

## CERTIFICATION

### State of Minnesota

#### General Obligation Bond Financed Property

The undersigned has a fee simple, leasehold and/or easement interest in the real property located in Ramsey County, State of Minnesota that is generally described or illustrated graphically in **Exhibit A** attached and all facilities situated thereon (the "Restricted Property") and acknowledges that the Restricted Property is or may become State bond-financed property. To the extent that the Restricted Property is or becomes State bond-financed property, the undersigned acknowledges that:

- A. The Restricted Property is state bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the encumbrance created and requirements imposed by such statute, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget;
- B. The Restricted Property is subject to the provisions of the State of Minnesota General Fund Grant Agreement Grant for Recreation Open Space Development between Metropolitan Council, as grantor, and Ramsey County, as grantee, dated \_\_\_\_\_, 2024; and
- C. The Restricted Property shall continue to be deemed state bond financed property for 125% of the useful life of the Restricted Property or until the Restricted Property is sold with the written approval of the Commissioner of Minnesota Management and Budget.

Date: \_\_\_\_\_, 2024

RAMSEY COUNTY, a political subdivision of the State of Minnesota

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By: Trista Martinson  
Title: Chair, Ramsey County Board of Commissioners

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By: Mee Cheng  
Title: Chief Clerk, Ramsey County Board of Commissioners

APPROVED AS TO FORM:

