itself except with respect to the application of revenues pursuant to the Lease/Use Agreement as therein provided, including the obligation to request the State Grant Proceeds from the State and provide the State Grant Proceeds to Landlord for the construction of certain of the Improvements. If, notwithstanding the provisions of this Section, the Tenant Parties incur any expense, or suffer any losses, claims, or damages, or incur any liabilities arising from this Ground Lease or the construction, of improvements, operation or maintenance of the Tubman Facility, except for any of the foregoing resulting from the gross negligence or tortious action of any of the Tenant Parties (collectively, "**Tenant Damages**"), then and in that event Landlord will indemnify and hold harmless the Tenant Parties from the same and will reimburse the Tenant Parties for any reasonable out of pocket legal or other expenses incurred by the Tenant Parties, in relation thereto, and this covenant to indemnify, hold harmless, and reimburse the Tenant Parties from the Tenant Damages shall survive the termination of this Ground Lease.

7. Assignment and Subletting.

7.1 General. Except as provided in Section 13, Tenant may not transfer or assign this Ground Lease or any interest in this Ground Lease or sublet the Premises or any portion thereof without the prior written consent of (a) Landlord, which consent shall not be unreasonably withheld, and (b) the holders of the Prior Interests (to the extent

such holders have the right to consent). Notwithstanding the foregoing, Landlord consents to the Lease/Use Agreement, the Grant Agreement, and the Declaration.

7.2 Landlord's Right to Encumber. Landlord may not mortgage or otherwise encumber its estate and interest in this Ground Lease and in the Premises without the prior written consent of the Commissioner and the Tenant, which consent shall not be unreasonably withheld. Any such mortgage or other encumbrance shall be, and shall expressly provide, that it is subject to and subordinate to (i) this Ground Lease and all rights hereunder, as this Ground Lease may be amended, modified, or supplemented from time to time (with mortgagee's consent if required by such mortgagee), and (ii) the Declaration. Upon the recordation of such a mortgage or encumbrance, Landlord shall notify Tenant of same, including the address of Landlord's mortgagee.

8. Landlord's Warranties. Landlord represents and warrants to, and covenants with, Tenant that:

8.1 Authority. Landlord has full right and authority to enter into this Ground Lease and perform Landlord's obligations pursuant to this Ground Lease as of the Commencement Date and, except for the Permitted Encumbrances, has good, marketable and insurable title to the Premises in fee simple, free and clear of all restrictions, leases, tenancies, and easements.

8.2 Condemnation; Dedication. Landlord has not received any notice, nor is it aware of any pending action to take by condemnation all or any portion of the Premises, nor has Landlord agreed or committed to dedicate any part of the Premises.

8.3 Violations. To the best of Landlord's knowledge, the Premises is not in material violation of any local governmental rule, ordinance, regulation, or building code, nor is there a pending or threatened investigation regarding a possible violation of any of the foregoing, except for violations that will be remedied as part of the construction of the Improvements.

8.4 Breach of Other Agreements. The execution and delivery of this Ground Lease by Landlord will not cause or constitute a violation of any provisions of its Articles of Incorporation or By-laws, or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to the actual knowledge of the undersigned officer of Landlord, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, 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 Ground Lease or to perform any of the terms, covenants, and conditions to be performed by Landlord pursuant to this Ground Lease.

9. Tenant's Warranties. Tenant represents and warrants to, and covenants with, Landlord that:

9.1 Authority. Tenant has full right and authority to enter into this Ground Lease and perform Tenant's obligations pursuant to this Ground Lease as of the Commencement Date.

9.2 Breach of Other Agreements. The execution and delivery of this Ground Lease by Tenant will not cause or constitute a violation of any laws of the State of Minnesota, and there are no actions, suits, or proceedings pending before or by any judicial body or governmental authority against or affecting it relating to the Premises, 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 Ground Lease or to perform any of the terms, covenants and conditions to be performed by Tenant pursuant to this Ground Lease.

10. Surrender. Upon the expiration or earlier termination of this Ground Lease, Tenant shall surrender the Premises to Landlord and leave the Improvements (to the extent then existing) in their then "as-is, where-is" condition. The Improvements and any equipment, trade fixtures, and personal property remaining upon the Premises after surrender thereof, to the extent not already the property of Landlord, shall automatically become the property of Landlord from and after the expiration or termination of the Term.

11. Default.

11.1 Default. It shall be an "**Event of Default**" for purposes of this Section if Tenant shall fail to perform any of the terms, covenants or conditions of this Ground Lease to be performed by Tenant and such failure shall continue for ten (10) days following receipt of written notice from Landlord to Tenant, specifying such failure, or, with respect to those failures which cannot with due diligence be cured within ten (10) days, then if Tenant fails to proceed within such ten (10) days to commence to cure the same and thereafter continues to prosecute the curing of such default with all due diligence (it being intended that in connection with a default not susceptible of being cured with reasonable diligence within ten (10) days that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with reasonable diligence).

11.2 Remedy. If an Event of Default has occurred, Landlord's sole remedies shall be to institute an action in equity to compel specific performance and neither an Event of Default or Tenant's failure to comply with any order for specific performance shall not be grounds for termination or modification of this Ground Lease.

11.3 Landlord's Default. In the event that (i) Landlord fails to observe, perform or comply with any provision, term, condition, covenant, agreement or warranty required

to be observed, performed or complied with by Landlord pursuant to this Ground Lease and (ii) Landlord fails to commence to cure such default within ten (10) days of written notice of default from Tenant and thereafter continues to prosecute the curing of such default with all due diligence (it being intended that in connection with a default not susceptible of being cured with reasonable diligence within ten (10) days that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with reasonable diligence), then a “**Landlord Event of Default**” shall exist pursuant to this Ground Lease. Upon the occurrence and during the continuance of a Landlord Event of Default, Tenant may (a) institute an action in equity to compel specific performance by Landlord of those actions or inactions which serve as the basis of a Landlord Event of Default or (b) take such other actions and seek such other remedies as may be available to Tenant in law or equity, provided, however, that Tenant’s damages shall be limited to actual damages incurred by Tenant and shall not include any consequential or punitive damages, and further provided, that such actual damages shall be limited to Landlord’s interest in the Premises.

11.4 Delay; Waiver. No delay or omission by either party to exercise any right or power accruing upon any noncompliance or default by the other party with respect to any of the terms of this Ground Lease shall impair any such right or power to be construed to be a waiver thereof, except as otherwise herein provided. A waiver by either of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition, or agreement herein contained.

12. Ownership of Improvements. Title to all Improvements shall be owned by Landlord regardless of who placed such Improvements thereon, together with any and all fixtures related thereto and located on the Premises, subject, however, to the provisions of Sections 23 and 36 of the Lease/Use Agreement with respect to the application of insurance proceeds and condemnation awards. Without in any way limiting the foregoing sentence, upon the expiration or earlier termination of this Ground Lease, Landlord shall become the absolute owner of any and all Improvements and any fixtures related thereto and located on the Premises.

13. Early Termination of Lease/Use Agreement.

13.1 Sale. In the event that the Tenant determines by City Council action that the Premises are no longer usable or needed to carry out the Governmental Program (as defined in the Lease/Use Agreement), then, the Tenant may sell the Tenant’s interest in the Premises. Upon the sale by the Tenant of its interest in the Premises, the Ground Lease shall remain in full force and effect, and the entity that purchases such interest shall replace the Tenant as the tenant hereunder and may enforce all of the terms and conditions contained herein as if they were the original tenant hereunder. Any sale shall be on the conditions that such sale must be (i) for fair market value and (ii) upon such other terms authorized by law and approved by the Commissioner, in the Commissioner’s reasonable discretion. For purposes of this Ground Lease, “fair market

value” shall mean (A) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal, in accordance with Section 13.3, which assumes that any and all mortgage liens or encumbrances on the property being sold, which negatively effect the value of the Premises, will be released (by reason of the purchaser’s payment of the same upon acquisition), or (B) the price bid by a purchaser under a public bid procedure after reasonable public notice with the proviso that any and all mortgage liens or encumbrances on the Premises, which negatively affect the value of the Premises, will be released at the time of acquisition by such purchaser’s payment of any of the same.

Notwithstanding the foregoing paragraph of this Section 13.1, the Tenant shall not sell its interest in the Premises or offer it for sale at competitive bids, until it has first offered to sell its interest in the Premises to Landlord, as hereinafter provided, and Landlord has elected in writing to not purchase the Tenant’s interest in the Premises.

The Tenant hereby grants to Landlord a right of first option to purchase the Tenant’s interest in the Premises, at fair market value, as defined in the first paragraph of this section. Said option shall be exercised by written notice to the Tenant within ninety (90) days after receipt of written notice by the Tenant to Landlord of the Tenant’s intent to sell its interest in the Premises. Landlord shall have 485 days after the exercise of the option to purchase to make its purchase price payment to the Tenant.

In the event of a sale of the Tenant’s interest in the Premises (a “**Sale**”) to Landlord or a third party, after deducting the Tenant’s reasonable and customary costs incurred in such Sale, the net proceeds of such Sale must be applied, in accordance with Section 4.02 of the Grant Agreement. The allocation of Sale proceeds shall be allocated between the Tenant and the Landlord pursuant to Section 4.02.C. of the Grant Agreement. The parties agree that **Exhibit C** to this Ground Lease reflects the amounts contributed initially by the Tenant and Landlord to the acquisition and betterment of the Premises. **Exhibit C** will be amended from time to time to reflect final amounts expended and subsequent contributions. If there are insufficient funds to fully reimburse the Tenant and Landlord the amounts set forth in **Exhibit C**, as amended from time to time, the available funds will be allocated in accordance with the then applicable percentages pursuant to **Exhibit C**. If there are funds in excess of the amounts necessary to reimburse the Tenant and Landlord, the excess funds will be allocated to the parties in accordance with the percentages in **Exhibit B** to this Ground Lease, as amended from time to time to reflect the amounts actually expended and subsequent contributions to the acquisitions and betterment of the Premises.

Nothing in this or any other agreement shall be construed as requiring the Tenant to sell its interest in the Premises.

To the extent, but only to the extent, disposition of the sale proceeds is not controlled by the G.O. Compliance Legislation, the proceeds of the sale will be shared

by Landlord and the Tenant in accordance with the percentages set forth on **Exhibit C**; provided that all Prior Interests shall first be paid in full.

13.2 Payment Based on Appraisal. Fair market value as determined by appraisal shall be established in accordance with the following procedure. Landlord and the Tenant will each select an MAI or comparable certified appraiser. Each of the two (2) appraisers will perform and complete appraisals within sixty (60) days of being retained for their services. The two appraisers will each determine fair market value for the purposes of Sections 13.1 of this Ground Lease. Fair market value will be the average of the two appraisals. The cost of any appraisals pursuant to this subsection will be paid by Landlord.

13.3 Sale Costs. In the event of a sale of the Tenant's interest in the Premises pursuant to Section 13.1, Landlord shall pay for the reasonable and customary costs incurred by the Tenant in such Sale that are not allowed by the State to be deducted first from the gross proceeds from such Sale (by way of example to the extent not allowed by the State, the Tenant's costs for interim property management, relocation, appraisal, marketing, staff administration, legal fees, survey, and title work). Landlord shall be responsible for payment of any outstanding debt incurred by Landlord to acquire or better the Premises or the Improvements that is not paid in accordance with Section 13.1 and the Tenant shall not be responsible for such payment unless such outstanding debt is incurred by the Tenant.

14. Condemnation.

14.1 Total Taking. In the event of a condemnation of all or substantially all of the Premises, this Ground Lease shall terminate as of the date of such taking, and all proceeds shall be payable in the same manner as if the Premises were sold pursuant to Section 13 hereof.

14.2 Termination on Partial Taking. In the event of a condemnation of less than all of the Premises and the Lease/Use Agreement is terminated and treated as a Sale in accordance with Section 36 thereof, then this Ground Lease shall also be terminated and such partial condemnation shall be treated as a Sale, in which event the proceeds of the condemnation shall be applied pursuant to Section 13.1 hereof.

14.3 Partial Taking. In the event of a condemnation of a part of the Premises for which the Lease/Use Agreement is not terminated in accordance with its provisions, this Ground Lease shall continue in full force as to the part of the Premises not thus taken, and the condemnation award for the Premises will be applied by Landlord in accordance with the provisions of Section 36 of the Lease/Use Agreement, or if excess proceeds are available, Section 17 of the Lease/Use Agreement.

14.4 Conflict with Grant Agreement. Whenever there shall exist a conflict between Section 15 of this Ground Lease and Section 7.02 of the Grant Agreement, the provisions of the Grant Agreement shall prevail.

15. Ground Lease for Site of State Bond Financed Property. The Tenant is leasing the Premises to be improved with state bond proceeds. The parties acknowledge that this Ground Lease is for a Term equal to 125 percent of the useful life of the Improvements. The expiration of this Ground Lease upon the end of the Term does not require that the State be repaid the State Grant Proceeds or that the Premises be sold. Upon the expiration of the Term, the Premises will no longer be the site of state bond financed property and no longer subject to the Grant Agreement, the Declaration, and G.O. Compliance Legislation. The Tenant shall promptly request the State, pursuant to the Grant Agreement, to release the Premises from the Declaration.

16. Alterations; Maintenance of Improvements; Restoration. Tenant shall not make any alterations, improvements, and changes to any building or improvement which may from time to time be on the Premises without the prior written consent of Landlord, which consent Landlord may withhold in Landlord's sole discretion. Throughout the Term of this Ground Lease and pursuant to Landlord's obligations pursuant to the Lease/Use Agreement, Landlord shall keep and maintain the Premises, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, including public and private sidewalks located thereon and adjacent thereto, in good, sanitary, lawful, and neat order, condition, and repair and shall restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever, including any modification required due to any partial condemnation as provided pursuant to Section 36 of the Lease/Use Agreement. So long as Landlord is the tenant pursuant to the Lease/Use Agreement, Tenant shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises.

17. Notice. All notices, demands and requests ("**Notice**") required or permitted to be given pursuant to this Ground Lease must be in writing and shall be deemed to have been properly given or served either on the date of hand delivery or two (2) days after the date such Notice is deposited with the United States Mail, addressed to Landlord or Tenant, as the case may be, prepaid and registered or certified mail or delivery charges prepaid, return receipt requested, at the following addresses:

To Tenant: Tubman
3111 First Avenue South
Minneapolis, MN 55408
Attention: President/Executive Director

And a copy to: Tubman
3111 First Avenue South
Minneapolis, MN 55408
Attention: CFO/Finance Director

To Landlord: Maplewood Department of Community
Development
1830 County Road B East
Maplewood, MN 55109
Attention: Director

And a copy to: Maplewood City Attorney
1830 County Road B East
Maplewood, MN 55109
Attention: CD Attorney

Rejection or refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice, or other communication, demand or request. Any party may change its address by giving Notice in writing, stating its new address, to any other party as provided in the foregoing manner: Commencing on the tenth (10th) day after the giving of such Notice, such newly designated address shall be such party's address for the purposes of all communications, demands, request or Notices, permitted or required to be given or served pursuant to this Ground Lease.

