

**AGENDA**  
**MAPLEWOOD CITY COUNCIL**  
7:00 P.M. Monday, April 22, 2024  
City Hall, Council Chambers  
Meeting No. 08-24

**A. CALL TO ORDER**

**B. PLEDGE OF ALLEGIANCE**

**C. ROLL CALL**

**D. APPROVAL OF AGENDA**

**E. APPROVAL OF MINUTES**

1. April 08, 2024 City Council Workshop Meeting Minutes
2. April 08, 2024 City Council Meeting Minutes

**F. APPOINTMENTS AND PRESENTATIONS**

1. Administrative Presentations
  - a. Council Calendar Update
2. Council Presentations
3. Resolution for Commissioner Reappointments
4. Resolution Proclaiming Arbor Day 2024

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

1. Approval of Claims
2. Local Lawful Gambling Permit for St Paul's Monastery, 2675 Benet Road
3. Development Agreement for Landscaping Improvements, Roers Maplewood Apartments LLC, 1160 Frost Avenue East
4. Criminal Justice Data Network
  - a. Resolution Approving State of Minnesota Joint Powers Agreements with the City of Maplewood on Behalf of its City Attorney
  - b. State of Minnesota Joint Powers Agreement for Criminal Justice Data Network
  - c. Court Data Services Subscriber Amendment to CJDN Subscriber Agreement
5. Public Safety Cardiovascular and Metabolic Screenings Agreement
6. Purchase of Equipment for Buildout of a 1-Ton Truck

**H. PUBLIC HEARINGS** – *If you are here for a Public Hearing please familiarize yourself with the Rules of Civility printed on the back of the agenda. Sign in with the City Clerk before addressing the council. At the podium please state your name and address clearly for the record. All comments/questions shall be posed to the Mayor and Council. The Mayor will then direct staff, as appropriate, to answer questions or respond to comments.*

1. Public Vacation Request, 2786 and 2792 Keller Parkway
  - a. Public Hearing
  - b. Public Vacation of an Easement Resolution

**I. UNFINISHED BUSINESS**

None

**J. NEW BUSINESS**

1. Abatement Agreement for Property Located at 1742 ½ English Street
2. Metropolitan Livable Communities Act Grant and Loan Agreements, Gladstone Village, 1310 Frost Avenue East
3. Resolution Approving Grant Agreement with the Minnesota Department of Natural Resources for EAB Tree Removal and Planting

**K. AWARD OF BIDS**

None

**L. ADJOURNMENT**

Sign language interpreters for hearing impaired persons are available for public hearings upon request. The request for this must be made at least 96 hours in advance. Please call the City Clerk's Office at 651.249.2000 to make arrangements. Assisted Listening Devices are also available. Please check with the City Clerk for availability.

**RULES OF CIVILITY FOR THE CITY COUNCIL, BOARDS, COMMISSIONS AND OUR COMMUNITY**

Following are rules of civility the City of Maplewood expects of everyone appearing at Council Meetings - elected officials, staff and citizens. It is hoped that by following these simple rules, everyone's opinions can be heard and understood in a reasonable manner. We appreciate the fact that when appearing at Council meetings, it is understood that everyone will follow these principles:

Speak only for yourself, not for other council members or citizens - unless specifically tasked by your colleagues to speak for the group or for citizens in the form of a petition.

Show respect during comments and/or discussions, listen actively and do not interrupt or talk amongst each other.

Be respectful of the process, keeping order and decorum. Do not be critical of council members, staff or others in public.

Be respectful of each other's time keeping remarks brief, to the point and non-repetitive.

**MINUTES  
MAPLEWOOD CITY COUNCIL  
MANAGER WORKSHOP**

6:30 P.M. Monday, April 08, 2024  
City Hall, Council Chambers

**A. CALL TO ORDER**

A meeting of the City Council was held in the City Hall Council Chambers and was called to order at 6:30 p.m. by Mayor Abrams.

**B. ROLL CALL**

Marylee Abrams, Mayor	Present
Rebecca Cave, Councilmember	Absent
Kathleen Juenemann, Councilmember	Present
Chonburi Lee, Councilmember	Present
Nikki Villavicencio, Councilmember	Present

**C. APPROVAL OF AGENDA**

Councilmember Lee moved to approve the agenda as submitted.