*Kathleen Ritter*  
\_\_\_\_\_  
Assistant County Attorney

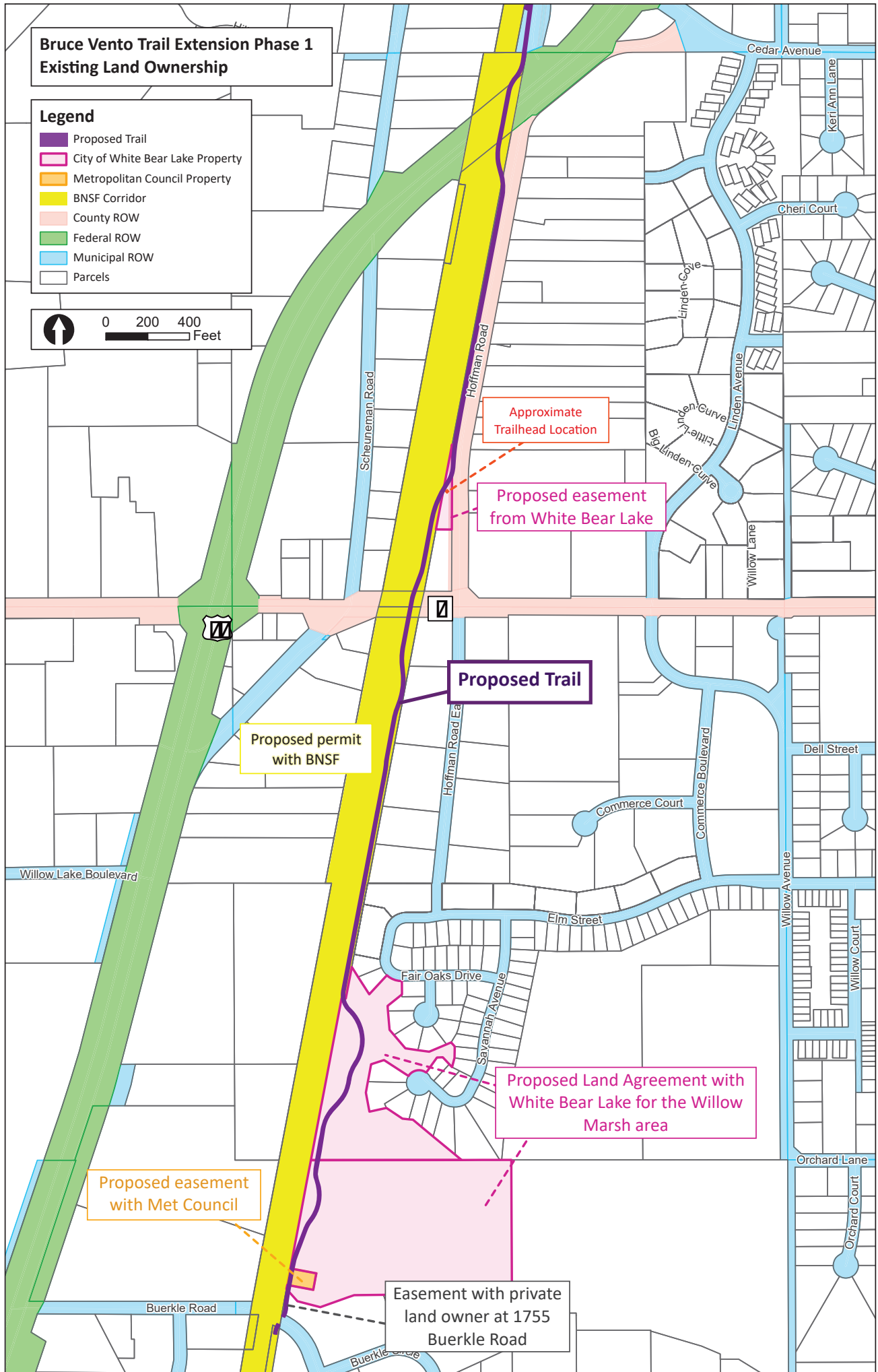
**Exhibit A**

**GENERAL DESCRIPTION OF RESTRICTED PROPERTY**

# Bruce Vento Trail Extension Phase 1 Existing Land Ownership

## Legend

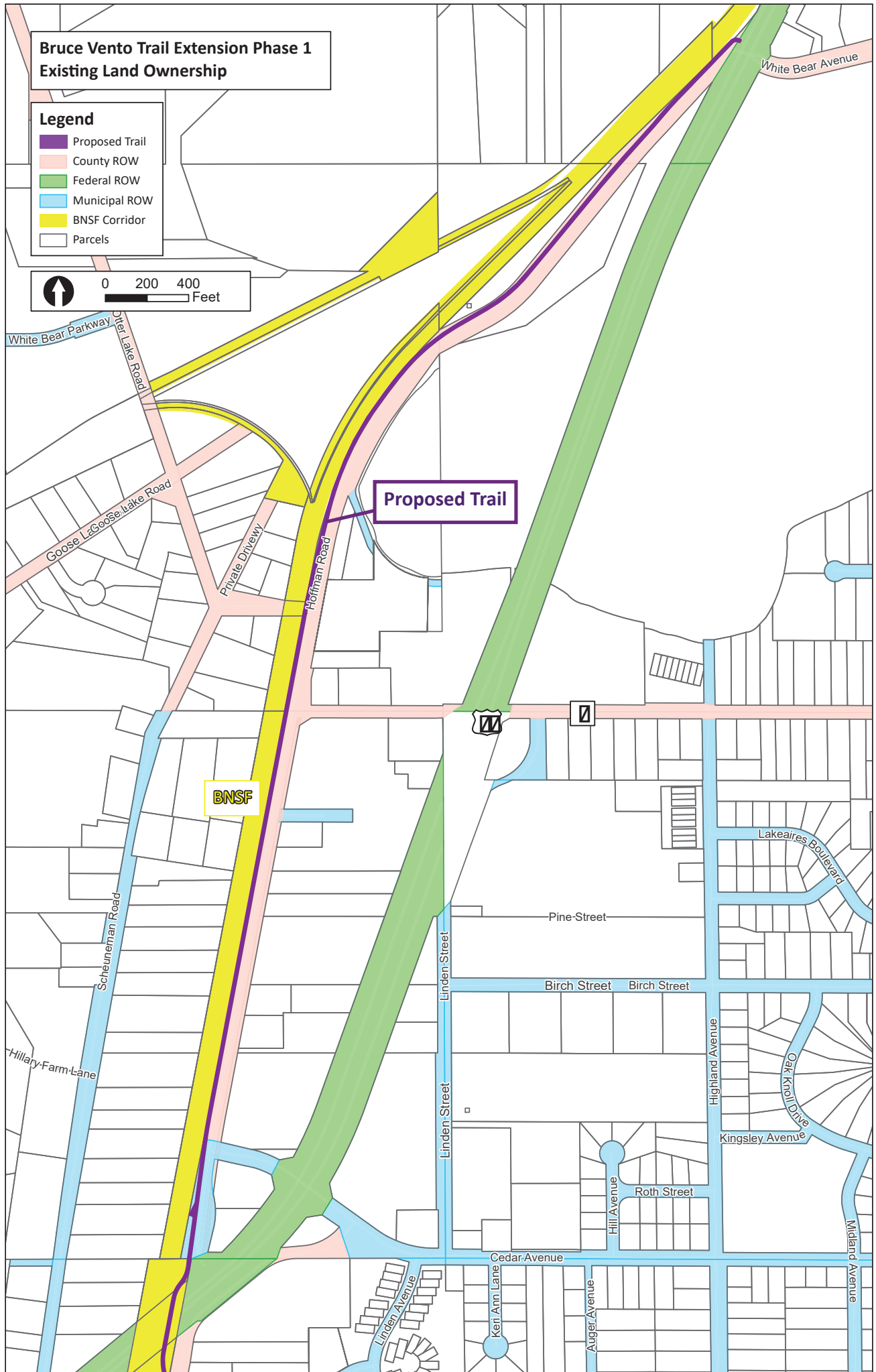
- Proposed Trail
- City of White Bear Lake Property
- Metropolitan Council Property
- BNSF Corridor
- County ROW
- Federal ROW
- Municipal ROW
- Parcels



# Bruce Vento Trail Extension Phase 1 Existing Land Ownership

## Legend

- Proposed Trail
- County ROW
- Federal ROW
- Municipal ROW
- BNSF Corridor
- Parcels



**SG-24P6-06-01**  
**Metropolitan Council**  
**Grant Program for Recreation Open Space**  
**Development – Pass-Through**

**State of Minnesota**  
**General Fund**  
**Grant Agreement**  
**for the**

**Ramsey County**  
**Bruce Vento Regional Trail**  
**Development**

## TABLE OF CONTENTS

|                                                                  |    |
|------------------------------------------------------------------|----|
| RECITALS .....                                                   | 1  |
| Article I - Definitions.....                                     | 2  |
| Section 1.01 Defined Terms.....                                  | 2  |
| Article II - GRANT.....                                          | 4  |
| Section 2.01 Grant of Monies .....                               | 4  |
| Section 2.02 Use of Grant Proceeds.....                          | 4  |
| Section 2.03 Operation of the Real Property and Facility.....    | 4  |
| Section 2.04 Grantee Representations and Warranties .....        | 5  |
| Section 2.05 Event(s) of Default.....                            | 7  |
| Section 2.06 Remedies .....                                      | 8  |
| Section 2.07 Notification of Event of Default.....               | 8  |
| Section 2.08 Term of Grant Agreement.....                        | 9  |
| Section 2.09 Modification and/or Early Termination of Grant..... | 9  |
| Section 2.10 Effect of Event of Default .....                    | 9  |
| Section 2.11 Excess Funds.....                                   | 10 |
| Article III - USE AND SALE.....                                  | 10 |
| Section 3.01 Use Contracts .....                                 | 10 |
| Section 3.02 Sale .....                                          | 10 |
| Section 3.03 Proceeds of a Sale .....                            | 11 |
| Article IV - DISBURSEMENT OF GRANT PROCEEDS.....                 | 12 |
| Section 4.01 Reimbursements .....                                | 12 |
| Section 4.02 Reimbursement Requests and Payment .....            | 12 |
| Section 4.03 Additional Funds .....                              | 12 |
| Section 4.04 Conditions Precedent to Any Reimbursement .....     | 12 |
| Section 4.05 Construction Inspections .....                      | 15 |
| Article V - MISCELLANEOUS.....                                   | 15 |
| Section 5.01 Insurance .....                                     | 15 |
| Section 5.02 Condemnation .....                                  | 16 |
| Section 5.03. Use, Maintenance, Repair and Alterations.....      | 16 |
| Section 5.04 Records Keeping and Reporting .....                 | 17 |
| Section 5.05 Inspections by Council.....                         | 17 |
| Section 5.06 Data Practices.....                                 | 17 |
| Section 5.07 Non-Discrimination.....                             | 17 |
| Section 5.08 Worker's Compensation.....                          | 17 |
| Section 5.09 Antitrust Claims .....                              | 18 |
| Section 5.10 Review of Plans and Cost Estimates .....            | 18 |
| Section 5.11 Prevailing Wages.....                               | 19 |
| Section 5.12 Liability .....                                     | 19 |
| Section 5.13 Indemnification by the Grantee.....                 | 20 |