18. Amendment, Modification and Waiver. No amendment, modification, or waiver of any condition, provision, or term of this Ground Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the State and the Commissioner, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

19. Short-Form Recordable Lease. The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Ground Lease, setting forth a description of the Premises, the Term of this Ground Lease and any other portions hereof, excepting the rent provisions, as either party may request.

20 Estoppel Certificates. In addition to any other information which may be reasonably requested, either party shall without charge, from time to time hereafter, but not more often than once every twelve (12) months, within thirty (30) days after written request, certify by written instrument duly executed and acknowledged to any person, firm, or corporation specified in such request:

a. Whether this Ground Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;

b. Whether the responding party has actual knowledge (without obligation to make inquiry) of any Event of Default pursuant to this Ground Lease;

c. Whether the responding party has actual knowledge (without obligation to make inquiry) of any offsets, counterclaim or defenses to the terms and obligations pursuant to the Lease.

Any such certificate may be relied on by the party who requested it and any other person, firm, or corporation to whom it may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing it. For any request more frequent than every twelve (12) months, the responding party may require payment of its reasonable costs in preparation of the estoppel response.

21 Grant Agreement Prevails. Whenever there shall exist a conflict between the provisions of this Ground Lease and the Grant Agreement, the Grant Agreement shall prevail. Unless required by law, Tenant shall not amend or otherwise modify the Grant Agreement without the prior written consent of Landlord.

22 Miscellaneous. This Ground Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. Time is declared to be of the essence of this Ground Lease. Except as expressly set forth herein, no third party beneficiary rights are created by this Ground Lease. The Section headings contained in this Ground Lease are for purposes of reference only and shall not limit or define the meaning of any of the terms of provisions hereof. All approvals required hereunder shall also be in writing. This Ground Lease shall be governed by and construed in accordance with the laws of the State of Minnesota. Whenever, in this Ground Lease, anything is to be done or performed by Tenant or Landlord, unless otherwise expressly provided to the contrary, it shall be done or performed at the sole cost and expense of Tenant or Landlord as the case may be. Any prevention, delay or stoppage due to strikes, labor disputes, acts of God, inability to obtain labor or materials, governmental restrictions, governmental controls, enemy or hostile government action, civil commotion, fire or other casualty, and other causes beyond the control of the party obligated to perform shall excuse the performance by such party for a period equal to any such prevention, delay or

stoppage, except the obligations of either Landlord or Tenant with regard to the payment of monies. Except as otherwise expressly provided herein, any consent or approval required in this Ground Lease may not be unreasonably withheld or delayed. Unless provision is made for a specific time period, consent or approval shall be given or withheld within fifteen (15) days, or, if City Council approval is required, within thirty (30) days of the request for such consent or approval.

*[The remainder of this page is intentionally left blank.
Signatures follow on the next page.]*

fb.us.8094130.02

IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease
the day and year first above written.

Landlord's address:

3111 First Avenue South
Minneapolis, MN 55408

LANDLORD:

TUBMAN

By _____

Name _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2012, by _____, the _____ of Tubman, a Minnesota
nonprofit corporation, on behalf of the nonprofit corporation.

Notary Public

EXHIBIT A

Legal Description of Premises

The land is situated in the City of Maplewood, County of Ramsey, State of Minnesota, and is described as follows:

Parcel 1:

Lot 2, Block 1, Century Trails Commons

Parcel 2:

The benefit of the appurtenant easements contained in Reciprocal Easement Agreement dated December 27, 2005, filed January 18, 2006, as Document No. 3919913, as amended by First Amendment to Reciprocal Easement Agreement dated August 20, 2008, filed September 4, 2008, as Document No. 4114968.

Parcel 3:

Non-exclusive easement for driveway, access, ingress and egress purposes as contained in Private Driveway Easement Agreement dated December 8, 2010, recorded December 22, 2010, as Document No. 4259266.

Parcel 4:

Non-exclusive easement for sidewalk purposes as contained in Reciprocal Sidewalk Easement Agreement dated December 8, 2010, recorded December 22, 2010, as Document No. 4259267.

Ramsey County, Minnesota
Abstract Property

EXHIBIT B

Tubman Facility

Contributions to Acquisition and Betterment by

State and Landlord

<u>SOURCES OF PROJECT FUNDS</u>	<u>AMOUNT</u>	<u>PERCENTAGE ALLOCATION</u>
State of Minnesota	\$ 2,000,000	%
Landlord	\$ _____ *	%
	\$ _____ *	100%

*Based on closing pro forma. Exact amount to be determined upon final completion and final draws pursuant to the Disbursing Agreement, at which time this Exhibit shall be revised and percentages adjusted accordingly.

This amount shall also be reduced by the amount of any land purchase payment made to Landlord pursuant to Section 14, and the percentages adjusted accordingly.

EXHIBIT C

Tubman Facility

Contributions to Acquisition and Betterment by

City and Landlord

	<u>Amount</u>	<u>Percentage of Allocation</u>
Landlord	\$ _____ *	<u>100%*</u>
Tenant (City of Maplewood)	\$0.00	0%

*Based on closing pro forma. Exact amount to be determined upon final completion and final draws pursuant to the Disbursing Agreement, at which time this Exhibit shall be revised and percentages adjusted accordingly.

This amount shall be reduced by the amount of any land purchase payment made to Landlord pursuant to Section 14, and the percentages adjusted accordingly.

EXHIBIT D

Permitted Encumbrances

1. Real estate taxes and installments of special assessments not currently due and payable.
2. Easements, covenants, conditions, restrictions, and limitations, if any, that do not impair the use of the Premises.
3. Reservation of any minerals or mineral rights reserved to the State of Minnesota.
4. Building and zoning laws, ordinances, and state and federal regulations.
5. Any liens or other encumbrances created by Tenant in accordance with this Lease.
6. The provisions of Minnesota Statute Section 16A.695 regarding the interests of the State of Minnesota.
7. Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement dated April 29, 2010, filed April 29, 2010, as Document No. A9507507 (Hennepin County), and filed April 30, 2010, as Document No. 4219458 (Ramsey County), executed by Tubman, a Minnesota nonprofit corporation, as mortgagor, to Bremer Bank, National Association, a national banking association, as mortgagee, in the original principal amount of \$4,146,000.00.
8. Terms and conditions of and easements contained in Reciprocal Easement Agreement, dated December 27, 2005, filed January 18, 2006, as Document No. 3919913. Amended by First Amendment to Reciprocal Easement Agreement dated August 20, 2008, filed September 4, 2008, as Document No. 4114968.
9. Easement for underground fiber optic cable line, together with a right of access, in favor of St. Paul's Monastery, Inc., a Minnesota religious corporation, as created in document dated April 29, 2008, filed September 2, 2008, as Document No. 4114544.
10. Terms and conditions of unrecorded Contract for Planned Unit Development dated March 19, 2008 between the City of Maplewood, Minnesota and St. Paul's Monastery.
11. Terms and conditions of Sections 5, 6, 7, 12, 17 and 18 of unrecorded Private Development Agreement dated May 29, 2008 by and between St. Paul's Monastery and Tubman Family Alliance & Chrysalis, A Center for Women, Inc. The remaining provisions of said agreement have been

- terminated by Partial Termination of Private Development Agreement dated December 7, 2011.
12. Terms and conditions of Private Driveway Easement Agreement dated December 8, 2010, recorded December 22, 2010, as Document No. 4259266.
 13. Terms and conditions of and easement for sidewalk purposes as contained in Reciprocal Sidewalk Easement Agreement dated December 8, 2010, recorded December 22, 2010, as Document No. 4259267.
 14. Terms and conditions of Master Subordination Agreement and Estoppel Certificate dated March 23, 2012, recorded March 26, 2012, as Document No. _____.
 15. Loan Repayment Agreement and Mortgage dated March 23, 2012, recorded March 26, 2012, as Document No. _____, executed by Tubman, a Minnesota non-profit corporation, as mortgagor, to Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, as mortgagee, in the original principal amount of \$600,000.00.
 16. Request for Notice of Foreclosure by Minnesota Housing Finance Agency dated March 23, 2012, recorded March 26, 2012, as Document No. _____.
 17. Declaration of Covenants and Restrictions dated as of December __, 2011, by Tubman, regarding a loan from the Ramsey County Housing and Redevelopment Authority, recorded March 26, 2012, as Document No. _____.
 18. Ground Lease dated as of _____, 2012, by and between Tubman, a Minnesota nonprofit corporation, as Landlord, and the City of Maplewood, a Minnesota municipal corporation, as Tenant, as evidenced by Short Form Ground Lease dated as of _____, 2012, recorded _____, 2012, as Document No. _____.
 19. Lease/Use Agreement dated as of _____, 2012, by and between the City of Maplewood, a Minnesota municipal corporation, as Landlord, and Tubman, a Minnesota nonprofit corporation, as Tenant, as evidenced by Short Form Lease dated as of _____, 2012, recorded _____, 2012, as Document No. _____.
 20. Declaration by the City of Maplewood dated _____, 2012, recorded _____, 2012, as Document No. _____.

_____.

21. Consent and Subordination Agreement dated as of _____, 2012 by and among Tubman, a Minnesota nonprofit corporation, Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, Bremer Bank, N.A., a national banking association and Ramsey County Housing and redevelopment Authority, a political subdivision of the State of Minnesota, recorded _____, 2012, as Document No. _____.

L&V Draft: 7/5/12

LEASE AND USE AGREEMENT

**By and between
City of Maplewood
and
Tubman**

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LEASE AND USE AGREEMENT

THE TUBMAN FACILITY

THIS **LEASE AND USE AGREEMENT** (“**this Lease**”) is entered into this ____ day of _____, 2012, between the **CITY OF MAPLEWOOD**, a Minnesota municipal corporation (“**Landlord**”), and **TUBMAN**, a Minnesota nonprofit corporation (“**Tenant**”).

1. PURPOSE.

a. Landlord believes that it serves the public interest of the City of Maplewood to promote and provide for healthy and safe families in the City and the region. Landlord and Tenant believe that Harriet Tubman Center East located at 2675 Larpenter Avenue, Maplewood, Minnesota, as more further described in this Lease (“**The Tubman Facility**”) furthers that public purpose, and that The Tubman Facility is and will continue to be an a primary provider of such services in the City and throughout the metro.

b. The governmental improvement authorized by: Minnesota Session Laws 2012, CHAPTER 293, Section 18, Subdivision 3.; Minnesota Statutes § 412.211 [**and established by official action of the City by Resolution _____**] is a grant of funds to modernize and improve the infrastructure in The Tubman Facility (the “**Governmental Program**”), which shall achieve Landlord’s goal of supporting Tubman’s programming. Minn. Stat. § 412.211 specifically authorizes statutory cities to enter into leases that advance their interests and goals. Landlord and Tenant acknowledge and agree that the goal of the Governmental Program will be to maintain regionally renowned shelter/short-term transitional housing for individuals experiencing family violence (“**Program Goal**”) and that the success of The Tubman Facility requires that Tenant have a safe and modern facility and it is the intent of the parties hereto that Tenant shall be empowered to upgrade its existing facilities.

c. This Lease is being entered into in accordance with the provisions of Minnesota Session Laws of 2012, Chapter 293, § 18, Subd. 3, Minn. Stat. § 412.211 and rules, regulations, and orders issued pursuant thereto in order to carry out this public purpose.

2. DEMISE AND DESCRIPTION OF PREMISES. In consideration of the rents, mutual promises, and covenants contained herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, those certain parcels of real property legally described on Exhibit A attached hereto, together with all existing improvements and improvements to be constructed thereon (together the real property and improvements, the “**Premises**”), all located in the City of Maplewood, Minnesota. The Premises are leased to Tenant on an AS-IS basis and Tenant acknowledges that

Landlord has made no representations or warranties as to the condition, quality, buildability, or suitability for development of the Premises.

Tenant acknowledges that Landlord's interest in the Premises is pursuant to that certain fifty (50) year Ground Lease entered into by and between Tubman, as Ground Landlord, and Landlord, as Ground Lessee, of even date herewith (the "**Ground Lease**"), and further will be subject to the Grant Agreement and Declaration described in Section 3 hereof. Tenant acknowledges that its rights in the Premises are subject to the Ground Lease and the Grant Agreement and Declaration.

3. **GRANT AGREEMENT.** Landlord and Tenant acknowledge that the costs of design and construction of renovations on the Premises of The Tubman Facility Improvements (as defined more fully in Section 21 of this Lease and generally described on the attached Exhibit B, variously referred to herein as the "**The Tubman Facility Improvements**" or the "**Improvements**") will be funded, in part, through the proceeds of a state grant in the aggregate amount of \$2,000,000 ("**State Grant Proceeds**") from the State of Minnesota acting by and through its Department of Employment and Economic Development (the "**State**"). The State Grant Proceeds have been provided to Landlord pursuant to the terms of a General Obligation Bond Proceeds Grant Agreement Construction Grant (the "**Grant Agreement**"), a copy of which is attached hereto as Exhibit C, and The Tubman Facility is "state bond financed property" as such term is defined therein and is subject to the General Obligation Bond Financed Declaration attached thereto and recorded in the Office of the Ramsey County Registrar of Titles on _____, 2012 as Document No. _____ (the "**Declaration**"). All capitalized terms that are not otherwise defined in this Lease shall have the meaning ascribed to those terms in the Grant Agreement.

This Lease requires Tenant to comply with the Grant Agreement and to fulfill certain obligations therein, which are set out more fully herein.

4. **TERM AND OPTIONS TO RENEW.** The initial term of this Lease shall be for twenty (20) years, commencing on the date of this Lease and ending _____, 2032, unless sooner terminated as hereinafter provided. This term is acknowledged to be substantially less than the useful life of The Tubman Facility improvements (which the parties agree is forty (40) years from the date of this Lease). As used herein the expression "**Term**" refers to the initial Term and to any renewal thereof as hereinafter provided.

Subject to the conditions set forth below, Tenant shall renew this Lease for two successive periods, the first of which shall be for twenty (20) years, and the second of which shall be for the remaining term of the Ground Lease. Unless the parties otherwise agree in writing, each renewal shall be upon the identical terms and conditions contained herein, including but not limited to, the condition that Tenant is operating The Tubman Facility to further the Program Goal. Each renewal shall be confirmed by Tenant providing a written notice of renewal to Landlord ("**Confirmation Notice**") at least six (6) months prior to the renewal year. As a condition precedent to such renewal, the Landlord shall have determined by action of the City Council of the

City of Maplewood (“**City Council**”), such action to be taken within three (3) months of receipt of the Confirmation Notice from Tenant, that Tenant has demonstrated that such renewal continues to carry out the Governmental Program and the Program Goal and that Tenant is suited and able to perform the functions contained in this Lease and upon such demonstration the Landlord shall act in good faith to renew this Lease. In no event shall Tenant be entitled to renew the Term hereof even though the Confirmation Notice is timely given, if (a) the Lease has been terminated, or (b) an Event of Default has occurred and is continuing as of the date of the expiration of the initial term hereof or the previously exercised renewal term, as the case may be. Tenant’s right to the second renewal term is conditioned upon the Term of this Lease having been extended by the previous renewal term. Notwithstanding anything to the contrary contained herein, Landlord is not required to renew this Lease with Tenant, and may at that time, in its sole option and discretion (i) decide to self operate the Governmental Program in the Premises, (ii) contract with some other entity to operate the Governmental Program in the Premises, or (iii) determine that the Premises is no longer needed or useful for the operation of the Governmental Program and sell its interest in the Premises, which option shall be exercised by at least three hundred sixty (360) days prior written notice to Tenant of such exercise.