Seconded by Councilmember Juenemann                      Ayes– All

The motion passed.

**D. UNFINISHED BUSINESS**

None

**E. NEW BUSINESS**

**1. Commissioner Interview**

Mayor Abrams introduced the item and assigned the interview questions to council. The following candidate was interviewed:

Pete Boulay – Heritage Preservation Commission

No Action Required.

**2. Fire/EMS Staffing Plan and Grant Update**

Fire & EMS Chief Mondor gave the presentation and answered questions of the council. Council expressed support of applying for the grant.

No action required

**D. ADJOURNMENT**

Mayor Abrams adjourned the meeting at 6:55 p.m.

**MINUTES**  
**MAPLEWOOD CITY COUNCIL**  
7:00 P.M. Monday, April 08, 2024  
City Hall, Council Chambers  
Meeting No. 07-24

**A. CALL TO ORDER**

A meeting of the City Council was held in the City Hall Council Chambers and was called to order at 7:01 by Mayor Abrams.

Mayor Abrams shared attending the White Bear Area Chamber of Commerce annual meeting at which the Maplewood Hy-Vee was named Business of the Year and shared information on the award.

**B. PLEDGE OF ALLEGIANCE**

**C. ROLL CALL**

Marylee Abrams, Mayor	Present
Rebecca Cave, Councilmember	Absent
Kathleen Juenemann, Councilmember	Present
Chonburi Lee, Councilmember	Present
Nikki Villavicencio, Councilmember	Present

**D. APPROVAL OF AGENDA**

The following items were added to Council Presentations:

Regional Council of Mayors

Councilmember Lee moved to approve the agenda as amended.

Seconded by Councilmember Juenemann                      Ayes– All

The motion passed.

**E. APPROVAL OF MINUTES**

**1. March 25, 2024 City Council Meeting Minutes**

Councilmember Juenemann moved to approve the March 25, 2024 City Council Meeting Minutes as submitted.

Seconded by Councilmember Lee                                      Ayes – All

The motion passed.

**F. APPOINTMENTS AND PRESENTATIONS**

**1. Administrative Presentations**

**a. Council Calendar Update**

City Manager Sable gave an update to the council calendar and reviewed other topics of concern or interest requested by councilmembers.

**2. Council Presentations**

**Spring Clean-Up**

Councilmember Juenemann reminded residents the Spring Clean-Up is Saturday, April 13<sup>th</sup>, from 8:00 am to 1:00 pm and gave the details of the event.

**Regional Council of Mayors**

Mayor Abrams attended the Regional Council of Mayors and shared the topic was public safety and crime.

**3. Resolution for Commissioner Appointment**

City Manager Sable gave the staff report.

Councilmember Villavicencio moved to approve the resolution to appoint Pete Boulay to the Heritage Preservation Commission.

Resolution 24-04-2299  
RESOLUTION

BE IT RESOLVED THAT THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA:

Hereby appoints the following individual, who the Maplewood City Council has reviewed, to be appointed to the following commission:

Heritage Preservation Commission

Pete Boulay term expires April 30, 2027

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

**4. Resolution of Appreciation for Mollie Miller, Environmental and Natural Resources Commission**

Ben Guell, Environmental and Natural Resources Commission Chair gave the report. Councilmember Juenemann read the Resolution of Appreciation. Mollie Miller addressed council and expressed gratitude to the city.

Councilmember Juenemann moved to approve the resolution of appreciation for Mollie Miller, Environmental and Natural Resources Commissioner.

Resolution 24-04-2300  
RESOLUTION OF APPRECIATION FOR MOLLIE MILLER



Seconded by Councilmember Juenemann                   Ayes – All

The motion passed.

**1. Approval of Claims**

Councilmember Lee moved to approve the approval of claims.