|                                                                |                                                           |    |
|----------------------------------------------------------------|-----------------------------------------------------------|----|
| Section 5.14                                                   | Relationship of the Parties.....                          | 20 |
| Section 5.15                                                   | Notices.....                                              | 21 |
| Section 5.16                                                   | Binding Effect and Assignment or Modification .....       | 21 |
| Section 5.17                                                   | Waiver .....                                              | 22 |
| Section 5.18                                                   | Entire Agreement .....                                    | 22 |
| Section 5.19                                                   | Choice of Law and Venue .....                             | 22 |
| Section 5.20                                                   | Severability.....                                         | 22 |
| Section 5.21                                                   | Time of Essence .....                                     | 22 |
| Section 5.22                                                   | Counterparts .....                                        | 22 |
| Section 5.23                                                   | Matching Funds.....                                       | 22 |
| Section 5.24                                                   | Source and Use of Funds.....                              | 22 |
| Section 5.25                                                   | Project Summary and Completion Schedule.....              | 23 |
| Section 5.26                                                   | Third-Party Beneficiary.....                              | 23 |
| Section 5.27                                                   | Grantee Tasks.....                                        | 23 |
| Section 5.28                                                   | Council and Commissioner Required Acts and Approvals..... | 24 |
| Section 5.29                                                   | Applicability to Real Property and Facility.....          | 24 |
| Section 5.29                                                   | E-Verification.....                                       | 24 |
| Section 5.30                                                   | Additional Requirements.....                              | 24 |
| Attachment I.....                                              |                                                           | 1  |
| Exhibit A to Declaration and Attachment II .....               |                                                           | 3  |
| LEGAL DESCRIPTION OF REAL PROPERTY .....                       |                                                           | 3  |
| Attachment III - SOURCE AND USE OF FUNDS FOR THE PROJECT ..... |                                                           | 4  |

**State of Minnesota General Fund Grant Agreement  
Grant for Recreation Open Space Development**

|                                                                                                                                          |                               |                          |
|------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|--------------------------|
| GRANTEE: Ramsey County                                                                                                                   |                               | GRANT NO.: SG-24P6-06-01 |
| GRANT PROJECT: Bruce Vento Regional Trail Development - See Grant Project Summary & Completion Schedule attached hereto as Attachment IV |                               |                          |
| COUNCIL GRANT                                                                                                                            |                               |                          |
| TOTAL GRANT AMOUNT: \$5,000,000.00                                                                                                       | STATE FISCAL YEAR: 2024       |                          |
| STATE GENERAL FUND: \$5,000,000.00                                                                                                       |                               |                          |
| APPROPRIATION: ML 2023, Regular Session, Chapter 71, Article 1, Section 11, Subd. 13                                                     |                               |                          |
| EFFECTIVE DATE: Date agreement has been fully executed by both parties.                                                                  |                               |                          |
| PROJECT ACTIVITY PERIOD: June 1, 2023 to December 31, 2027                                                                               |                               |                          |
| COUNCIL AUTHORIZED REPRESENTATIVE: Nicole Clapp, Parks Grants Administrator (nicole.clapp@metc.state.mn.us)                              |                               |                          |
| COUNCIL ACTION: September 13, 2023                                                                                                       | BUSINESS ITEM: 2023-174 JT SW |                          |
| EXPIRATION DATE: December 31, 2027                                                                                                       |                               |                          |

**THIS GRANT AGREEMENT** (“Agreement”) is made and entered into on the Effective Date by and between the Metropolitan Council (“Council”) and the municipality or political subdivision of the State of Minnesota identified above as the (“Grantee.”)

**RECITALS**

1. The Council is authorized by Minnesota Statutes section 473.301 *et seq.* to make grants to eligible governmental units situated wholly or partly within the metropolitan area (“Recreation Open Space Development Grants”) for the purpose of development of regional recreation open space in accord with Minnesota Statutes section 473.147, the Regional Parks Policy Plan (the “Council Grant Program”).
2. Under the provisions contained in Minnesota Session [Laws 2023, Regular Session, Chapter 71, Article 1, Section 11, Subd. 13](#) (the “State of Minnesota Capital Improvement Legislation”) the State of Minnesota has general funds (the “State of Minnesota Capital Improvement Legislation”) in the amount(s) shown above, (the “Council Grant”) to be given to the Grantee as a grant to assist it in the costs of the legislatively defined grant project.

3. The Metropolitan Council has authorized a Recreation Open Space Development Grant to the Grantee to assist in completion of the legislatively defined project.
4. The monies allocated to fund the Council Grant to the Grantee are appropriated money from the State of Minnesota's general fund.
5. The Metropolitan Council has included the state general fund appropriation in the Council's Authorized Capital Program.
6. The Grantee and the Council desire to set forth herein the provisions relating to the granting of such monies and the disbursement thereof to the Grantee.

**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:

“Agreement” means this General Funds Grant Agreement for the Grant Project/Facility completion, as such exists on its original date and any amendments, modifications or restatements thereof.

“Architect” means the Grantee that will administer the Construction Contract Documents.

“Commissioner of Management and Budget” - means the State of Minnesota acting through its Commissioner of Management and Budget, and any designated representatives thereof.

“Completion Date” means the project completion date indicated in Attachment IV.

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

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

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

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

“Council Grant” means the grant of monies from the Council to the Grantee in the amount identified on Page 1 of this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Counterparty” means any entity with which the Grantee contracts under a Use Contract. *This definition only applies if the Grantee enters into an agreement with another party under which such party will operate the Real Property or Facility.*

“Declaration” - means a declaration, or declarations, in the form as **Attachment I** and all amendments thereto, indicating that the Grantee’s ownership interest in the Real Property and, if applicable, the Facility is subject to the provisions of this Agreement.

“Event of Default” - means those events delineated in Section 2.05.

“Facility”, if applicable, means the grant project described on page 1 which will be constructed and located on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the Council Grant.

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

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

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

“Project” - means the acquisition of an interest in the Real Property and, if applicable, the Facility, along with the performance of those activities indicated in Section 2.03.

“Real Property” means the real property located in the State of Minnesota, legally described in Attachment II to this Agreement.

“Reimbursement Request” means a reimbursement request that the Grantee, or its designee, submits to the Council to request the Reimbursement of grant eligible expenses, as referred to in Section 4.02.