5. STATUTORY TERMINATION.

a. Notwithstanding any other provisions of this Lease to the contrary, if the Governmental Program is terminated or changed in response to changes in state law in such a manner as to (a) cause this Lease and the operation of The Tubman Facility to be inconsistent with the changed Governmental Program or (b) remove the statutory authority for the Landlord to operate the Governmental Program, then this Lease may be terminated by 485 days written notice to Tenant (the “**Termination Date**”), provided however that Landlord agrees that it will not terminate or change the Governmental Program during the Term unless required to do so by applicable State law. Any termination must be approved by the City Council, and provided further that any termination pursuant to this Section 5 will be deemed automatically rescinded and of no force or effect if within said 485 day period (i) the State law requiring the Governmental Program to be terminated or changed or precluding the Landlord’s operation of the Governmental Program is repealed or modified in such a manner as to permit the Governmental Program to continue in a form that does not cause this Lease and operation of The Tubman Facility on the Premises to be inconsistent therewith, or (ii) Tenant conforms its operation to the changed Governmental Program. Unless the termination is so rescinded, Tenant’s failure to cease operation of The Tubman Facility on the Termination Date shall be a default under this Lease.

b. The parties agree to cooperate in good faith to attempt to obtain State legislation that permits the Governmental Program and this Lease to continue.

6. RENT. No rent is required to be paid to Landlord by Tenant for the initial Term and the renewal Terms, provided, however, that anything else contained herein or

elsewhere notwithstanding, it is the intention of the parties that this Lease is a complete “net” Lease and that all costs and expenses, of any nature or kind whatsoever, attributable to the Premises or Tenant’s use thereof during the Term hereof, or the renewal Terms, including but not limited to the operation and maintenance of the Premises and the operation of the Governmental Program, shall be the sole responsibility of Tenant, and Landlord shall not have any liability therefore, provided that damage to persons or property shall be governed by Section 25 hereof.

7. PAYMENT OF ASSESSMENTS.

a. Taxes as Additional Rental. As “**Additional Rent**” hereunder, Tenant shall pay and discharge as they become due, promptly and before delinquency, all real estate taxes, personal property taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special or ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, and kind which shall be levied, assessed, charged, or imposed or which may become a lien or charge on or against the Premises or any part thereof, the leasehold of Tenant herein, any Improvements now or hereafter thereon, or on or against Tenant’s estate hereby created, which may be a subject of taxation, during the entire Term hereof, including the renewal Terms, excepting only those taxes hereinafter specifically excepted in subsection (c).

b. Assessments Affecting Improvements. Specifically, but without any way limiting the generality of the requirements of subsection (a), Tenant shall pay all special assessments and levies or charges made by any municipal or political subdivision for local improvements and may pay them in cash as they shall fall due and before they shall become delinquent, or in installments each year as assessed by any such municipal or political subdivision. If, by making any such election to pay in installments, any such installments shall be payable after the termination of this Lease or any extended Term thereof, such unpaid installments shall be prorated as of the date of termination, and amounts payable after such date shall be paid by Landlord. All of the taxes and charges under this Section shall be prorated at the commencement and expiration of the Term hereof.

c. Contesting Taxes. If Tenant shall in good faith desire to contest the validity or amount of any tax, assessment, levy, or other governmental charge herein agreed to be paid by Tenant, Tenant shall be permitted to do so and to defer payment of such tax or charge, the validity or amount of which Tenant is so contesting, until final determination of the consent, on giving to Landlord written notice thereof prior to the commencement of any such contest, provided, however, that Tenant shall be absolutely obligated to pay such tax or charge no later than thirty (30) days before such unpaid tax or charge will result in a forfeiture of the Premises or any part thereof. If Tenant does undertake any such contest it shall diligently pursue such contest to completion.

d. Disposition of Rebates. All rebates on account of any such taxes, rates, levies, charges, or assessments required to be paid and paid by Tenant under the provisions hereof shall belong to Tenant, and Landlord will on the request of Tenant execute any receipts, assignments, or other acquaintances that may be necessary on the Premises in order to secure rebates that may be received by Landlord. All rebates on account of any such taxes, rates, levies, charges, or assessments paid by Landlord shall belong to Landlord, provided Tenant has not reimbursed Landlord for such payments and Tenant shall have no obligation to reimburse Landlord to the extent of such rebates received and retained by Landlord.

e. Landlord's Right to Pay Taxes on Behalf of Tenant. In the event Tenant shall fail to comply with the preceding terms of this Section 7 and such failure shall continue for thirty (30) days following Landlord's written notice to Tenant of such initial failure, Landlord may, but shall not be obligated to, pay any such taxes or assessments and charge it, plus interest on such amount at a rate of 2% over the prime rate established by U.S. Bank National Association, or its successor, from the date paid by Landlord, as Rent immediately due and payable, subject, however, to subsection (d) above.

f. Receipts. Tenant shall, at the request of Landlord, obtain and deliver to Landlord receipts or duplicate receipts for all taxes, assessments, and other items required hereunder to be paid by Tenant, promptly on payment thereof.

g. Acknowledgement. Tenant acknowledges that Landlord has made no representations or warranties of any kind with respect to the amount of any real estate taxes, special assessments, or other charges which may be levied against the Premises throughout the initial Term, or the renewal Terms, of this Lease. Landlord agrees to cooperate with Tenant in the taking of any reasonable action determined by Tenant to be necessary to obtain or maintain tax exempt status for Tenant's use of the Premises, provided, however, that Tenant shall be responsible for all actual out of pocket costs and expenses incurred by Landlord in connection with such cooperation.

8. PAYMENT OF UTILITIES. As Additional Rent, Tenant shall fully and promptly pay for all water, gas, heat, light, power, telecommunications, and all other utilities of every kind furnished to the Premises throughout the term hereof, and Landlord shall have no responsibility of any kind for any thereof.

9. REPORTING AND PROGRAM OVERSIGHT.

a. After completion of The Tubman Facility Improvements, Tenant shall promptly submit to the Landlord, upon written request, such documentation, information and reports as are needed by the Landlord to fulfill its reporting requirements under the Grant Agreement.

b. (1) On or before each December 1, commencing on the December 1 first following the Completion Date, Tenant shall submit to the City of Maplewood, Director of Community Development or other designee of the City Manager ("**CD Director**") the following information (hereinafter, the "Annual Report"):

A) A report of major activities at The Tubman Facility for the current fiscal year of Tenant, and a description of how the major activities accomplish the Program Goal.

B) Tenant's annual budget for the next fiscal year, including revenues and expenses (and including all capitalized expenditures for Improvements), which shall demonstrate that forecast revenues (from all sources) will be equal to or exceed forecast program expenses and that Tenant has secure funding to maintain the Premises in an amount at least equal to the maintenance cost in the most recent fiscal year (the "**Maintenance Obligation**"). For purposes of this Lease, the cost to maintain the Premises means the following expenses:

- i. salary, benefits and related overhead for core building operation staff;
- ii. building equipment operation and maintenance;
- iii. building repairs;
- iv. property tax payments (including any special assessments);
- v. permits;
- vi. snow and ice removal;
- vii. waste removal;
- viii. landscaping maintenance;
- ix. utilities (e.g., electricity, steam and water/sewer) at half the cost incurred for the full building program operations;
- x. stormwater fees;
- xi. security services;
- xii. fire/smoke alarm/sprinkler services and maintenance;

xiii. property and liability insurance; and

xiv. similar costs needed to maintain the building and its value.

C) Tenant's projected budgets for funding operations of The Tubman Facility for the next three fiscal years that show that forecast revenues (from all sources) will be equal to or greater than forecast program expenses while still maintaining the Maintenance Obligation.

D) A report of Tenant's expenditures for Improvements in the prior year.

(2) No later than forty-five (45) days after submittal to the CD Director by Tenant, and upon a finding that (i) the Tenant is carrying out the Governmental Program and furthering the Program Goal, (ii) revenues equal or exceed program expenses, and (iii) the Maintenance Obligation is projected to be maintained for the next three fiscal years, the CD Director, shall approve the budget of Tenant upon the City's findings that Tenant is carrying out the Governmental Program and the revenues (from all sources) equal or exceed the program expenses and forward its approval to the Commissioners of Minnesota Management and Budget and the Minnesota Department of Employment and Economic Development. If the CD Director does not approve the budget, the CD Director shall submit his/her report and findings and all written materials that the CD Director received from Tenant along with a written description of the actions that the CD Director intends on taking in order to comply with the requirements imposed by Section 2.04 of the Grant Agreement, if any, to the City Council and the Commissioners of Minnesota Management and Budget and the Minnesota Department of Employment and Economic Development.

10. TENANT REPRESENTATIONS, WARRANTIES AND COVENANTS.

Tenant covenants with and warrants and represents to Landlord as follows:

a. It has legal authority to enter into, execute, and deliver this Lease, and that it has taken all corporate and other actions necessary and incident to its execution and delivery of such documents.

b. It will comply with all of the terms, conditions, covenants, requirements, and/or warranties in this Lease, at all times during the term hereof.

c. It will comply with the terms, conditions, covenants, requirements and/or warranties in the Grant Agreement, the G.O. Compliance Legislation, and the Commissioner's Order (the latter two as defined in the Grant Agreement).

d. It will construct The Tubman Facility Improvements and operate The Tubman Facility in compliance with the Grant Agreement, the G.O. Compliance Legislation, and the Commissioner's Order.

e. It has made no material false statement, or material misstatement of fact, in connection with its receipt of this Lease, and all of the information previously submitted to Landlord, the State, or the Commissioner of Minnesota Management and Budget (the "**Commissioner**"), or to be submitted to Landlord, the State, or the Commissioner of the Minnesota Office of Management and Budget in the future, relating to this Lease or the Grant given to Landlord or the disbursement of any of the proceeds of the Lease or Grant, is and will be true, complete and correct by Tenant in all material respects.

f. The execution and delivery of this Lease by Tenant will not cause or constitute a violation of any provisions of Tenants Articles of Incorporation, Operating Agreement or By-laws, or of the laws of the State of Minnesota, and there are no actions, suits, or proceedings pending, or to the actual knowledge of the undersigned officers of Tenant, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, 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 Lease, or to perform any of the acts required of it in this Lease.

g. Neither the execution or delivery of this Lease, nor compliance with any of the terms, conditions, requirements, or provisions contained herein, 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, or any of its properties, is bound.

h. Subject to Unavoidable Delays (as defined in Section 21), but no later than the Completion Date (as defined in Section 21), The Tubman Facility Improvements will be substantially completed in such a manner as will allow The Tubman Facility to commence the Governmental Program as specified in Section 1 of this Lease.

i. As of the date hereof, the Premises and the contemplated use thereof will not violate in any material respect any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record, relating to the Premises, except violations that will be corrected as part of the construction of the Improvements.

j. The construction of The Tubman Facility Improvements will be performed in material compliance with all applicable laws, statutes, rules, ordinances, and regulations, including but not limited to building code, disability, access, zoning, air quality, pollution control, recyclable materials, and prevailing wage requirements as issued by any federal, state, or local political subdivisions having jurisdiction over the Premises.

k. All applicable licenses, permits, and bonds required for the construction of The Tubman Facility Improvements have been or shall be obtained.

l. It shall furnish satisfactory evidence regarding the representations, warranties and covenants contained herein as may be required by Landlord or the State and requested in writing from time-to-time.

m. It shall not take any actions inconsistent with this Lease.

n. It will not pay for billboard advertising using Landlord-derived funds.

11. LANDLORD REPRESENTATIONS, WARRANTIES AND COVENANTS. Landlord covenants with and warrants and represents to Tenant as follows:

a. It has legal authority to enter into, execute, and deliver this Lease, and that it has taken all official and other actions necessary and incident to its execution and delivery of such documents.

b. It will comply with all of the terms, conditions, covenants, requirements, and/or warranties in this Lease applicable to Landlord at all times during the term hereof.

c. It will comply with all of the terms, conditions, covenants, requirements and/or warranties in the Grant Agreement, the G.O. Compliance Legislation, and the Commissioner's Order subject to Tenant's compliance with all terms and conditions of this Lease.

d. The execution and delivery of this Lease by Landlord will not cause or constitute a 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 the actual knowledge of the undersigned officers of Landlord, threatened, before or by any judicial body or governmental authority against or affecting it relating to the Premises, 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 Lease, or to perform any of the acts required of it in this Lease.

e. Neither the execution or delivery of this Lease, nor compliance with any of the terms, conditions, requirements, or provisions contained herein, 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, or any of its properties, is bound.

12. WARRANTIES OF TITLE AND QUIET POSSESSION. Landlord covenants that Landlord is seized of the Premises as ground tenant pursuant to the Ground Lease and, assuming Tenant fully performs as required by this Lease, Tenant

shall have quiet and peaceable possession of the Premises during the Term, in accordance with this Lease.

13. USE OF PREMISES. Subject to the other terms and provisions contained herein, Tenant shall be permitted to use The Tubman Facility only for the construction of the Improvements, construction of additional buildings and improvements pursuant to Section 22 herein, maintenance and repair of the Premises and operation of The Tubman Facility in order to achieve the Program Goal as set forth in Section 1.b. above.

No use shall be made or shall be permitted to be made of the Premises nor shall any acts be done which will jeopardize the tax-exempt status of the general obligation bonds that funded the State Grant Proceeds or cause a cancellation of any insurance policy covering the Improvements on the Premises, or any part thereof. Tenant shall, at its sole cost, comply with all requirements necessary for the maintenance of insurance of any insurance organization or company, as herein provided, covering any building and appurtenances located on the Premises.

Furthermore, during the term of this Lease, Tenant shall comply with all applicable laws affecting the Premises if either: (a) the breach of such laws might result in any penalty on Landlord or the forfeiture of Landlord's title to the Premises; or (b) the breach of which would have an adverse effect on public health or safety. Tenant shall not commit or allow to be committed any waste of or nuisance on the Premises. Throughout the Term of this Lease, the operation of the Governmental Program on the Premises shall be subject to Unavoidable Delays, as defined in Section 21 herein.

14. ABANDONMENT OF PREMISES. If Tenant shall abandon, vacate, or surrender the Premises or shall be dispossessed by process of law, or otherwise, then and in that event, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord.

15. LANDLORD'S RIGHT OF ENTRY. Tenant shall permit Landlord and the agents and employees of Landlord to enter into and on the Premises at all reasonable times during business hours and with at least five (5) days written notice for the purpose of inspecting them or for the purpose of posting notices of non-responsibility for alterations, additions, or repairs, without any charge to Landlord and without any liability to Landlord for any loss of occupation or quiet enjoyment of the Premises thereby occasioned.