ACCOUNTS PAYABLE:

\$ 1,109,931.00	Checks # 120714 thru # 120828 dated 03/26/24
\$ 184,213.73	Checks # 120829 thru # 120854 dated 04/02/24
\$ 1,291,220.82	Disbursements via debits to checking account dated 03/18/24 thru 03/31/24
<hr/>	
\$ 2,585,365.55	Total Accounts Payable

PAYROLL

\$ 696,846.61	Payroll Checks and Direct Deposits dated 03/29/24
<hr/>	
\$ 696,846.61	Total Payroll
<hr/>	
\$ 3,282,212.16	GRAND TOTAL

Seconded by Councilmember Juenemann                   Ayes – All

The motion passed.

**2. Payment for Axon Yearly Maintenance Support & Evidence.com Subscription**

Councilmember Lee moved to approve payment for Axon yearly maintenance support and Evidence.com subscription.

Seconded by Councilmember Juenemann                   Ayes – All

The motion passed.

**3. Purchase New Ambulance**

Councilmember Lee moved to approve the purchase of a new ambulance.

Seconded by Councilmember Juenemann                   Ayes – All

The motion passed.

**4. Resolution Accepting Donation From Merit Chevrolet**

Councilmember Lee moved to approve the resolution accepting the donation made by Merit Chevrolet.

Resolution 24-04-2301

EXPRESSING ACCEPTANCE OF AND APPRECIATION OF  
A DONATION TO THE MAPLEWOOD PUBLIC SAFETY DEPARTMENT

WHEREAS, Merit Chevrolet has presented to the Maplewood Public Safety Department a donation in the amount of \$1,000.00; and

WHEREAS, this donation is intended for the purpose to benefit the Departments employee recognition and wellness initiatives; and

WHEREAS, the Maplewood City Council is appreciative of the donation and commends Merit Chevrolet for their civic efforts,

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Maplewood, Minnesota, that:

1. The donation is accepted and acknowledged with gratitude; and
2. The donation will be appropriated for the Public Safety Department as designated; and
3. The appropriate budget adjustments be made.

Seconded by Councilmember Juenemann                      Ayes – All

The motion passed.

**5. Resolution Accepting Donation From The Friends of Maplewood Nature for Bird and Pollinator Supporting Native Plants**

Councilmember Lee moved to approve the resolution accepting a donation of native plants in the amount of \$1,964.00 from The Friends of Maplewood Nature, to be planted at Maplewood Nature Center.

Resolution 24-04-2302

RESOLUTION TO ACCEPT A DONATION FROM THE FRIENDS OF MAPLEWOOD NATURE FOR NATIVE BIRD AND POLLINATOR SUPPORTING PLANTS

WHEREAS the City of Maplewood has received a donation of native bird and pollinator supporting plants with a value of \$1,964.00 from The Friends of Maplewood Nature, through a Saint Paul Audubon Grant;



NOW, THEREFORE, BE IT RESOLVED that the Maplewood City Council authorizes the City of Maplewood, Parks and Natural Resources Division to accept this donation

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

**6. Cooperative Funding Agreement for the Rice Larpenteur Alliance**

Councilmember Lee moved to approve the Cooperative Funding Agreement for Rice Street and Larpenteur Avenue Gateway Alliance Consulting Services.

Seconded by Councilmember Juenemann Ayes – All

The motion passed.

**H. PUBLIC HEARINGS** – *If you are here for a Public Hearing please familiarize yourself with the Rules of Civility printed on the back of the agenda. Sign in with the City Clerk before addressing the council. At the podium please state your name and address clearly for the record. All comments/questions shall be posed to the Mayor and Council. The Mayor will then direct staff, as appropriate, to answer questions or respond to comments.*

None

**I. UNFINISHED BUSINESS**

None

**J. NEW BUSINESS**

**1. Resolution Supporting Retention of City Zoning Authority**

City Manager Sable, Assistant City Manager/HR Director Darrow, and Community Development Director Parr gave the presentation. Council discussed the agenda item.

Councilmember Lee moved to approve the resolution supporting the retention of city zoning authority.