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

“Useful Life of the Real Property and, if applicable, the Facility” – means the term set forth in Section 2.04.T. of this Agreement.

## **Article II - GRANT**

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

**Section 2.02 Use of Grant Proceeds.** The Grantee shall use the Council Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities, and may not use the Council Grant for any other purpose. (Check 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 on the Real Property.
- ☒ Improvement of the Real Property.
- ☐ Acquisition of the Facility.
- ☐ Improvement of the Facility.
- ☐ Renovation or rehabilitation of the Facility.
- ☐ Construction of the Facility.

**Section 2.03 Operation of the Real Property and Facility.** The Grantee shall operate the Real Property and, if applicable, the Facility, or cause it to be operated, in accordance with the Council Grant Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses. The Grantee may enter into Use Contracts with Counterparties to so operate the Real Property and, if applicable, the Facility; provided that such Use Contracts must fully comply with all of the provisions contained in Section 3.01. The Grantee shall also annually determine that the Real Property and, if applicable, the Facility are being so used, and shall annually supply a statement, sworn to before a notary public, to such effect to the Council and Commissioner of MMB.

**Section 2.04 Grantee Representations and Warranties.** The Grantee further covenants with, and represents and warrants to the Council as follows:

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

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

C. 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.

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

E. 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, the Facility, 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.

F. 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.

G. The contemplated use of the Real Property and, if applicable, the 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.

H. The Project was, or 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.

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

J. All applicable licenses, permits and bonds required for the operation of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03 have been, or will be, obtained.

K. It will operate, maintain, and manage the Real Property and, if applicable, the Facility 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, the Facility.

L. It has, or will acquire, the following interest in the Real Property and, if applicable, the Facility, and, in addition, will possess all easements necessary for the operation, maintenance and management of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03:

(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, in form and substance acceptable to the Council, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the Council.

(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, in form and substance acceptable to the Council, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the Council.

(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 Real Property.

☐ A Real Property/Facility Lease for the Real Property, in form and substance acceptable to the Council, for a term of at least 125% of the Useful Life of the Real Property and, if applicable, Facility, which cannot be prematurely cancelled or terminated without the prior written consent of the Council.

(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.

and such interests are or will be subject only to those easements, covenants, conditions and restrictions that will not materially interfere with the completion of the Project and the intended operation and use of the Real Property and, if applicable, the Facility, or those easements, covenants, conditions and restrictions which are specifically consented to, in writing, by the Council.

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

N. It has complied with the matching funds requirement, if any, contained in Section 5.23.

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

P. The Project will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and will be situated entirely on the Real Property.

Q. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its conduct of work on the Project.

R. It will not allow any lien or encumbrance that is prior and superior to the Declaration to be created on or imposed upon the Real Property, whether such lien or encumbrance is voluntary or involuntary and including but not limited to a mechanic's lien or a mortgage lien, without the prior written consent of the Council and the Commissioner of MMB.

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

T. The Useful Life of the Real Property and, if applicable, Facility is 10 years.

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

**Section 2.05 Event(s) of Default.** The following events shall, unless waived in writing by the Council and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the Council or Commissioner of MMB giving the Grantee 30 days written notice of such event, and the Grantee's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Grantee is using its best efforts to cure and is making reasonable progress in curing such Events of Default,

however, in no event shall the time period to cure any Event of Default exceed 6 months. Notwithstanding the foregoing, any of the following events that cannot be cured shall, unless waived in writing by the Council and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon the Council giving the Grantee written notice of such event.

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

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

**Section 2.06 Remedies.** Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Council, the Council, or the Commissioner of MMB may enforce any or all of the following remedies.

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

B. The Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the portion of the Council Grant already disbursed to the Grantee be returned to it, and upon such demand the Grantee shall return such portion to the Commissioner of MMB.

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

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

If the Grantee does not repay any portion of the amount specified in Section 2.06.B within 30 days of demand by either the Council or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Grantee is entitled to receive from the State of Minnesota.

**Section 2.07 Notification of Event of Default.** The Grantee shall furnish to both the Council and the Commissioner of MMB, as soon as possible and in any event within 7 calendar days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Grantee proposes to take with respect thereto.

**Section 2.08 Term of Grant Agreement.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and, if applicable, Facility to the date on which the Real Property and, if applicable, Facility is first used for the operation of the Council Grant Program after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and, if applicable, Facility from the effect of this Agreement and the Declaration.

**Section 2.09 Modification and/or Early Termination of Grant.** If the Project is not started on or before the date that is 5 years from the effective date of this Agreement or all of the Council Grant has not been disbursed as of the date that is 4 years from the date on which the Project is started, or such later date to which the Grantee and the Council may agree in writing, then, the Council's obligation to fund the Grant shall terminate, and, in such event, (i) if none of the Council Grant has been disbursed by such date then the Council's obligation to fund any portion of the Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (ii) if some but not all of the Council Grant has been disbursed by such date then the Council shall have no further obligation to provide any additional funding for the Council Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Council Grant that was actually disbursed as of such date.

This Agreement shall also terminate and no longer be of any force or effect upon (a) the termination of the Grantee's leasehold or easement interest in the Real Property in accordance with the terms of such lease or easement, or (b) the sale of the Grantee's interest in the Real Property and, if applicable, the Facility in accordance with the provisions contained in Section 3.02 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 3.03. Upon such termination the Council shall execute and deliver to the Grantee such documents as are required to release the Real Property and, if applicable, the Facility, from the effect of the Declaration.

In the event that the legislation that authorized the Council Grant is amended to increase or reduce the amount of the Council Grant or in any other way, then this Agreement shall be deemed to have been automatically modified in accordance with such amendment and the amount of the Council Grant shall also be automatically modified in accordance with such amendment.

**Section 2.10 Effect of Event of Default.** If an Event of Default occurs and the Grantee is required to and does return the amount specified in Section 2.06.B to the Commissioner of MMB, then the following shall occur.

A. This Agreement shall survive and remain in full force and effect.

B. The amount returned by the Grantee shall be credited against any amount that shall be due to the Commissioner of MMB under Section 3.03 and against any amount that becomes due and payable because of any other Event of Default.

**Section 2.11 Excess Funds.** If the full amount of the Council Grant and any matching funds referred to in Section 5.23 are not needed to complete the Project, then, unless language in the legislation that authorized the Council Grant indicates otherwise, the Council Grant shall be reduced by the amount not needed.