16. ENCUMBRANCE OF TENANT'S LEASEHOLD INTEREST. With the prior approval of Landlord and the Commissioner, Tenant may encumber by mortgage or other proper instrument its leasehold interest in the Premises including all Improvements placed by Tenant thereon, as security for any indebtedness of Tenant incurred to finance or refinance Improvements on the Premises as provided in the Grant Agreement, provided such mortgage contains an acknowledgement that the mortgagee's rights are subject to the rights of Landlord under this Lease and the Ground Lease and the rights of the State under the Grant Agreement and the Declaration. Any such mortgage or other instrument shall provide that Tenant shall

have access to insurance and condemnation proceeds so as to allow Tenant the right to rebuild or restore any portions of the Premises destroyed or condemned in the event that Landlord permits such rebuilding or restoration under the terms of this Lease. No such mortgage or encumbrance, or any foreclosure, conveyance, or exercise of right by any secured lender shall relieve Tenant from its liabilities hereunder, nor prevent Landlord from exercising its rights to terminate the Lease.

If Tenant so encumbers its leasehold interest and if Tenant or the holder of the indebtedness secured by such encumbrance gives notice to Landlord of the existence thereof and the address of such holder, then Landlord will mail or deliver to such holder at that address a duplicate copy of all notices in writing which Landlord may, from time-to-time, give to or serve on Tenant under and pursuant to the terms and provisions hereof. Such copies shall be mailed or delivered to such holder at or as near as possible to the same time such notices are given to or served on Tenant.

Such holder may, at its option, at any time before the rights of Tenant are terminated as provided herein, pay any of the rent due hereunder or pay any taxes and assessments or do any other act or thing required of Tenant by the terms hereof or do any act or thing that may be necessary and proper to be done in the observance of the covenants and conditions hereof or to prevent the termination hereof. All payments so made, and all things so done and performed by such holder, if done prior to the rights of Tenant having been terminated, shall be as effective to prevent a termination of the rights of Tenant hereunder as they would have been if done and performed by Tenant.

Upon such holder succeeding to the interest of Tenant hereunder, such holder shall be bound by all terms and conditions of this Lease, and shall be deemed to have assumed all of Tenant's obligations hereunder from and after such time as it succeeds to the interest of Tenant.

The provisions of this Section 16 do not apply to (a) the mortgage in favor of Bremer Bank, (b) the mortgage in favor of Minnesota Housing Finance Agency, and/or (c) the interests of Ramsey County, Minnesota in and to the Premises ("**Prior Interests**").

17. NON-RENEWAL OR EARLY TERMINATION OF THIS LEASE,
PAYMENT FOR IMPROVEMENTS TO TENANT

a. In the event that the Landlord terminates this Lease pursuant to Section 30 for a default under Subsection 28(c) and has determined to continue to carry out the Governmental Program in the Premises, at the time of the termination, the Landlord shall reimburse the Tenant for 100% of Tenant's Investment (as defined in subsection e. below).

b. In the event that the Landlord does not renew this Lease upon any renewal date pursuant to Section 4 and the Landlord has determined to continue to carry out the Governmental Program in the Premises, then, at the time of non-

renewal, the Landlord shall reimburse the Tenant for 100% of Tenant's Investment.

c. In the event the Landlord terminates this Lease pursuant to Section 30 for a default other than under Subsection 28(c) and the Landlord has determined to continue to carry out the Governmental Program in the Premises, then the Landlord shall have no obligation to reimburse the Tenant for its Investment.

d. In the event the Landlord determines by City Council action to discontinue the Governmental Program in the Premises, for any reason, including a change in the applicable legislation authorizing the Governmental Program, upon termination or nonrenewal of this Lease, then the Premises shall be sold and proceeds distributed as provided in Section 4.02 of the Grant Agreement and Section 13.1 of the Ground Lease. The relative contributions of the State, the Landlord and the Tenant and the relative contributions of the Landlord and the Tenant are set forth in Exhibit B and Exhibit C of the Ground Lease, respectively.

e. **"Investment"** means the amount of money or like-kind contributions contributed initially and subsequently for the acquisition and betterment of the Premises by or on behalf of the Tenant. The parties agree that the determination of Investment for purposes of this section shall not be subject to either depreciation or discount for passage of time, nor shall it be subject to appreciation in value, it being the intent of the parties to look solely to the actual dollar amount of same. The parties agree that the projected amount of Investment by or on behalf of the Tenant, as of the date of entry into this Lease, is agreed to be as provided on Exhibit C to the Ground Lease (with the Prior Interests either paid as debt or considered to be part of the Investment of Use Agreement Tenant, as shown thereon). Tenant shall annually advise the CPED Director, as provided in Section 9.b.(1) D), of the amount of all capital improvements and capitalized repairs for the applicable year that augment the Tenant's Investment in the Improvements, and the amount of Tenant's Investment shall be adjusted annually to reflect such additional amounts. Any dispute as to the Investment amount shall be resolved by binding arbitration by an arbitrator selected by the Chief Judge of the Ramsey County District Court and in accordance with the Rules of the American Arbitration Association for Commercial Arbitration, provided that discovery shall be allowed pursuant to procedures approved by the arbitrator.

f. Amounts to be paid by the Landlord to the Tenant for its Investment in the Premises shall be due and payable thirty (30) days after the termination or non-renewal of this Lease (the **"Payment Date"**), except those sums which cannot be determined as of such date shall be due and payable upon determination. All amounts due hereunder, if not paid, shall earn interest from and after the Payment Date, until paid in full at the rate of two percent (2%) over the prime rate announced from time-to-time by U.S. Bank National Association.

g. This Section 17 shall survive the termination or non-renewal of this Lease.

18. Intentionally Omitted.

19. SUBLETTING AND ASSIGNMENTS. Tenant shall not assign any of its rights hereunder, or sublet all or any portion of the Premises, without Landlord's prior written consent which consent may not be unreasonably delayed or withheld; provided, however, that Tenant may sublet or license from time-to-time without Landlord's consent such space as appropriate to further the Program Goal or for other permitted ancillary uses, subject to the limitations in Section 13. All subtenants and licensees shall operate the licensed or subleased premises for a purpose and in a manner so as to be related and ancillary to the Program Goal.

Further notwithstanding the foregoing, Tenant shall be permitted to mortgage its interest hereunder to any mortgagee, provided such mortgage is in connection with Tenant's financing or refinancing of the development or improvement of the Premises as contemplated herein subject to the requirements of Section 16 hereof. On the foreclosure of any such mortgage, the mortgagee may thereafter assign or transfer its interest in the leasehold to any other assignee or transferee, subject to the provisions of Minn. Stat. §16A.695 and the Grant Agreement, provided that any assignee thereof shall agree to be bound by the terms and conditions of this Lease. Thereafter, there shall be no other assignments or transfers of the leasehold interest without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole discretion, and Landlord's consent to one assignment or transfer shall not be deemed to be consent to any subsequent assignment or transfer. Any other transfer or assignment without Landlord's consent shall be void and shall at the option of Landlord constitute an Event of Default hereunder.

20. NOTICES. All communications, demands, notices, or objections permitted or required to be given or served under this Lease (each, a "**Notice**") shall be in writing and shall be deemed to have been duly given or served when delivered in person to the other party or its authorized agent or two (2) days after being deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested, and addressed to the other party to this Lease, to the address set forth next to such party's signature at the end of this Lease, or if to a person not a party to this Lease, at the following addresses:

To Tenant: Tubman
3111 First Avenue South
Minneapolis, MN 55408
Attention: President/Executive Director

And a copy to: Tubman
3111 First Avenue South
Minneapolis, MN 55408
Attention: CFO/Finance Director

To Landlord: Maplewood Department of Community
Development
1830 County Road B East
Maplewood, MN 55109
Attention: Director

And a copy to: Maplewood City Attorney
1830 County Road B East
Maplewood, MN 55109
Attention: CD Attorney

Any party may change its address by giving Notice in writing, stating its new address, to any other party as provided in the foregoing manner. Commencing on the tenth (10th) day after the giving of such notice, such newly designated address shall be such party's address for the purposes of all communications, demands, notices, or objections permitted or required to be given or served under this Lease.

21. CONSTRUCTION OF THE TUBMAN FACILITY IMPROVEMENTS. Tenant shall construct The Tubman Facility Improvements, described on Exhibit B, attached hereto and incorporated herein, at its own expense and subject to and in accordance with all terms and conditions of this Lease, the Grant Agreement and the Disbursing Agreement between Landlord, Tenant, the State, and other parties, and in material compliance with all applicable federal, state and local laws, rules and regulations, and in material compliance with the terms and conditions of all applicable licenses and permits and Landlord shall authorize the disbursement of the State Grant Proceeds to Tenant to be used to construct The Tubman Facility Improvements as provided herein and in accordance with the Grant Agreement and Disbursing Agreement. The State is the final arbiter of whether and when State Grant Proceeds are disbursed. The Improvements shall be substantially completed no later than December 1, 2013 (the "**Completion Date**"), subject to delays in the performance obligations for construction of The Tubman Facility Improvements due to the unforeseeable causes beyond the control of Tenant and without the fault or negligence of either party, including but not limited to adverse or severe weather conditions, acts of God, acts of the public enemy, strikes and other similar labor troubles, fire, floods, epidemics, quarantines, unavailability of power, unavailability of materials, delays due to damage or destruction of the Premises or the equipment used to construct the same, discovery of hazardous materials or other concealed site conditions including

environmental issues, or delays of contractors due to such discovery, and litigation commenced by third parties which by injunction or other similar judicial action directly results in delays and other casualty to the Premises, or affect the validity of this Lease (“**Unavoidable Delays**”). All of such Tubman Facility Improvements, including any fixtures related to the operation of any buildings located on the Premises, shall immediately become the property of the Tenant and Landlord shall have only a leasehold interest therein, subject to the terms and provisions contained herein and in the Ground Lease. Tenant is hereby authorized by Landlord to provide for the construction and equipping of The Tubman Facility Improvements in accordance with Minnesota Session Laws of 2012, Chapter 189, § 21, Subd. 11.

22. CONSTRUCTION OF ADDITIONAL BUILDINGS AND IMPROVEMENTS.

Tenant, but only with the prior written approval of Landlord, which approval shall not be unreasonably delayed or withheld, shall have the right to make such alterations, improvements, and changes to any building or improvement which may from time-to-time be on the Premises as Tenant may deem necessary or to replace any such building or improvement with a new one. If Landlord fails to respond to a written request from Tenant pursuant to this Section 22 within twenty (20) days of Landlord’s receipt of the same, then and in that event, Landlord shall be deemed to have consented to such request. Notwithstanding the preceding sentence, Landlord agrees that changes to The Tubman Facility that Tenant in its judgment determines do not reduce the value of The Tubman Facility as a whole or reduce the ability of Tenant to operate the Governmental Program, do not require the consent of Landlord. Landlord and Tenant acknowledge that during such additional construction, the Governmental Program may be interrupted as is reasonably necessary for orderly and safe construction to occur, provided that the Governmental Program shall resume immediately upon completion of construction. Any new building constructed by Tenant on the Premises, and any changes to The Tubman Facility or to new buildings, shall be constructed in material compliance with all applicable federal, state and local laws, rules and regulations; and in compliance with the terms and conditions of all applicable licenses and permits; and, together with any fixtures related to the operation of any buildings located on the Premises, shall immediately become the property of Tenant, as Ground Landlord pursuant to the Ground Lease, and Landlord shall have only a leasehold interest therein, subject to the terms and provisions contained herein and in the Ground Lease. Tenant shall annually certify the costs of any capital Improvements to and as part of the Annual Report.

23. REPAIRS AND DESTRUCTION OF IMPROVEMENTS.

a. Maintenance of Improvements. Tenant shall, throughout the Term of this Lease, at its own cost and without any expense to Landlord, keep and maintain the Premises, including all buildings and improvements of every kind which may be a part thereof, and all appurtenances thereto, including public and private sidewalks located thereon and adjacent thereto, in good, sanitary, lawful, and neat order, condition, and repair and, except as specifically provided herein, shall restore and rehabilitate any improvements of any kind which may be destroyed or damaged by fire, casualty, or any other cause whatsoever.

Landlord shall not be obligated to make any repairs, replacements, or renewals of any kind, nature, or description whatsoever to the Premises or any buildings or improvements thereon.

b. Damage to and Destruction of Buildings or Improvements. The damage or destruction or partial destruction of any building or other improvement which is a part of the Premises shall not release Tenant from any obligation hereunder, except as hereinafter expressly provided.

In case of damage to or destruction of such building or improvement which is not substantial, Tenant shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such damage or destruction, and, subject to the Prior Interests, Tenant shall have the right to any insurance proceeds the premium for which has been paid by Tenant, to be used by Tenant to pay the cost of such repair and restoration.

In the case of damage to or destruction of such building or improvement which is substantial, Tenant shall at its own expense promptly repair and restore the same to a condition as good or better than that which existed prior to such change or destruction, provided that the cost of the restoration is covered by insurance plus any deductible under such policy. If a damage or destruction is not so covered, and the damage is substantial, subject to the Prior Interests, the parties shall consult as to whether to proceed with renovation, and how to pay the uninsured costs thereof. Subject to the Prior Interests, if the parties determine that it is inappropriate to rebuild the building or improvements on the Premises this Lease and Tenant's interest in the Premises shall be terminated and shall have the same effect as if a sale shall have occurred (subject to Landlord's determination that the Premises are no longer usable or needed by Landlord to carry out the Governmental Program), and the insurance proceeds shall be paid in accordance with the provisions of Section 17(d) above. Subject to the Prior Interests, no settlement with the insurance company shall be agreed to by Tenant without the prior written consent of Landlord and the Commissioner.

Except as otherwise provided in this Section, and without limiting such obligations of Tenant, subject to the Prior Interests, if Tenant elects to rebuild, it is agreed that the proceeds of any insurance covering such damage or destruction shall be paid to Landlord and Tenant, to be held in escrow for such repair or replacement with an escrow agent acceptable to Landlord, Tenant, and any mortgagee, to be disbursed in accordance with standard commercial construction lending conditions customarily required by institutional lenders. The Tenant shall not be obligated to operate the Governmental Program on the Premises from the date of damage or destruction of the buildings or improvements until repair or reconstruction of the buildings or improvements on the Premises is complete.

24. MECHANICS' LIENS. Tenant hereby covenants and agrees that Tenant will not permit or allow any mechanics' or material supplier's liens to be placed on

Landlord's interest in the Premises during the Term hereof. Notwithstanding the previous sentence, however, in the event any such lien shall be so filed against Landlord's interest, Tenant shall take all steps necessary to remove it within 120 days of its being filed; provided, however, that Tenant may contest any such lien provided Tenant first posts a surety bond or letter of credit or cash with the applicable court sufficient to release the Premises from such lien, or otherwise protect Landlord from foreclosure thereof.