### **Article III - USE AND SALE**

**Section 3.01 Use Contracts.** Each and every Use Contract that the Grantee enters into must comply with the following requirements:

- A. The purpose for which the Use Contract was entered into must be a governmental purpose.
- B. It must contain a provision setting forth the statutory authority under which the Grantee is entering into the Use Contract, and must comply with the substantive and procedural provisions of such statute.
- C. It must contain a provision stating that the Use Contract is being entered into in order to carry out the purpose for which the Council Grant was allocated, and must recite the purpose.
- D. It must be for a term, including any renewals that are solely at the option of the Counterparty, that is, if applicable, substantially less than the useful life of the structures and improvements that make up the Facility, but may allow for renewals beyond the original term upon a determination by the Grantee that the use continues to carry out the specific purpose for which the Council Grant was allocated. A term that is equal to or shorter than 50% of the useful life of the structures and improvements that make up the Facility will meet the requirement that it be for a time period that is substantially shorter than the useful life of such structures and improvements.
- E. It must allow for termination by the Grantee in the event of a default thereunder by the Counterparty, or in the event that the specific purpose for which the Council Grant was allocated is terminated or changed.
- F. It must require the Counterparty to pay all costs of operation and maintenance of the Real Property and, if applicable, the Facility, unless the Grantee is authorized by law to pay such costs and agrees to pay such costs.
- G. If the amount of the Council Grant exceeds \$200,000.00, then it must contain a provision requiring the Counterparty to list any vacant or new positions it may have with state workforce centers as required by Minn. Stat. § 116L.66, Subd. 1, as it may be amended, modified or replaced from time to time, for the term of the Use Contract.

**Section 3.02 Sale.** The Grantee shall not sell any part of its ownership interest in the Real Property or, if applicable, the Facility unless all of the following provisions have been complied with fully.

A. The Grantee determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Council Grant Program, which such determination may be based on a determination that the portion of the Real Property or, if applicable, Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.

B. The sale is made as authorized by law.

C. The sale is for Fair Market Value.

D. Written notice of such proposed sale has been supplied to both the Council and the Commissioner of MMB at least 30 days prior thereto.

The acquisition of the Grantee's interest in the Real Property and, if applicable, the 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 of thereof, by a lender that has provided monies for the acquisition of the Grantee's interest in or betterment of the Real Property and, if applicable, the 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, the Facility in a manner which is not inconsistent with the program specified in Section 2.03 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, the 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 3.03.

**Section 3.03 Proceeds of a Sale.** Upon the sale of the Grantee's interest in the Real Property and, if applicable, the Facility the net proceeds thereof 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 amount of the Council Grant actually disbursed, and if the amount of such net proceeds shall be less than the amount of the Council Grant actually disbursed then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 3.03.A, shall be distributed to pay in full any outstanding public or private debt incurred to acquire the Grantee's interest in or for the betterment of the Real Property and, if applicable, the Facility in the order of priority of such debt.

C. Any remaining portion, after the distributions specified in Sections 3.03A and B, shall be divided and distributed in proportion to the shares contributed to the acquisition of the Grantee's interest in or for the betterment of the Real Property and, if applicable, the Facilities by public and private entities, including the Council but not including any private entity that has been paid in full, that supplied funds in either real monies or like-kind contributions for such acquisition and betterment, and the Council's distribution shall be made to the Commissioner of MMB. Such public and private entities may agree amongst themselves as to any redistribution of such distributed funds.

The Grantee shall not be required to pay or reimburse the Council 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 Council Grant actually disbursed.

#### **Article IV - DISBURSEMENT OF GRANT PROCEEDS**

**Section 4.01 Reimbursements.** The Council will reimburse the Grantee for grant eligible expenses as submitted.

**Section 4.02 Reimbursement Requests and Payment.** The Council will reimburse the Grantee for grant eligible expenses as submitted. Payment requests shall be made using reimbursement request forms provided by the Council. The Council will disburse grant funds on a reimbursement or a "cost incurred" basis. Payment requests must include the specific Council Grant Project activities conducted or completed during the authorized time-period. Payment requests must include documentation supporting expenses including consultant/contractor invoices showing the time-period covered by the invoice; proof or verification of the invoice, and other supporting documents as the Council deems appropriate.

Notwithstanding anything herein to the contrary, no Reimbursements for materials stored on or off the Real Property will be made by the Council unless the Grantee shall advise the Council, in writing, of its intentions to so store materials prior to their delivery and the Council has not objected thereto.

At the time of submission of each Reimbursement Request, other than the final Reimbursement, the Grantee shall submit to the Council such supporting evidence as may be requested by the Council to substantiate all payments which are to be made out of the relevant Reimbursement Request or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Reimbursement Request, which shall not be submitted before completion of the Project, the Grantee must comply with all requirements contained in Section 5.30 of this Agreement.

**Section 4.03 Additional Funds.** If the Council shall at any time in good faith determine that the sum of the undisbursed amount of the Council Grant plus the amount of all other funds committed to the completion of 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 completion of the Project, then the Council may send written notice thereof to the Grantee specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Grantee agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the Council's notice.

**Section 4.04 Conditions Precedent to Any Reimbursement.** The obligation of the Council to make any Reimbursement hereunder shall be subject to the following conditions precedent:

A. The Council shall have received a Reimbursement Request for such Reimbursement specifying the amount of funds being requested, which such amount when

added to all prior requests for a Reimbursement shall not exceed the amount of the Council Grant delineated in Section 1.01.

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

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

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

E. The Council shall have received evidence, in form and substance acceptable to the Council, that the Grantee is in compliance with the matching funds requirements, if any, contained in Section 5.23.

F. The Council shall have received evidence, in form and substance acceptable to the Council, showing that the Grantee currently possesses or will use the Council Grant to acquire the ownership interest delineated in Section 2.04.L.

G. The Council shall have received evidence, in form and substance acceptable to the Council, that the Real Property and, if applicable, the 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 have been duly approved by the applicable municipal or governmental authorities having jurisdiction.

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

I. The Council shall have received evidence, in form and substance acceptable to the Council, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and, if applicable, the Facility in the manner specified in Section 2.03 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The Council shall have received evidence, in form and substance acceptable to the Council, that the Project will be completed in a manner that will allow the Real Property and, if applicable, the Facility to be operated in the manner specified in Section 2.03.

K. The Council shall have received evidence, in form and substance acceptable to the Council, that the Grantee has the ability and a plan to fund the program which will be operated on the Real Property and, if applicable, in the Facility.

L. The Council shall have received evidence, in form and substance acceptable to the Council, that the Construction Contract Documents are in place and are fully and completely enforceable.

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

N. The Council shall have received evidence, in form and substance acceptable to the Council, that the policies of insurance required under Section 5.01 are in full force and effect.

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

P. No determination shall have been made by the Council that the amount of funds committed to the completion of 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 completion of the Project, or if such a determination has been made and notice thereof sent to the Grantee then the Grantee has supplied or has caused some other entity to supply the necessary funds in accordance with Section 4.03, or to provide evidence acceptable to the Council that sufficient funds are available.

Q. 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.

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

**Section 4.05 Construction Inspections.** The Grantee and the Architect, if any, shall be responsible for making their own inspections and observations of the Project, 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 Reimbursement has been properly done or supplied in accordance with the applicable contracts with such Contractors. If any work done or materials supplied by a Contractor are not satisfactory to the Grantee and the Architect, if any, or if a Contractor is not in material compliance with the Construction Contract Documents in any respect, then the Grantee shall immediately notify the Council, in writing. The Council and the Inspecting Engineer, if any, may conduct such inspections of the Project as either may deem necessary for the protection of the Council's interest, and that any inspections which may be made of the Project by the Council or the Inspecting Engineer, if any, are made and all certificates issued by the Inspecting Engineer, if any, will be issued solely for the benefit and protection of the Council, and the Grantee will not rely thereon.

## **Article V - MISCELLANEOUS**

**Section 5.01 Insurance.** The Grantee shall maintain or cause to be maintained builders risk insurance and fire and extended coverage insurance on the Facility, if such exists, in an amount equal to the full insurable value thereof, and shall name the Council as loss payee thereunder. If damages which are covered by such required insurance occurs to the Facility, if such exists, then the Grantee shall, at its sole option and discretion, either: (i) 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 (ii) sell its interest in the Real Property and the damaged Facility, if such exists, in accordance with the provisions contained in Section 3.02. If the Grantee elects to only partially repair such damage, then the portion of the insurance proceeds which are not used for such repair shall be applied in accordance with the provisions contained in Section 3.03 as if the Grantee's interest in the Real Property and Facility, if such exists, had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.03 upon the ultimate sale of the Grantee's interest in the Real Property and Facility, if such exists. If the Grantee elects to sell its interest in the Real Property and the damaged Facility, if such exists, 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 3.03, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Grantee.

As loss payee under the insurance required herein the Council agrees to and will assign or pay over to the Grantee all insurance proceeds it receives so that the Grantee can comply with the requirements that this Section 5.01 imposes upon the Grantee as to the use of such insurance proceeds.

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

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

**Section 5.02 Condemnation.** If all or any portion of the Real Property and, if applicable, the Facility is condemned to an extent that the Grantee can no longer comply with the provisions contained in Section 2.03, then the Grantee shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Grantee to continue to comply with the provisions contained in Section 2.03 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 interest in the Real Property and, if applicable, the Facility in accordance with the provisions contained in Section 3.02. 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 3.03 as if the Grantee's interest in the Real Property and, if applicable, the Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.03 upon the ultimate sale of the Grantee's interest in the Real Property and, if applicable, the Facility. If the Grantee elects to sell its interest in the portion of the Real Property and, if applicable, the 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 3.03, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Grantee.

As recipient of any of condemnation awards or proceeds referred to herein, the Council agrees to and will disclaim, assign or pay over to the Grantee all of such condemnation awards or proceeds it receives so that the Grantee can comply with the requirements which this Section 5.02 imposes upon the Grantee as to the use of such condemnation awards or proceeds.

**Section 5.03. Use, Maintenance, Repair and Alterations.** The Grantee shall not, without the written consent of the Council, permit or suffer the use of any of the Real Property and, if applicable, the Facility, for any purpose other than the use for which the same is intended as of the effective date of this Agreement. In addition, the Grantee: (i) shall keep the Real Property and, if applicable, the Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) shall not, written consent of the Council, remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Facility, if applicable, (iii) shall not do any act or thing which would unduly impair or depreciate the value of the Real Property and, if applicable, the Facility, (iv) shall not abandon the Real Property and, if applicable, the Facility, (v) shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefor, (vi) shall comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property and, if applicable, the Facility, or any part thereof, or requiring any alterations or improvements thereto, (vii) shall not commit or permit any waste or deterioration of the Real Property and, if applicable, the Facility,

(viii) shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (ix) shall comply with the provisions of any lease if the Grantee's interest in the Real Property and, if applicable, the Facility, is a leasehold interest, (x) shall comply with the provisions of any condominium documents if the Real Property and, if applicable, the Facility, is part of a condominium regime, (xi) shall not remove any fixtures or personal property from the Real Property and, if applicable, the Facility, that was paid for with the proceeds of the Council Grant unless the same are immediately replaced with like property of at least equal value and utility, and (xii) shall not commit, suffer or permit any act to be done in or upon the Real Property and, if applicable, the Facility, in violation of any law, ordinance or regulation.

**Section 5.04 Records Keeping and Reporting.** The Grantee shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the completion of the Project and operation of the Real Property and, if applicable, the Facility, and compliance with the requirements contained in this Agreement, and upon request shall allow or cause the entity which is maintaining such items to allow the Council, auditors for the Council, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of its books, records, papers, or other documents relevant to the Council Grant. The Grantee shall use or cause the entity which is maintaining such books and records to use generally accepted accounting principles in the maintenance of such books and records, and shall retain or cause to be retained all of such books, records, documents and other evidence for a period of 6 years from the date that the Project is fully completed and placed into operation.

**Section 5.05 Inspections by Council.** Upon reasonable request by the Council the Grantee shall allow, and will require any entity to whom it leases, subleases, or enters into a Use Contract for any portion of the Real Property and, if applicable, the Facility to allow, the Council to inspect the Real Property and, if applicable, the Facility.