25. INDEMNIFICATION OF LANDLORD.

a. To the fullest extent permitted by law, Tenant shall, and hereby does, indemnify, save, hold harmless, and defend Landlord, its officials, employees, representatives, and agents but only when acting in their capacities as such (collectively, the "**Indemnified Party**" or "**Indemnified Parties**"), from and against all claims, costs (including reasonable attorneys fees to the extent provided in clause (e) below), liabilities, losses, or damages suffered or incurred by any of the Indemnified Parties arising from or as a result of any loss, injury, death, or damage to persons or property arising out of the use, possession, construction of improvements, operation, or maintenance of the Premises or any part thereof, or as a result of Tenant's failure to comply with the Grant Agreement, whether such loss, injury, death, or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of Indemnified Parties.

b. Tenant hereby waives and releases all claims against the Indemnified Parties for damages to any building and improvements which are now on or hereafter placed or built on the Premises and to the property of Tenant in, on, or about the Premises. Tenant also agrees that it will not assert against the Indemnified Parties in any legal proceeding any claim, cross-claim or third party claim for which Tenant is obligated under the provisions of clause (a) of this Section 25 to provide indemnification to the Indemnified Parties.

c. Notwithstanding the provisions of clauses (a) and (b) above, the provisions of clause (a) and (b) above of this Section 25 shall not apply to claims, costs, liabilities, losses, or damages which are caused by the grossly negligent, willful or intentional misconduct of the Indemnified Parties. No person or entity other than the Indemnified Parties shall have any benefit whatsoever from the agreements contained in clause (a) and (b) above, other than any indirect benefit accruing to taxpayers or residents of the City of Maplewood by reason of the benefit to Landlord and the Indemnified Parties of such agreements, and shall not be deemed to be a third party beneficiary of the agreements of Tenant contained in clauses (a) and (b) above.

d. Nothing in this Section 25 shall be construed to, and shall not, expand Landlord's maximum liability over the limits set forth in Minnesota Statutes, Chapter 466, as amended from time-to-time, or any other or successor law which has the effect of limiting Landlord's liability.

e. Promptly after receipt by an Indemnified Party of notice of the commencement of any action for which Tenant has indemnified the Indemnified Parties hereunder, the Indemnified Party will notify Tenant in writing of the commencement thereof, and, subject to the provisions hereinafter stated, Tenant shall assume, at its expense, the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to the Indemnified Parties) insofar as such action shall relate to any alleged liability for which Tenant has indemnified the Indemnified Parties hereunder. The Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of Tenant unless (i) the employment of such counsel has been specifically authorized by Tenant, or (ii) the named parties to any such action (including any impleaded parties) include more than one of the Indemnified Parties and a conflict of interest among Tenant and Indemnified Parties exists, and as a result Tenant and the Indemnified Parties cannot adequately be represented by the same counsel. In the case of such a conflict of interest, Tenant shall not have the right to assume the defense of such action on behalf of such Indemnified Parties and the Indemnified Party shall have the right to select separate counsel, at the expense of Tenant but subject to the limitation set forth in the following sentence, to assume such legal defense and to otherwise participate in the defense of such action on behalf of the Indemnified Parties. In connection with any one such action or separate but substantially arising out of the same general allegations or circumstances, Tenant shall not be liable for the fees and expenses of more than one separate firm of attorneys for all such Indemnified Parties, which firm shall be reasonably acceptable to Tenant and shall be designated in writing by the Indemnified Parties. Tenant shall not be liable for any settlement of any such action effected without its written consent. If such action is settled with the written consent of Tenant, or if there be a final judgment for the plaintiff in any such action, with or without the consent of Tenant, Tenant agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment, but only to the extent provided in subsection (a) of this Section 25. This indemnity includes reimbursement for expenses reasonably incurred by any of the Indemnified Parties in investigating the claim and in defending it if Tenant declines to assume the defense.

f. The obligations of Tenant to indemnify Landlord shall survive expiration or termination of this Lease. The rights of the Landlord hereunder shall be in addition to any other rights or remedies which the Landlord may have against Tenant under this Lease or any other document, or at law or in equity.

26. INSURANCE.

a. Insurance Coverage of Premises. Tenant shall at all times during the Term of this Lease and at Tenant's sole expense keep all Improvements which are now or hereafter a part of the Premises insured against "all risks", for those risks that are available at commercially reasonable rates, for the full

insurable value of such Improvements, and during the construction of The Tubman Facility Improvements “builders risk” and standard fire and extended coverage, with a deductible not to exceed \$100,000, and with loss payable to Landlord, Tenant, the State, and any mortgagee holding Prior Interests or an otherwise permitted encumbrance on the Premises, as their respective interests may appear. Any loss adjustment shall be made in accordance with the requirements for the use and distribution of insurance proceeds in the event of damage as otherwise provided herein, but shall require the prior written consent of Landlord, the State, Tenant, and any mortgagee. Tenant shall be responsible for any insurance deductible.

b. Commercial General Liability Insurance. Tenant shall maintain in effect throughout the Term of this Lease, at its own expense, commercial general liability insurance covering the Premises and its appurtenances and the sidewalks fronting on the Premises in the amount of at least Two Million Dollars combined single limit, and insurance on all boilers and other pressure vessels, fired or unfired. Such insurance shall: (i) be primary with respect to Landlord’s insurance or self-insurance; (ii) not exclude explosion, collapse and underground property damage; (iii) be written on an “Occurrence” Form policy basis; (iv) shall name Landlord and the State of Minnesota as additional insureds thereunder; and (v) not contain an “aggregate” policy limit (combined general liability and excess liability) of less than Ten Million Dollars per annual policy period unless specifically approved in writing by Landlord. Additionally, Landlord and the State of Minnesota shall be named as additional insureds on any contractor’s general liability insurance maintained by the general contractor or construction manager responsible for constructing the improvements to the Premises.

c. Workers’ Compensation Insurance. Tenant shall maintain Workers’ Compensation Insurance with not less than statutory minimum limits, and Employers’ Liability Insurance with minimum limits of at least \$100,000 per accident and with an all states endorsement.

d. Insurance Certificates. Tenant shall supply to Landlord, concurrently with signing this Lease and thereafter as reasonably requested by Landlord, current insurance certificates for policies required in this Section. Tenant shall promptly furnish to Landlord all endorsements showing Landlord’s additional insured status on a form that provides coverage for completed operations and liability arising out of the named insured’s operations and other written notices which modify or change any insurance coverage with respect to the Premises or Tenant’s operation at the Premises, and all paid premium receipts by Tenant regarding such required insurance.

e. Additional Required Insurance. The limits cited under each insurance requirement above establish minimums; and it is the sole responsibility of Tenant to purchase and maintain additional insurance that Tenant may determine to be necessary in relation to this Lease or its operation of the Premises.

f. Non-waiver of Statutory Limits. Nothing in this Lease shall constitute a waiver by Landlord of any statutory limits or exceptions on liability.

g. Placement of Insurance. Tenant shall place the insurance with responsible insurance companies authorized and licensed to do business in the State of Minnesota having an A.M. Best Company rating of at least A:VIII, and shall deliver endorsements and certificates in the form required above evidencing such coverage to Landlord on the date of Tenant's execution of this Lease and from time-to-time thereafter as reasonably required by Landlord. The policies required in this Section shall be endorsed to indicate that the insurer cannot cancel or change the insurance without first giving Landlord and the State thirty (30) days' written notice.

h. Landlord's Right to Pay Premiums on Behalf of Tenant. Tenant shall pay all of the premiums therefor and deliver such policies, or certificates thereof, to Landlord. In the event of the failure of Tenant, either to effect such insurance in the names called for or to pay the premiums there for or to deliver such policies or certificates thereof to Landlord, Landlord shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums therefore. Such premiums, together with interest thereon at the rate of two percent (2%) over the prime rate of US Bank National Association, accruing from the date of payment by Landlord, shall be repayable to Landlord within thirty (30) days after written notice of the payment of such insurance, and failure to repay the premiums shall carry with it the same consequences as failure to pay any installment of Rent. All rebates on account of any such premiums paid by Landlord shall belong to Landlord, provided Tenant has not reimbursed Landlord for such premiums and Tenant shall have no obligation to reimburse Landlord to the extent of such rebates received and retained by Landlord.

Each insurer mentioned in this Section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Landlord, and in form acceptable to Landlord, that it will give to Landlord and the State thirty (30) days' written notice before the policy or policies in question shall be altered or cancelled.

i. Increase in Coverage. The insurance and the size of any applicable deductible required to be maintained pursuant to this Lease shall be subject to review as to its adequacy by an Independent Insurance Consultant, as defined below, once every three years beginning in the year 2016. The Independent Insurance Consultant shall not be an employee or officer of Landlord. Tenant shall cause such review to be conducted and shall cause such Consultant to prepare a written report regarding such review containing such Consultant's recommendations, if any, for changes in such insurance. Tenant shall cause copies of such report to be delivered promptly to Landlord and agrees to follow the recommendations of such Independent Insurance Consultant to the extent practicable. For purposes of this subsection, the term "Independent Insurance Consultant" means any person who is not an employee or officer of

Tenant, appointed by Tenant, qualified to survey risks and to recommend insurance coverage for organizations engaged in like operations to those of Tenant and having a favorable reputation for skill and experience in such surveys and such recommendations, and who may be a broker or agent with whom Tenant transacts business, and reasonably acceptable to Landlord.

j. Blanket Insurance Policies. Notwithstanding anything to the contrary contained in this Section, Tenant's obligations to carry the insurance provided for herein may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Tenant; provided, however, that the coverage afforded Landlord will be at least as broad in all material respects as that afforded by the underlying primary policy.

27. PROHIBITION OF INVOLUNTARY ASSIGNMENT.

Neither this Lease nor the leasehold estate of Tenant nor any interest of Tenant hereunder in the Premises or in any buildings or improvements thereon shall be subject to involuntary assignment, transfer, or sale, by operation of law or otherwise, and any such attempt at involuntary assignment, transfer, or sale shall be void and of no effect. For purposes of this Section, the merger or consolidation of Tenant with any other entity or entities shall be deemed to be a transfer and prohibited by this Section unless either: (i) such merger is with another entity and Tenant is the survivor and remains exempt from income tax under § 501(c)(3) of the Internal Revenue Code of 1986 as amended (the "**Code**"); or (ii) such merger is with another entity which is exempt from income tax under § 501(c)(3) of the Code, Tenant is not the surviving entity, said surviving entity expressly assumes all obligations of Tenant hereunder, said surviving entity remains exempt from income tax under § 501(c)(3) of the Code, and said surviving entity has comparable or higher "net worth" (or its equivalent under accounting principles applicable to Section 501(1)(3) organizations) as Tenant has on the date hereof.

The occurrence of any involuntary assignment prohibited by the provisions of this Section 27 shall be deemed to constitute a Default under Section 28 hereof, and upon the expiration of the applicable cure period contained in Section 29 hereof, Landlord shall be entitled to exercise all remedies set forth in this Lease, subject, however, to the provisions of Section 32 hereof.

28. EVENTS OF DEFAULT. Any of the following events shall constitute a "Default" under this Lease:

a. Subject to Unavoidable Delays, if construction of The Tubman Facility Improvements has not been commenced or completed by the dates required by Section 21 and have not been completed substantially in accordance with the plans and specifications as amended from time-to-time in accordance with the provisions contained in the Section 21 and the Grant Agreement; or

b. Subject to any payments being contested in good faith, if Tenant fails to fully and completely pay all sums lawfully owing for the completion of the

Tubman Facility Improvements in accordance with the plans and specifications;
or

c. If, without the written consent of Landlord and the Commissioner, any material part of the Premises ceases to be used to achieve the Program Goal and related and ancillary activities; or

d. If a default under Section 27 hereof occurs; or

e. If, without the written consent of Landlord, the State, and the Commissioner, and except for the permitted encumbrances identified on Exhibit E attached hereto, and except as allowed under Sections 16, 17 or 19 hereof, Tenant sells, transfers, leases, encumbers, or otherwise conveys, in any way or manner, whether voluntary or involuntary, or by action of law, all or any part of its interest in the Premises, or amends or modifies any agreement relating to such sale which had previously been so consented to and approved by Landlord and the Commissioner or

f. If, without the written waiver of Landlord, Tenant fails to annually certify that the Premises is being used to further the Program Goal and related and ancillary activities, as required in Section 1 of this Lease; or

g. If, without the written waiver of Landlord, Tenant fails to provide the Annual Report meeting the requirements of Section 9.b(1) to Landlord; or

h. If Tenant fails to continuously maintain the insurance required by Section 26 of this Lease; or

i. If Tenant, upon request, refuses to allow Landlord, the Commissioner, or any auditor for the State of Minnesota or for the Minnesota Legislature, to inspect audit, copy, or abstract any and all of Tenant's financial records (books, records, papers) or other documents relevant to this Lease, the Grant Agreement, or the Premises; or

j. If Tenant, upon request, refuses to allow Landlord, the Commissioner, or any authorized representative of the State of Minnesota, to inspect the Premises; or

k. If Tenant fails to cooperate fully with Landlord in complying with any of the provisions of the Grant Agreement, G.O. Compliance Legislation, or the Commissioner's Order or Tenant fails to comply with the Grant Agreement, G.O. Compliance Legislation, or the Commissioner's Order and such failure results in a default notice from the State Entity, as defined therein; or

l. If any representation or warranty made by Tenant hereunder prove to have been untrue or incorrect in any material respect, as of the time such representation or warranty was made; or,

m. If, without the written consent or waiver of Landlord, Tenant fails to fully comply with any other material provision, term, condition, covenant, or warranty contained in this Lease, or fails to fully comply with any provisions of the Declaration; or

n. If, under any material document, instrument or agreement relating to the acquisition, construction, financing, or refinancing, of the improvements to the Premises, there occurs an event which constitutes an event of default by Tenant thereunder, after applicable grace and cure periods, and the other party thereto gives notice to Tenant of the default, if notice is required before the exercise of remedies.

29. NOTICE OF DEFAULT.

a. Upon the occurrence of a Default, an Event of Default shall not be deemed to have occurred under this Lease unless Landlord has given Tenant written notice of the Default and Tenant has failed to cure such Default within the time period specified in subsection (b) below or, if applicable, in subsection (c) below.

b. For those Defaults described in Section 27 and subsections 28 (i) and (j) the notice and cure period shall be ten (10) days; for those Defaults described in subsection 28 (h) the notice and cure period shall be thirty (30) days (provided said insurance does not expire); and for all other Defaults the notice and cure period shall be sixty (60) days if prior to the Completion Date and ninety (90) days if after the Completion Date.

c. Notwithstanding the preceding paragraph of this Section 29, (i) in the event that a Default occurs prior to the Completion Date and cannot be cured within the applicable cure period provided in subsection (b) above, and in the event that Tenant has commenced the action necessary to cure the Default during the applicable cure period provided in the subsection (b) above, then Tenant shall have such time as shall be reasonably necessary to cure such default so long as Tenant is reasonably, continuously and diligently pursuing efforts to cure such default, on the condition that Tenant diligently pursues the cure; and (ii) in the event that a Default occurs after the issuance of the Completion Date and cannot be cured within the applicable cure period provided in subsection (b) above, and in the event that Tenant has commenced the action necessary to cure the Default during the applicable cure period provided in subsection (b) above, then Tenant shall have such time as shall be reasonably necessary to cure such Default so long as Tenant is reasonably, continuously and diligently pursuing efforts to cure such Default; provided, however, that in no event shall Tenant's cure period exceed the cure period allowed Landlord or Tenant under the Grant Agreement.