**Section 5.06 Data Practices.** The Grantee agrees with respect to any data that it possesses regarding the Council Grant, the Project, or the Real Property and, if applicable, the 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 5.07 Non-Discrimination.** The Grantee agrees to not engage in discriminatory employment practices in the completion of the Project, or operation or management of the Real Property and, if applicable, the Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Minn. Stat. Chapters 363A and 181 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

**Section 5.08 Worker's Compensation.** The Grantee agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181, Subd. 2 and 176.182 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, with respect to the completion of the Project, and the operation or management of the Real Property and, if applicable, the Facility.

**Section 5.09 Antitrust Claims.** The Grantee hereby assigns to the Council and the Commissioner of MMB all claims it may have for over charges as to goods or services provided in its completion of the Project, and operation or management of the Real Property and, if applicable, the Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

**Section 5.10 Review of Plans and Cost Estimates.** The Grantee agrees to comply with all applicable provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Grantee and the Council agree to comply with the following provisions and requirements if such provisions and requirements are applicable.

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

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

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

D. The Grantee must notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees of any significant changes to the program plan and cost estimates referred to in Section 5.10.C.

E. The program plan and cost estimates referred to in Section 5.10.C must ensure that the Project will comply with all applicable energy conservation standards contained in

law, including Minn. Stat. §§ 216C.19 to 216C.20, as they may be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Council Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 5.10.B and the program plan and cost estimates referred to in Section 5.10.C must include provisions for cost-effective information technology investments that will enable the occupant of the Facility to reduce its need for office space, provide more of its services electronically, and decentralize its operations.

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

H. The Project must be: (i) completed in accordance with the program plan and cost estimates referred to in Section 5.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 5.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 5.10.C.

Provided, however, the provisions and requirements contained in this Section 5.10 only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, parking structures, park and ride facilities, bus rapid transit stations, light rail lines, passenger rail projects, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04, as it may be amended, modified or replaced from time to time, ice centers, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

**Section 5.11 Prevailing Wages.** The Grantee agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Real Property and, if applicable, Facility as intended by the Minnesota Legislature. By agreeing to this provision, the Grantee is not acknowledging or agreeing that the cited provisions apply to the Project or to the operation of the Real Property and, if applicable, Facility.

**Section 5.12 Liability.** The Grantee and the Council agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the

extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of both the Council and the Commissioner of Management and Budget is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Grantee is a “municipality” as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Grantee, including but not limited to the indemnification provided under Section 5.13, is governed by the provisions contained in such Chapter 466.

**Section 5.13 Indemnification by the Grantee.** The Grantee shall bear all loss, expense (including attorneys’ fees), and damage in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, and agrees to indemnify and hold harmless the Council, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the Council, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the Council, the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, whether or not due to any act of omission or commission, including negligence of the Grantee or any Contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the Council, the Commissioner of MMB, and the State of Minnesota, their employees, servants or agents.

The Grantee further agrees to indemnify, save, and hold the Council, the Commissioner of MMB, and the State of Minnesota, their agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Grantee, its officers, employees, or agents, or by any Counterparty, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 5.06.

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

**Section 5.14 Relationship of the Parties.** Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Grantee, the Council, or the Commissioner of MMB, nor shall the Grantee be considered or deemed to be an agent, representative, or employee of either the Council, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the completion of the Project, or operation of the Real Property and, if applicable, the Facility.

The Grantee represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the completion of the Project and the operation and maintenance of the Real Property and, if applicable, the Facility. All personnel of the Grantee or other persons while engaging in the performance of this Agreement, the completion of the Project, or the operation and maintenance of the Real Property and, if applicable, the Facility shall

not have any contractual relationship with either the Council, the Commissioner of MMB, or the State of Minnesota and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Grantee, its officers, agents, contractors, or employees shall in no way be the responsibility of either the Council, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the Council, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

**Section 5.15 Notices.** In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing, and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

The Council: Nicole Clapp, Parks Grants Administrator  
CD/MTS Finance & Administration (or successor)  
Mailing Address: 390 North Robert Street, St. Paul, MN 55101  
Phone: 651-602-1723  
E-mail: nicole.clapp@metc.state.mn.us

The Grantee: Ramsey County Parks & Recreation  
Name: Scott Yonke, Director Planning & Development  
Mailing Address: 2015 Van Dyke St. Maplewood, MN 55109  
Phone: 651-266-0370  
E-mail: scott.yonke@co.ramsey.mn.us

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

**Section 5.16 Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Grantee and the Council, and their respective successors and assigns. Provided, however, that neither the Grantee nor the Council may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Grantee or the Council unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

**Section 5.17 Waiver.** Neither the failure by the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances, to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

**Section 5.18 Entire Agreement.** This Agreement, the Declaration, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Grantee and the Council, and there are no other agreements, either oral or written, between the Grantee and the Council on the subject matter hereof.

**Section 5.19 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 5.20 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 5.21 Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

**Section 5.22 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 5.23 Matching Funds.** The Grantee must obtain and supply the following matching funds, if any, for the completion of the Project: NONE

**Section 5.24 Source and Use of Funds.** The Grantee represents to the Council and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

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

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

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

C. Such other financial information 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.

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

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

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

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

**Section 5.25 Project Summary and Completion Schedule.** The Grantee represents to the Council and the Commissioner of MMB that **Attachment IV** correctly and accurately delineates the projected schedule for the completion of the Project.

**Section 5.26 Third-Party Beneficiary.** The Council Grant Program to be operated in conjunction with the Real Property and, if applicable, the Facility will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the Council and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

**Section 5.27 Grantee Tasks.** Any tasks that this Agreement imposes upon the Grantee may be performed by such other entity as the Grantee may select or designate, provided that the

failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Grantee.

**Section 5.28 Council and Commissioner Required Acts and Approvals.** The Council and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval required of it herein.

**Section 5.29 Applicability to Real Property and Facility.** This Agreement applies to the Grantee's interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing before the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Grantee's interest in the Real Property.

**Section 5.29 E-Verification.** The Grantee agrees and acknowledges that it is aware of Minn. Stat. § 16C.075 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such statute and impose a similar requirement in any Use Contract to which it is a party.

**Section 5.30 Additional Requirements.** The Grantee and the Council agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

**A. Semi-Annual Reporting during the Grant Project Activity Period.** Grantee must submit cash flow and semi-annual progress reports to the Council by July 31 and January 31 of each year while the grant agreement is active. In the cash flow report, the Grantee shall describe the current project spending and projected spending for the periods defined in the report template. The progress report shall include the construction, programing and/or consulting activities taken during the reporting period. The Grantee shall provide sufficient documentation for information the Council reasonably requests.