Notwithstanding the provisions of this Section set forth above, in no event shall any cure period, including any extension of a cure period, be greater than the cure

period available under the Grant Agreement if the Default by Tenant hereunder also causes a default or event of default by Landlord under the Grant Agreement.

Additionally, no extensions of the cure period set forth in subsection (b) above shall be granted or allowed for a Default under Section 27 hereof.

d. Before it exercises any remedies under this Lease for an uncured Event of Default, Landlord will first comply with the obligations under the Recognition, Agreement.

30. DEFAULT AND TERMINATION. (a) Prior to the Completion Date, upon the occurrence and during the continuance of an Event of Default under this Lease, Landlord, in addition to the other rights or remedies it may have, including damages, shall have the immediate right to terminate this Lease by delivery of written notice of termination; (b) after the Completion Date, upon the occurrence and during the continuance of an Event of Default under this Lease, subject to Section 32 hereof, Landlord, in addition to the other rights or remedies it may have, including damages, shall have the immediate right to terminate this Lease by delivery of written notice of termination, and reenter the Premises and remove all persons and property otherwise from the Premises.

31. ADDITIONAL REMEDIES. Notwithstanding anything in this Lease or any other agreement to the contrary, upon the occurrence, and during the continuance, of a Default, in addition to the remedies in Section 30 and this Section, Landlord may immediately refrain from making any payments from the Grant Agreement. In addition, during the continuance of an Event of Default under this Lease, and after giving Tenant any notice required by Section 29 hereof and the running of any applicable time period without Tenant having cured, Landlord may (a) in addition to the remedies in Section 30 and this Section, exert any remedies it may have in law or equity and, (b) if the State issues a demand, commences an action, actually receives payment from Landlord, or exercises any other remedies against Landlord, then Landlord may also similarly demand, commence an action, or exercise any other remedies against, and be immediately entitled to receive from Tenant, or do to Tenant that which the State does to Landlord on the condition that such demand, action, payment, or other action by the State against Landlord is caused by a Default by Tenant under this Lease.

32. SPECIAL TERMINATION PROCEDURE. After the Completion Date for The Tubman Facility Improvements, if Tenant is in default under subsection 28(c), Landlord agrees that it will not exercise the remedy of termination of the Lease provided in Section 30 hereof on the condition that Tenant does each of the following:

a. Within ninety (90) days of the occurrence of a Default, Tenant shall have retained, at its sole expense, an independent consultant qualified to analyze Tenant's operation at the Premises and reasonably acceptable to Landlord, (hereinafter the "**Consultant**");

b. Within sixty (60) days of the retention of the Consultant, Tenant shall have delivered to Landlord a written report of the Consultant analyzing its operations at the Leased Premises (the “**Consultant’s Report**”);

c. Within fifteen (15) days of the delivery of the Consultant’s Report, Tenant shall have met with Landlord to discuss the findings and recommendations of the Consultant;

provided, however, that in the event that Tenant has not retained the Consultant, delivered the Consultant’s Report, or met with Landlord, within the required time period, then Landlord shall have the right to proceed to exercise the remedy of termination of this Lease without regard to the succeeding provisions of this Section 32. Landlord and Tenant acknowledge and agree that Tenant shall not be required to pay more than \$40,000 (adjusted for inflation) for the fees and expenses of each Consultant’s Report. Landlord agrees that if after any time during the process set forth in subsections (a), (b) or (c) above, the Default has been cured, Tenant shall not be required to proceed with the remaining portion of the process set forth in subsections (a), (b) and (c) above.

In the event that Tenant has retained the Consultant, delivered the Consultant’s Report, and met with Landlord as required hereinabove, Landlord further agrees that it will not exercise the remedy of termination of this Lease unless and until (i) the governing body of Landlord has considered a resolution at which meeting representatives of Tenant shall have the right to be heard; (ii) Landlord’s governing body shall adopt a resolution authorizing the termination of this Lease, and (iii) Tenant shall have failed to cure the Event of Default within thirty (30) days of the adoption of such resolution.

Tenant acknowledges and agrees that: a) Landlord is not required to accept or adopt all or any portion of the Consultant’s Report; and b) in the event that Landlord determines, in its sole discretion, to accept any of the recommendations of the Consultant’s Report, the acceptance of which requires an amendment to this Lease, or a waiver of the Default or Event of Default, Landlord shall have the right, as a condition to agreeing to any such amendment or waiver, to impose any conditions Landlord deems appropriate, in its reasonable discretion.

33. LANDLORD’S RIGHT TO PERFORM. In addition to any other provision contained herein, in the event that an Event of Default by Tenant shall have occurred and be continuing, Landlord may, at Landlord’s option but without any obligation, take any action to perform the obligations of Tenant which gave rise to the Event of Default or with respect to which Tenant is otherwise in Default under this Lease, and Landlord shall not be liable, or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Tenant on account thereof, other than for Landlord’s willful or intentional misconduct. Tenant shall repay to Landlord on demand the entire expense of Landlord’s performance together with interest at the rate of two percent (2%) in excess of the prime rate of US Bank National Association, accruing from the date of any disbursement.

Landlord shall be permitted to enter the Premises while exercising any right given to it by the terms of this Section. Any act or thing done by Landlord pursuant to the provisions of this Section shall not be or be construed to be a waiver of any such Default or Event of Default by Tenant, or as a waiver of any covenant, term, or condition herein contained or the performance thereof, or of any other right or remedy of Landlord, hereunder or otherwise.

34. LANDLORD DEFAULTS AND TENANT REMEDIES.

a. In the event that (i) Landlord (a) fails to observe, perform or comply with any provision, term, condition, covenant, agreement or warranty required to be observed, performed or complied with by Landlord under this Lease, or (b) fails to observe, perform or comply with any obligation, provision, term, covenant, condition or agreement to be observed, performed or complied with by Landlord under the Grant Agreement, unless Landlord's failure is the result of a Default by Tenant under this Lease, and (ii) Landlord fails to cure such Default within ten (10) days of written notice of default from Tenant, then a Landlord Event of Default shall exist under this Lease. Upon the occurrence and during the continuance of a Landlord Event of Default, Tenant may exercise any of the following remedies:

1. subject to Sections 65 and 67 hereof, commence an action at law to recover the damages incurred by Tenant and caused by Landlord Event of Default, which damages shall be limited to the cost of curing Landlord's Default;

2. commence an action in equity to compel the performance by Landlord of those actions or inactions which serve as the basis of a Landlord Event of Default; or

3. in addition to any other provision contained herein, in the event that an Event of Default by Landlord shall have occurred and be continuing, Tenant may, at Tenant's option but without any obligation, take any action to perform the obligations of Landlord, which gave rise to the Event of Default or with respect to which Landlord is otherwise in Default under this Lease, and Tenant shall not be liable, or be held liable or in any way responsible for any loss, inconvenience, annoyance, or damage resulting to Landlord on account thereof, other than for Tenant's willful or intentional misconduct. Landlord shall repay to Tenant on demand the entire expense of Tenant's performance together with interest at the rate of two percent (2%) in excess of the prime rate of US Bank National Association, accruing from the date of any disbursement.

Landlord agrees to comply with all terms and conditions of the Grant Agreement (unless Landlord's failure to comply is the result of Tenant's failure to comply with the terms and conditions of this Lease) and Tenant agrees to cooperate fully with Landlord in so complying. Landlord and Tenant further agree

that in the event that Landlord fails to comply with any provision in the Grant Agreement then, if Landlord fails to cure such failure within sixty (60) days of Landlord's receipt of Tenant's written demand or the State's notice of default, Tenant shall have the right to take such action.

35. NO REMEDY EXCLUSIVE. No remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time-to-time and as often as may be deemed expedient.

36. EFFECT OF EMINENT DOMAIN.

a. Effect of Total Condemnation. In the event that the entire Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, this Lease shall be terminated and all proceeds shall be payable in the same manner as if the Premises were sold pursuant to Section 17 above.

b. Effect of Partial Condemnation. Subject to the Prior Interests, in the event that a portion of the Premises shall be so appropriated or taken to an extent that Tenant can no longer operate the Governmental Program, then Tenant shall have the right to give Landlord written notice of the right to treat the partial condemnation as a sale pursuant to Section 17(d) above within one hundred twenty (120) days after such portion of the Premises has been so appropriated or taken. Provided the Landlord agrees in such determination, in that event, this Lease shall be terminated and the proceeds of the condemnation shall be applied as if the condemned portion of the Premises were sold in accordance with Section 17(d) above. In the event the Landlord does not concur, Tenant shall either continue the program on the residual property, or shall have the right to terminate this Lease.

Subject to the Prior Interests, in the event of partial taking in which Tenant elects to continue this Lease in the Premises, this Lease shall continue in full force as to the part not taken, and the condemnation award for the Premises shall be applied first to restore the remaining portion of the Premises to a configuration and condition so that the Premises can be used for the purposes set forth in Section 1 hereof (with the condemnation proceeds to be held by a mutually agreeable escrow agent in escrow for such restoration to be disbursed in accordance with standard commercial construction conditions customarily required by institutional lenders), and, to the extent of any remaining proceeds, as if the condemned portion of the Premises were sold in accordance with Section 17(d) above.

None of the foregoing provisions shall preclude Tenant from making a separate claim against the condemning authority for the value of any trade fixtures, furniture, and equipment taken by said condemning authority and its relocation expenses provided such claim does not diminish or impair the award with respect to the Premises.

37. SURRENDER OF LEASE: EFFECT ON SUBLEASES. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall operate as an assignment to Landlord of any or all such subleases, subtenancies, or license agreements.

38. OWNERSHIP OF IMPROVEMENTS. The parties acknowledge that Tenant, as Ground Landlord, is the absolute owner of any and all buildings or improvements of any nature or kind on the Premises, regardless of who placed such buildings or improvements thereon, together with any and all fixtures related to any of the buildings located on the Premises, and, except as provided in Section 17, upon the termination or expiration of the Term of this Lease Tenant shall not have any interest whatsoever therein. Prior to expiration of the Term or any termination of this Lease, the Tenant shall have the right under Sections 23 and 36 hereof, to share in the insurance and condemnation proceeds.

39. AMENDMENT, MODIFICATION, AND WAIVER. No amendment, modification, or waiver of any condition, provision, or term of this Lease shall be valid or of any effect unless made in writing, signed by the party or parties to be bound or its duly authorized representative, and approved in writing by the State and the Commissioner, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party shall not affect or impair any right arising from any subsequent default.

40. APPROVAL BY STATE OF MINNESOTA. This Lease shall not be valid or of any effect until signed by both parties and consent in writing has been given by the Commissioner.

41. EFFECT OF TENANT'S HOLDING OVER. Any holding over after the expiration of the Term of this Lease, with consent of Landlord, shall be construed to be a tenancy from month to month, at the same Rent as required to be paid by Tenant for the period immediately prior to the expiration of the Term hereof, and shall otherwise be on the terms and conditions herein specified, so far as they are applicable.

42. PARTIES BOUND. This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective assigns, executors, heirs, and successors.

43. TIME OF ESSENCE. Time is of the essence in this Lease, and of each and every covenant, term, condition, and provision hereof.

44. CAPTIONS. All captions, headings, or titles in the subsections or Sections of this Lease are inserted for convenience of reference only and shall not

constitute a part of this Lease as a limitation of the scope of the particular subsections or Sections to which they apply.

45. NO PARTNERSHIP, JOINT VENTURE, OR FIDUCIARY RELATIONSHIP CREATED HEREBY. Nothing contained in this Lease shall be interpreted as creating a partnership, joint venture, or relationship of principal and agent between Landlord and Tenant, it being understood that the sole relationship created hereby is one of landlord and tenant. All laws and statutes of the State of Minnesota relative to landlord and tenant relationships shall be applicable to the parties hereto.

46. CUMULATIVE RIGHTS. Except as otherwise expressly stated herein, no right or remedy herein conferred on or reserved to Tenant or Landlord is intended to be exclusive of any other right or remedy hereof provided by law, but each shall be cumulative in, and in addition to, every other right or remedy given herein or not or hereafter existing at law, in equity, or by statute.

47. SEVERABLE PROVISIONS. Each provision, section, sentence, clause, phrase, and word of this Lease is intended to be severable. If any provision, sentence, clause, phrase, and word hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Lease

48. ENTIRE AGREEMENT. This Lease and the Ground Lease (and the other agreements contemplated in those agreements) contain the entire understanding of the parties hereto with respect to the transactions contemplated hereby and supersede all prior agreements and understandings between the parties with respect to such subject matter. No representations, warranties, undertakings, or promises, whether oral, implied, written, or otherwise, have been made by either party hereto to the other unless expressly stated in this Lease or unless mutually agreed to in writing between the parties hereto after the date hereof, and neither party has relied on any verbal representations, agreements, or understandings not expressly set forth herein.

49. REFERENCE TO GENDER. Where appropriate, the feminine gender may be read as the masculine gender or the neuter gender; the masculine gender may be read as the feminine gender or the neuter gender; and the neuter gender may be read as the masculine or the feminine gender.

50. MINNESOTA LAW. This Lease shall be construed and enforced in accordance with the laws of the State of Minnesota.

51. FURTHER ASSURANCES. In addition to any other information which may be reasonably requested, either party shall without charge, from time-to-time hereafter, but not more often than once every twelve (12) months, within thirty (30) days after written request, certify by written instrument duly executed and acknowledged to any person, firm, or corporation specified in such request:

a. whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment;

b. whether the responding party has actual knowledge (without obligation to make inquiry) of any Event of Default under the Lease and;

c. whether the responding party has actual knowledge (without obligation to make inquiry) of any offsets, counterclaims, or defenses to the terms and obligations under the Lease.

Any such certificate may be relied on by the party who requested it and any other person, firm, or corporation to whom it may be exhibited or delivered, and the contents of such certificate shall be binding on the party executing it. For any request more frequent than every twelve (12) months, the responding party may require payment of its reasonable costs in preparation of the estoppel response.

52. SHORT-FORM RECORDABLE LEASE. The parties will at any time, at the request of either one, promptly execute duplicate originals of an instrument, in recordable form, which will constitute a short form of this Lease, setting forth a description of the Premises, the term of this Lease, and options to renew, and any other portions hereof, excepting the rent provisions, as either party may request.

53. FEDERAL INCOME TAX DEDUCTIONS. Only Tenant shall have the right to take deductions on its tax returns with respect to such buildings, structures, improvements, changes, alterations, repairs, additions, and installations and the depreciation or amortization thereof; provided, however, that Landlord makes no representations or warranties as to the amount of any taxes or deductions or the treatment of any particular tax item.

54. BROKERAGE FEES. Each party hereto warrants that it has not incurred any real estate brokerage fees, finders' fees, loan brokerage fees, or any other fees to any third party in connection with this Lease, and in the event that any third party institutes legal action in an effort to recover such fees, the parties shall jointly defend such action. If a judgment is obtained against the parties jointly, the party responsible for breach of this warranty shall reimburse the other for the latter's attorneys' fees, court costs, expenses, and share of the judgment.

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

a. Tenant acknowledges and agrees that The Tubman Facility on the Premises is "state bond financed property", as such term is used in the Grant Agreement, G.O. Compliance Legislation and Commissioner's Order, and that therefore, the provisions contained in such statute and Order apply to the Premises and this Lease.

b. Landlord and Tenant acknowledge and agree that Landlord will not receive any money from Tenant pursuant to this Lease, and as a result thereof the Commissioner does not reasonably expect to receive any monies as contemplated by Section 4.02, paragraph (f) of the Commissioner's Order, and

therefore the provisions of Section 4.05 of the Commissioner's Order do not apply.

56. LISTING OF JOBS. Tenant shall, for one year from the date hereof, list any vacant or new positions it may have with state workforce centers, as required by Minn. Stat. § 116L.66 as such may subsequently be amended, modified or replaced. Further, Tenant shall comply with the Governor's Executive Order 08-01 regarding e-verification that all newly hired employees are legally entitled to work in the United States.

57. RECORD KEEPING AND REPORTING. Tenant shall maintain books, records, documents, and other evidence pertaining to the costs or expenses associated with the construction of The Tubman Facility Improvements, the operation of the Governmental Program, and compliance with the requirements contained in this Lease and the Grant Agreement, and shall, upon ten (10) day's prior written request, allow Landlord, State, and either the Legislative Auditor or State Auditor for the State of Minnesota, whichever is applicable, to inspect, audit, copy, or abstract, any and all of its books, records, papers, or other documents relevant to this Lease or the Grant Agreement. Tenant shall use generally accepted accounting principles in the maintenance of such books and records, and shall retain all of such books, records, documents and other evidence (i) relating to the construction of The Tubman Facility Improvements, for a period of six (6) years from the date that The Tubman Facility Improvements have been initially constructed and put into operation, and (ii) relating to the operation of the Governmental Program, for a period of six (6) years from the date such books, records, documents and other evidence are created.

Landlord agrees to protect such information as non-public or trade secret information to the extent such protection is available under Minnesota Statutes, Chapter 13. Nothing herein shall be construed to require Landlord to incur any costs or expenses in complying with this provision unless Tenant agrees in advance to pay or reimburse Landlord for any costs and expenses incurred by Landlord in complying with this Lease.

58. NON-DISCRIMINATION. Tenant agrees not to engage in unlawful discriminatory practices with respect to the Premises or the operation or management of The Tubman Facility, and it shall, with respect thereto, fully comply with all applicable provisions in Minn. Stat. Chapters 363A and 181, as such may be amended, modified or replaced.

59. WORKER'S COMPENSATION. Tenant agrees to fully comply with all applicable provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 Subd. 2, and 176.182, as such may be amended, modified or replaced, with respect to the Premises.

60. PREVAILING WAGE. Tenant agrees to comply with all applicable provisions of Minn. Stat., Chapter 177, including, but not limited to §§ 177.41 - 177.435 as amended from time-to-time.

61. COMPLIANCE WITH LANDLORD'S CONTRACTING REQUIREMENTS.

a. Equal Employment Opportunity. The Tenant must develop and cause its general contractor to develop an affirmative action plan meeting the requirements of Section 139.50, Maplewood Code of Ordinances. In addition, the Tenant agrees that during the term of this Lease:

(1) The Tenant will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, or national origin. The Tenant will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, ancestry, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, or national origin. Such action shall include, but not be limited, to the following: advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Landlord setting forth the provisions of this nondiscrimination clause.

(2) The Tenant will, in all solicitations or advertisements for employees placed by or on behalf of the Tenant, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, ancestry, sex, sexual orientation, disability, age, marital status, status with regard to public assistance, or national origin.

(3) The Tenant will comply with all applicable provisions of the Maplewood Code of Ordinances, Chapters 139-141, incorporated herein by reference, and other applicable federal, state and local laws, rules and regulations regarding equal employment opportunities.

(4) The Tenant will include the provisions of paragraphs (a) through (c) of this Section in every contract or purchase order over \$50,000 relating to construction of The Tubman Facility Improvements, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors in excess of \$50,000, so that such provisions will be binding upon each such contractor, subcontractor, or vendor, as the case may be.

b. Conflict of Interests/Code of Ethics. Tenant agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with Tenant's responsibilities under this Lease and that Tenant shall not employ any person having such an interest. Tenant

agrees to be bound by the Landlord's Code of Ethics, Maplewood Code of Ordinances, Chapter 15. Tenant certifies that to the best of its knowledge (without any investigation or inquiry), all Landlord employees and officers participating in this Lease have also complied with that ordinance. It is agreed by the parties that any such violation of the Code of Ethics constitutes grounds for the Landlord to void this Lease. All questions relative to this section shall be referred to the Landlord and shall be promptly answered.

g. Contract Documents. Tenant shall incorporate in all contracts for The Tubman Facility Improvements, to which it is a party, the requirements of this Section and Section 60, and shall cause its contractors and subcontractors for The Tubman Facility Improvements to incorporate the requirements of this Section in all subcontracts, including contracts for purchase of materials and services.

63. HAZARDOUS WASTE POLLUTION AND CONTAMINANTS.

a. For purposes of this Section 63, the following defined terms shall have the following meanings:

(1) Hazardous Substance means asbestos, urea formaldehyde, polychlorinated biphenyls ("PCBs"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law;

(2) Environmental Laws means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Hazardous Materials Transportation Act, §1802 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Clean Air Act, 33 U.S.C. §1321 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Minnesota Environmental Response and Liability Act, Minn. Stat. Ch. 115B, the Minnesota Petroleum Tank Release and Cleanup Act, Minn. Stat. Ch. 115C, and any other federal, state, county, municipal, local or other statute, law relating to Hazardous Substances;

b. Tenant agrees to comply with all Environmental Laws applicable to the Premises. Tenant shall bear all costs and expenses arising from compliance with all Environmental Laws. If Tenant fails to comply with any Environmental Laws, Landlord shall have the right, but not the obligation, to undertake such compliance and charge Tenant the costs of compliance plus interest at the rate of ten percent per annum accruing from the date of disbursement and also with reasonable attorney fees.

c. Tenant agrees to defend, indemnify and hold harmless Landlord, its officers, employees and agents (hereinafter collectively referred to as the

“Indemnitees”) from and against and shall reimburse each such Indemnitee for any and all loss, claim, liability, damage, judgment, penalty, injunctive relief, injury to person, property or natural resources, cost, expense, action or cause of action arising in connection with or as the result of the existence, use, handling, storage, transportation, manufacture, release or disposal of any Hazardous Substance in, on or under the Premises, whether foreseeable or unforeseeable, regardless of the source, the time of occurrence or the time of discovery (hereinafter collectively referred to as “Loss”) . The foregoing indemnification against Loss includes, without limitation, indemnification against all costs in law or in equity of removal, response, investigation, or remediation of any kind, and disposal of such Hazardous Substances, all costs of determining whether the Premises are in compliance with, and of causing the Premises to be in compliance with, all applicable Environmental Laws, all costs associated with claims for damages to persons, property, or natural resources, and the Indemnitees’ reasonable consultants’ fees, court costs and expenses incurred in connection with any thereof.

d. The obligations of Tenant to indemnify the Indemnitees shall survive expiration or termination of this Lease. The rights of the Indemnitees hereunder shall be in addition to any other rights or remedies which the Indemnitees may have against Tenant under this Lease or any other document, or at law or in equity.

64. WAIVER OF SUBROGATION. Tenant, on behalf of itself and its insurer, hereby waives all claims and rights of recovery against Landlord which it would, but for this Section, have to Landlord for losses occurring to the Premises and to the improvements, betterments, trade fixtures, equipment, personal property and other property located therein or thereupon:

a. to the extent actually covered by insurance required to be carried by the party waiving; or

b. to the extent actually covered by any other insurance being carried by the party waiving at the time of such occurrence.

65. WAIVER OF CERTAIN DAMAGES. IN CONSIDERATION OF ENTERING INTO THIS LEASE, LANDLORD AND TENANT HEREBY WAIVE AND FOREVER GIVE UP ANY RIGHT TO CLAIM OR RECOVER DAMAGES FOR LOST INCOME OR PROFITS AS A RESULT OF ANY BREACH OF THIS LEASE OR ANY DOCUMENTS OR AGREEMENTS REFERRED TO HEREIN. THE AGREEMENTS AND WAIVERS SET FORTH HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS LEASE.

66. COMPLIANCE WITH LAWS. Tenant agrees that it will comply with all present and future laws, ordinances, and regulations, as amended and in effect from time-to-time, applicable to its use, occupancy, alteration or improvement of the Premises.

67. LIMITATION ON LIABILITY. Notwithstanding anything to the contrary in this Lease (except as otherwise provided in Sections 17 and 34 herein), the Ground Lease, and the Grant Agreement, it is understood and agreed by Landlord and Tenant that no covenant, provision or agreement of Landlord herein or in the Ground Lease or the Grant Agreement or in any other document executed by Landlord in connection with the Governmental Program, or any obligation herein or therein imposed upon Landlord or breach thereof, shall give rise to a pecuniary liability of Landlord, its officers, employees, or agents, or a charge against Landlord's general credit or taxing powers or shall obligate Landlord, its officers, employees, or agents, financially in any way. No failure of Landlord to comply with any term, condition, covenant, or agreement therein shall subject Landlord, its officers, employees, or agents, to liability for any claim for damages, costs, or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Lease or revenues therefrom. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of Landlord. In making the agreements, provisions, and covenants set forth herein, Landlord has not obligated itself except with respect to the application of revenues hereunder as hereinabove provided and the obligation to request the State Grant Proceeds from the State and provide the State Grant Proceeds to Tenant for the construction of The Tubman Facility Improvements. If, notwithstanding the provisions of this Section, Landlord, its officers, employees, or agents, incur any expense, or suffer any losses, claims, or damages or incur any liabilities, Tenant will indemnify and hold harmless Landlord, its officers, employees, or agents, from the same and will reimburse Landlord, its officers, employees, or agents, for any legal or other expenses incurred by Landlord, its officers, employees, or agents, in relation thereto, and this covenant to indemnify, hold harmless and reimburse Landlord, its officers, employees, or agents shall survive the termination of this Lease.

68. GRANT AGREEMENT PREVAILS. Whenever there shall exist a conflict between the provisions of this Lease and the Grant Agreement, the Grant Agreement shall prevail. Landlord shall not amend or otherwise modify the Grant Agreement without the prior written consent of Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

[Signature pages follow.]

Signature Page to Lease/Use Agreement by and between City of Maplewood and Tubman.

Tenant's Mailing Address:

3111 First Avenue South
Minneapolis, MN 55408

TENANT:

TUBMAN

By _____

Its _____

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

SS.

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____ the _____ of Tubman, a Minnesota non-profit corporation, on behalf of the corporation.

Notary Public

Signature Page to Lease/Use Agreement by and between City of Maplewood and Tubman

Landlord's address:

Maplewood Department of Community
Development
1830 County Road B East
Maplewood, MN 55109

LANDLORD:

CITY OF MAPLEWOOD

By _____
Its City Manager

Department head Responsible for
Monitoring Contract:

Director, CD

Approved as to form:

Assistant City Attorney

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

SS.

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, the City Manager of the City of Maplewood, a Minnesota municipal corporation, on behalf of the City.

Notary Public

EXHIBIT A

Legal Description of The Tubman Facility

The land is situated in the City of Maplewood, County of Ramsey, State of Minnesota, and is described as follows:

Parcel 1:

Lot 2, Block 1, Century Trails Commons

Parcel 2:

The benefit of the appurtenant easements contained in Reciprocal Easement Agreement dated December 27, 2005, filed January 18, 2006, as Document No. 3919913, as amended by First Amendment to Reciprocal Easement Agreement dated August 20, 2008, filed September 4, 2008, as Document No. 4114968.

Parcel 3:

Non-exclusive easement for driveway, access, ingress and egress purposes as contained in Private Driveway Easement Agreement dated December 8, 2010, recorded December 22, 2010, as Document No. 4259266.

Parcel 4:

Non-exclusive easement for sidewalk purposes as contained in Reciprocal Sidewalk Easement Agreement dated December 8, 2010, recoded December 22, 2010, as Document No. 4259267.

Ramsey County, Minnesota
Abstract Property

EXHIBIT B

The Tubman Facility Improvements

EXHIBIT C
Grant Agreement

EXHIBIT D

The Tubman Facility Source and Use

Use Attachment III to the GO Grant Agreement for this exhibit.

EXHIBIT E

Permitted Encumbrances

1. Real estate taxes and installments of special assessments not currently due and payable.
2. Easements, covenants, conditions, restrictions, and limitations, if any, that do not impair the use of the Premises.
3. Reservation of any minerals or mineral rights reserved to the State of Minnesota.
4. Building and zoning laws, ordinances, and state and federal regulations.
5. Any liens or other encumbrances created by Tenant in accordance with this Lease.
6. The provisions of Minnesota Statute Section 16A.695 regarding the interests of the State of Minnesota.
7. Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement dated April 29, 2010, filed April 29, 2010, as Document No. A9507507 (Hennepin County), and filed April 30, 2010, as Document No. 4219458 (Ramsey County), executed by Tubman, a Minnesota nonprofit corporation, as mortgagor, to Bremer Bank, National Association, a national banking association, as mortgagee, in the original principal amount of \$4,146,000.00.
8. Terms and conditions of and easements contained in Reciprocal Easement Agreement, dated December 27, 2005, filed January 18, 2006, as Document No. 3919913. Amended by First Amendment to Reciprocal Easement Agreement dated August 20, 2008, filed September 4, 2008, as Document No. 4114968.
9. Easement for underground fiber optic cable line, together with a right of access, in favor of St. Paul's Monastery, Inc., a Minnesota religious corporation, as created in document dated April 29, 2008, filed September 2, 2008, as Document No. 4114544.
10. Terms and conditions of unrecorded Contract for Planned Unit Development dated March 19, 2008 between the City of Maplewood, Minnesota and St. Paul's Monastery.
11. Terms and conditions of Sections 5, 6, 7, 12, 17 and 18 of unrecorded Private Development Agreement dated May 29, 2008 by and between St. Paul's Monastery and Tubman Family Alliance & Chrysalis, A Center for Women, Inc.

The remaining provisions of said agreement have been terminated by Partial Termination of Private Development Agreement dated December 7, 2011.

12. Terms and conditions of Private Driveway Easement Agreement dated December 8, 2010, recorded December 22, 2010, as Document No. 4259266.
13. Terms and conditions of and easement for sidewalk purposes as contained in Reciprocal Sidewalk Easement Agreement dated December 8, 2010, recorded December 22, 2010, as Document No. 4259267.
14. Terms and conditions of Master Subordination Agreement and Estoppel Certificate dated March 23, 2012, recorded March 26, 2012, as Document No. _____.
15. Loan Repayment Agreement and Mortgage dated March 23, 2012, recorded March 26, 2012, as Document No. _____, executed by Tubman, a Minnesota non-profit corporation, as mortgagor, to Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, as mortgagee, in the original principal amount of \$600,000.00.
16. Request for Notice of Foreclosure by Minnesota Housing Finance Agency dated March 23, 2012, recorded March 26, 2012, as Document No. _____.
17. Declaration of Covenants and Restrictions dated as of December __, 2011, by Tubman, regarding a loan from the Ramsey County Housing and Redevelopment Authority, recorded March 26, 2012, as Document No. _____.
18. Ground Lease dated as of _____, 2012, by and between Tubman, a Minnesota nonprofit corporation, as Landlord, and the City of Maplewood, a Minnesota municipal corporation, as Tenant, as evidenced by Short Form Ground Lease dated as of _____, 2012, recorded _____, 2012, as Document No. _____.
19. Lease/Use Agreement dated as of _____, 2012, by and between the City of Maplewood, a Minnesota municipal corporation, as Landlord, and Tubman, a Minnesota nonprofit corporation, as Tenant, as evidenced by Short Form Lease dated as of _____, 2012, recorded _____, 2012, as Document No. _____.