**B. Final Report and Grant Closeout.** Prior to the Council's approval and release of the Final Reimbursement, the Grantee must submit a final closeout report that provides the completed project results, acknowledges that the grant funds have been spent in accordance with the grant agreement, and certifies that the reported expenditures fairly and accurately represent the true project costs. The Final Reimbursement must include all final costs and expenditures.

**American-Made Steel.** Minnesota Laws 2014, Chapter 295, Section 21 (the "Act"), requires public entities receiving an appropriation of public money for a project in that Act to ensure those facilities are built with American-made steel, to the extent practicable. The Grantee shall comply with this requirement, and shall furnish any documentation pursuant thereto reasonably requested by the Council.

(THE REMAINING PORTION OF THIS PAGE WAS INTENTIONALLY LEFT BLANK)

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

**RAMSEY COUNTY**

**METROPOLITAN COUNCIL**

By: \_\_\_\_\_  
Trista Martinson  
Its: Chair

By: \_\_\_\_\_  
LisaBeth Barajas, Executive Director  
Its: Community Development Division

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mee Cheng  
Its: Chief Clerk  
  
Date: \_\_\_\_\_

Approval Recommended:

By: *Mark McCabe*  
Mark McCabe  
Its: Director of Parks and Recreation  
  
Date: 06/21/2024

**Approved as to form**

By: *Kathleen Ritter*  
Its: Assistant County Attorney  
  
Date: 6/21/2024

## **Attachment I**

(Above space is reserved for recording information)

### **State of Minnesota General Fund Financed DECLARATION**

The undersigned has the following interest in the real property located in the [INSERT GRANTEE INFO], 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 contained in the Metropolitan Council Grant Agreement No. [INSERT GRANT ID] between [ENTER GRANTEE] and the Metropolitan Council. The Restricted Property shall remain subject to such provisions, requirements, restrictions, and encumbrances until it is released therefrom by a written release in recordable form signed by the Commissioner of Minnesota Management and Budget, 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 Management and Budget.

[INSERT GRANTEE], a political subdivision of  
the State of Minnesota

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF MINNESOTA    )  
                                          ) ss  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, before me a notary public within and for the  
County    of    \_\_\_\_\_, personally appeared \_\_\_\_\_, the  
\_\_\_\_\_ of the \_\_\_\_\_, a political subdivision of the State of  
Minnesota, on its behalf.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Peter A. Hanf  
Associate General Counsel  
License No. 0268124  
Metropolitan Council  
390 Robert Street North  
St. Paul, MN 55101

**Exhibit A to Declaration and Attachment II**

**LEGAL DESCRIPTION OF REAL PROPERTY**

**Attachment III -  
SOURCE AND USE OF FUNDS FOR THE PROJECT**

| <b>Source of Funds</b>                 |                      | <b>Use of Funds</b>                                                         |                      |
|----------------------------------------|----------------------|-----------------------------------------------------------------------------|----------------------|
| <b><u>Identify Source of Funds</u></b> | <b><u>Amount</u></b> | <b><u>Identify Items</u></b>                                                | <b><u>Amount</u></b> |
| <b>State G.O. Funds</b>                |                      | <b>Ownership Acquisition and Other Items Paid for with G.O. Grant Funds</b> |                      |
| G.O. Grant                             | \$5,000,000          | Purchase of Ownership Interest                                              | \$ _____             |
| <b>Other State Funds</b>               |                      | Other Items of a Capital Nature:                                            |                      |
| State Bond                             | \$ _____             | Construction                                                                | \$ 5,000,000         |
|                                        | \$ _____             |                                                                             | \$ _____             |
|                                        | \$ _____             |                                                                             | \$ _____             |
| Subtotal                               | \$5,000,000          | Subtotal                                                                    | \$5,000,000          |
| <b>Matching Funds</b>                  |                      | <b>Items Paid for with Non-G.O. Grant Funds</b>                             |                      |
| Federal Funds                          | \$4,000,000          | Construction Engineering                                                    | \$600,000            |
| Ramsey County CIP                      | \$1,000,000          | Construction Cost                                                           | \$4,000,000          |
| Subtotal                               | \$5,000,000          | Administrative/Overhead                                                     | \$400,000            |
| <b>Other Public Entity Funds</b>       |                      | Subtotal                                                                    | \$5,000,000          |
|                                        | \$ _____             |                                                                             |                      |
|                                        | \$ _____             |                                                                             |                      |
| Subtotal                               |                      |                                                                             |                      |
| <b>Loans</b>                           |                      |                                                                             |                      |
|                                        | \$ _____             |                                                                             |                      |
| Subtotal                               | \$ _____             |                                                                             |                      |
| <b>Other Funds</b>                     |                      |                                                                             |                      |
|                                        | \$ _____             |                                                                             |                      |
| Subtotal                               | \$ _____             |                                                                             |                      |
| <b>Prepaid Project Expenses</b>        |                      |                                                                             |                      |
|                                        | \$ _____             |                                                                             |                      |
|                                        | \$ _____             |                                                                             |                      |
| Subtotal                               | \$ _____             |                                                                             |                      |
| <b>TOTAL FUNDS</b>                     | <b>\$10,000,000</b>  | <b>TOTAL PROJECT COSTS</b>                                                  | <b>\$10,000,000</b>  |

**Attachment IV**

**PROJECT SUMMARY & COMPLETION SCHEDULE**

*(Activities and Schedule to Complete Project)*

|                                                                                                  |                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Activity &amp; Project Description</b><br><i>(in chronological order)</i>                     | Construct an approximately 2.7-mile extension of the Bruce Vento Regional Trail between Buerkle Road and the intersection of Hoffman Road/Trunk Highway 61 in the city of White Bear Lake. |
| Construction Solicitation<br>Contract Awarded<br>Construction Start<br>Projected Completion Date | August 2024<br>September/October 2024<br>October/November 2024<br>December 31, 2025                                                                                                        |
| Grant reporting and closeout                                                                     | December 31, 2027                                                                                                                                                                          |
| Project Budget (Total Grant Award)                                                               | \$5,000,000                                                                                                                                                                                |
| External Professional Services                                                                   | \$0                                                                                                                                                                                        |
| Internal Professional Services                                                                   | \$0                                                                                                                                                                                        |
| Construction                                                                                     | \$5,000,000                                                                                                                                                                                |