20. Declaration by the City of Maplewood dated _____, 2012, recorded _____, 2012, as Document No. _____.

21. Consent and Subordination Agreement dated as of _____, 2012 by and among Tubman, a Minnesota nonprofit corporation, Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, Bremer Bank, N.A., a national banking association and Ramsey County Housing and redevelopment Authority, a political subdivision of the State of Minnesota, recorded _____, 2012, as Document No. _____.

MEMORANDUM

TO: James Antonen, City Manager
 FROM: Tom Ekstrand, Senior Planner
 Chuck Ahl, Assistant City Manager
 SUBJECT: **Ordinance Amendment Regarding Reinforced-Turf Parking Lots—
 Section 44-17 (second reading)**
 VOTE: Simple Majority Required to Approve
 DATE: July 12, 2012

INTRODUCTION

On July 9, 2012, the city council moved to approve a parking ordinance to allow reinforced turf parking surfaces under specific conditions. During their discussion, the council also added a condition to require approval by public safety for assurance that any proposed turf parking surface would meet with the approval of the police and fire chiefs.

Council also suggested language to permit water-permeable surfaces such as porous pavers, porous concrete and porous bituminous. These are all hard surfaces and the city has been allowing such parking surfaces already. Staff, therefore, feels that ordinance permits these surfaces. The primary example is the city's own public works parking lot. Staff did not offer any language change since the ordinance already allows these surfaces.

Request

Give second reading and approve an amendment of the city's parking ordinance to allow reinforced-turf parking lots.

DISCUSSION

Under the right circumstances, reinforced-turf parking lots are a reasonable alternative to traditional hard-surfaced paving. Staff feels that this is:

- When the need for overflow parking is infrequent or limited to occasional parking events.
- Where there is already hard-surfaced parking that provides for handicap-accessible parking needs.
- Where the turf parking lot would meet setback and screening requirements.
- Where the parking need is seasonal (non-winter) so snow plowing is not needed.
- Where there would be an environmental benefit due to storm water management or meeting shoreland/wetland/flood plain ordinance impact needs.

- When the proposed parking lot is approved by city council by a conditional use permit or other review process.
- Where the turf-parking plan meets the approval of the city engineer from the standpoint of using proven construction materials engineered for durability and aesthetics.
- Where the turf-parking plan meets the approval of the police and fire chief from the standpoint of meeting public safety requirements.

This proposed ordinance should also state that it would not pertain to parking on single or double dwelling residential properties, which is governed separately by ordinance.

COMMISSION ACTIONS

June 5, 2012: The planning commission recommended approval of the proposed ordinance revision.

BUDGET IMPACT

None.

RECOMMENDATION

Adopt the resolution amending Section 44-17 to allow reinforced-turf parking lots.

p:\ ORD\Parking\Turf Parking Code Amendment CC Report Second Reading 7 12 te
Attachments:

1. Ordinance Amendment to Section 44-17

ORDINANCE NO. ____

**AN ORDINANCE AMENDMENT TO ALLOW
REINFORCED-TURF PARKING LOTS**

The Maplewood City Council approves the following revision to the Maplewood Code of Ordinances. (Additions are underlined.)

Section 1. Section 44-17 (e) of the Maplewood Code of Ordinances is hereby amended as follows:

Sec. 44-17. Off-Street Parking.

(e) All parking lots and associated driveways shall have a surface of bituminous material or concrete and ~~single-striped~~ parking spaces. The city council may permit the alternative parking method of reinforced-turf parking when it would meet the following criteria:

- When the need for overflow parking is infrequent or limited to occasional parking events.
- Where there is already hard-surfaced parking that provides for handicap-accessible parking needs.
- Where the turf parking lot would meet setback and screening requirements.
- Where the parking need is seasonal (non winter) so snow plowing is not needed.
- Where there would be an environmental benefit due to storm water management or meeting shoreland/wetland/flood plain ordinance impact needs.
- Where the turf-parking plan meets the approval of the city engineer from the standpoint of using proven construction materials engineered for durability and aesthetics.
- Where the turf-parking plan meets the approval of the police and fire chief from the standpoint of meeting public safety requirements.

This parking surface alternative shall not apply to single and double dwelling residential properties which are governed under Section 44-17 (j), the residential parking ordinance apply.

Section 2. This ordinance shall take effect after the approval by the city council and publishing in the official newspaper.

The Maplewood City Council approved this ordinance revision on _____.

Mayor

Attest:

City Clerk

AGENDA REPORT

TO: Jim Antonen, City Manager
FROM: Michael Thompson, Public Works Director/City Engineer
Steven Love, Assistant City Engineer
Jon Jarosch, Civil Engineer I
SUBJECT: **Arkwright-Sunrise Area Street Improvements, City Project 12-09, Resolution Ordering Preparation of Feasibility Study**
DATE: July 11, 2012

INTRODUCTION

The Arkwright-Sunrise Area streets are generally located east of McMenemy Street, north of County Road B, west of Edgerton Street, and south of Highway 36 (*see attached drawing*). These streets are listed in the approved 2013 – 2017 Maplewood Capital Improvement Plan (CIP) as a proposed project for the 2013 construction season. The City council will consider initiating the project by approving the attached resolution ordering the preparation of a feasibility study.

Background

The Arkwright-Sunrise Area streets have continued to deteriorate over the years with the streets having a current weighted average PCI rating of 33 (on a scale from 1 to 100) as indicated on the approved 2013 – 2017 CIP. Little storm sewer is present in the project area with the majority of the street runoff flowing adjacent to residential boulevards and onto MnDOT right-of-way. There is very little concrete curbing along the project streets, with the curbing present in a deteriorated condition. The Public Works department continues to spend a considerable amount of time maintaining these streets by patching potholes in severe areas to maintain a minimum level of service. The minimal amount of storm sewer, little concrete curb and gutter, and areas that lack a defined crown in the road have contributed to the deterioration of the streets by allowing water to pond in the street section. The Public Works Utility department has stated that improvements to the existing sanitary sewer system are likely to be required within the project area. The majority of the street runoff flows untreated off of neighborhood streets and is discharged directly to local water bodies. To address the issues within this neighborhood a full reconstruction of the roads is necessary.

This project would consist of approximately 2.2 miles of full street reconstruction. It is necessary to fully reconstruct these neighborhood streets to improve the serviceability and drainage, meet city standards, upgrade aging underground infrastructure as required, and relieve the maintenance department of continual repairs. Full street reconstruction would include reconstructing the road beds and the installation of concrete curb and gutter. The neighborhood reconstruction project would also include the installation of additional storm sewer, constructing storm water quality features to reduce the amount of pollutants and excess nutrients that currently flow untreated off the neighborhood streets, replacing water main as necessary, and improving the sanitary sewer system as required.

The use of a Living Streets concept in this neighborhood will also be investigated as a part of this feasibility study. The Living Streets concept aims to reduce impervious surfaces, improve pedestrian and bicyclist safety, improve the quality of storm-water runoff, and enhance the urban forest.

Schedule

The following is a tentative schedule of the feasibility study portion of the project once initiated:

- Late July / Early August 2012 – staff initiates the project process and feasibility study by sending an informational letter to the neighborhood residents.
- Late July thru October 2012 – engineering department conducts topographic surveys, preliminary engineering studies, research of the project area, and drafts the feasibility study. Staff holds informational neighborhood meetings about the proposed project as the feasibility study is being conducted.
- October 2012 – Staff submits the feasibility study to Council to consider acceptance and scheduling of a public hearing.

Note: This schedule is subject to change based on the upcoming budget discussions.

During the public outreach and neighborhood meetings staff plans to discuss the assessments in extensive detail. The assessments will be based on a benefit appraisal.

Budget

Given that the project area consists of approximately 2.2 miles of roads and a significant amount of utility improvements are anticipated, a budget of \$80,000 would be established for the project development. This amount will cover topographic surveying, soil borings, benefit appraisal services, preparation of a feasibility report, preliminary engineering, and wetland delineations (as needed).

RECOMMENDATION

Staff recommends that the City Council approve the attached resolution ordering the preparation of the feasibility study for the Arkwright-Sunrise Area Street Improvements, City Project 12-09, and establish a project budget of \$80,000.

Attachments:

1. Resolution Preparation of Feasibility Study
2. Capital Improvement Plan - Project Details
3. Location Map

RESOLUTION

ORDERING PREPARATION OF A FEASIBILITY STUDY

WHEREAS, it is proposed to make improvements to the Arkwright-Sunrise Area Streets, City Project 12-09 and to assess the benefited property for all or a portion of the cost of the improvement, pursuant to Minnesota Statutes, Chapter 429,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA:

That the proposed improvement be referred to the City Engineer for study and that he is instructed to report to the council with all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost effective and feasible, and as to whether it should best be made as proposed or in connection with some other improvement, and the estimated cost of the improvement as recommended.

FURTHERMORE, funds in the amount of \$80,000 are appropriated to prepare this feasibility report.

Approved this 23rd day of July 2012

CITY OF MAPLEWOOD CAPITAL IMPROVEMENT PLAN 2013 - 2017

PROJECT TITLE: Arkwright/Sunrise Area Streets	TOTAL COST: \$4,600,000
PROJECT NUMBER: PW11.090	PROJECT CATEGORY: Public Works
DESCRIPTION: Neighborhood area street reconstruction	

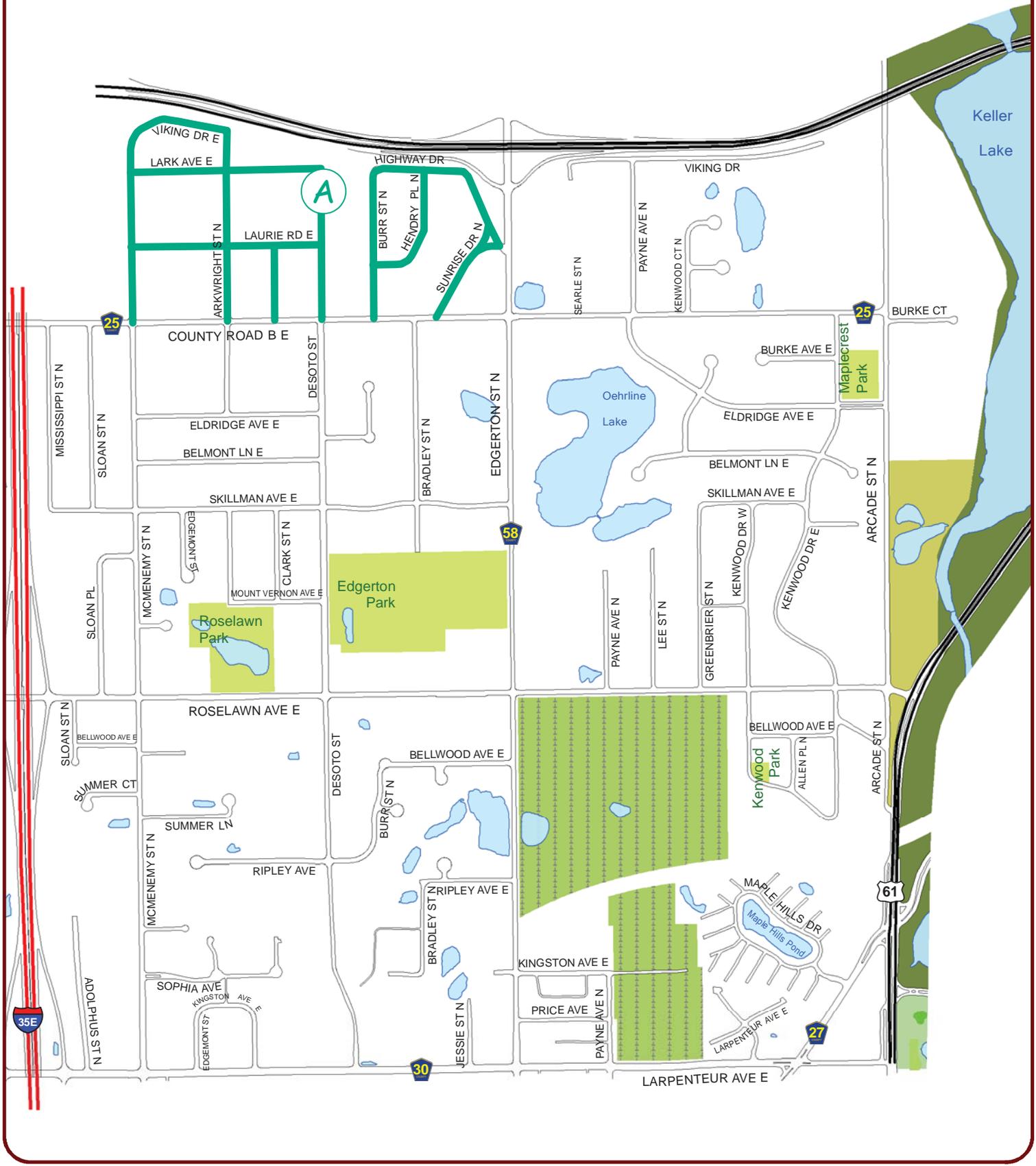
JUSTIFICATION:

The Arkwright and Sunrise area streets are very badly deteriorated and existing drainage conditions are poor. The streets in this area are in bad condition and in need of major reconstruction. Replacement will include upgrades to the area drainage system in coordination with the improvements to the area streets. This area is a key neighborhood in need of improvement according to the Street Superintendent. Streets in this project area include: McMenemy St, Highway Dr, Lark Ave, Arkwright St, Clark St, Burr St, Hendry Pl, Desoto St, and Sunrise.
2.2 miles of streets, Average PCI: 33

PROJECT COSTS AND FUNDING SOURCES BY YEARS:

Funding Source	Prior Years	2013	2014	2015	2016	2017	Funding Total
Bonds-G.O. Improvement	200,000	1,620,000	0	0	0	0	1,820,000
Bonds-Special Assessment	0	1,615,000	0	0	0	0	1,615,000
Environmental Utility Fund	0	460,000	0	0	0	0	460,000
Sanitary Sewer Fund	0	329,000	0	0	0	0	329,000
St. Paul W.A.C. Fund	0	238,000	0	0	0	0	238,000
St. Paul Water	0	138,000	0	0	0	0	138,000

	PROJECT COSTS
PROJECT STARTING DATE: August 2012	Preliminaries: \$200,000
	Land Acquisition: \$0
PROJECT COMPLETION DATE: October 2013	Construction: \$4,400,000
	Equipment and Other: \$0
NEIGHBORHOOD: 02 - Parkside	Project Costs: \$4,600,000



Parkside Neighborhood #2