Resolution 24-04-2303

**RESOLUTION SUPPORTING RETENTION OF CITY ZONING AUTHORITY**

WHEREAS, the Minnesota State Legislature, in an attempt to address housing availability and affordability challenges, is considering measures that would preempt city authority to regulate land use and zoning; and

WHEREAS, decisions about local zoning and land use, long-term planning and local control is essential to meeting health, safety and general welfare standards that are unique to each community; and

WHEREAS, cities use zoning and land use regulations to balance property usage, plan for community growth, dedicate space and capacity for public infrastructure to support development (roads, parks and trails, transportation, sewer, stormwater, water, etc.), mitigate flooding and erosion, and preserve natural resources among others; and

WHEREAS, provisions of the proposed state measures shift the fiscal burden for infrastructure and operational impacts on the shoulders of existing homeowners and renters in our local communities; and

WHEREAS, the City of Maplewood, supports additional housing in the region and has worked with developers to successfully develop lifecycle housing options to meet the demand for housing within our region as a leader in Ramsey County.

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

The City of Maplewood opposes state proposals that seek to preempt local zoning and land use decision-making when it comes to residential development;

Supports constructive policy alternatives to incentivize and bolster city efforts for addressing housing challenges;

Supports continued local transparency and due process that occurs on a local level through public hearings and/or short or long-term planning processes;

And, advocates for a city-state partnership to consider reforms that are proven to address housing availability and affordability and that ensure efforts can be locally led and shaped.

Seconded by Councilmember Juenemann                      Ayes – All

The motion passed.

**2. Resolution Authorizing the Execution of a Lease for Property at 1955 Clarence Street**

Fire & EMS Chief Mondor, Community Development Director Parr, and Public Safety Director Bierdeman gave the staff report.

Councilmember Juenemann moved to approve the resolution authorizing the City of Maplewood to enter into a lease agreement with the State of Minnesota, Department of Administration for the property at 1955 Clarence Street. The Mayor and City Manager are authorized to sign said agreement, and minor technical revisions as approved by the City Attorney are authorized as needed.

Resolution 24-04-2304  
AUTHORIZING THE EXECUTION OF A LEASE FOR PROPERTY AT  
1955 CLARENCE STREET

BE IT RESOLVED, that pursuant to Minnesota Stat. Sec.16B.24, subd.6, the Commissioner of Administration is empowered to lease non-state owned property with proper lease terms.

BE IT FURTHER RESOLVED, the Mayor and the City Manager are hereby authorized on behalf of the City of Maplewood to sign said agreement and enter into an agreement with the State of Minnesota, Department of Administration prescribing the terms and conditions of said lease a copy of which said agreement was before the City Council and which is made a part hereof by reference.

Seconded by Councilmember Lee

Ayes – All

The motion passed.

- 3. MSP Commercial, 1081 Highway 36 East**
  - a. Conditional Use Permit Amendment Resolution**
  - b. Setback Variance Resolution**

Community Development Director Parr gave the presentation. Eric Vang, owner of Fresh'n Up Car Care, and Mike Brass with Titus Commercial Real Estate, addressed council.

Mayor Abrams moved to revoke the previous CUP's and replace them with a new approved conditional use permit amendment resolution for the property at 1081 Highway 36 East, subject to certain conditions of approval.

Resolution 24-04-2305

CONDITIONAL USE PERMIT AMENDMENT RESOLUTION

BE IT RESOLVED by the City Council of the City of Maplewood, Minnesota, as follows:

Section 1. Background.

- 1.01 MSP Commercial (property owner) has requested to amend the Conditional Use Permit for the property located at 1081 Highway 36 East.
- 1.02 The property located at 1081 Highway 36 East is legally described as: That part of the East 350 feet of the Southwest Quarter of Section 9, Township 29, Range 22, lying Northerly of the Northerly line of State Trunk Highway No. 36-188 and 61-1, according to the United States Government Survey thereof, Ramsey County, Minnesota.

Abstract Property

Tax Parcel Identification: 092922310001

- 1.03 The conditional use permit allows used vehicle sales to operate on the property.
- 1.04 The property owner requests to amend the conditional use permit to allow a vehicle maintenance garage to operate on the property.

Section 2. Standards.

- 2.01 General Conditional Use Permit Standards. City Ordinance Section 44-1097(a) states that the City Council must base approval of a Conditional Use Permit on the following nine standards for approval.

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

### Section 3. Findings.

3.01 The proposal meets the specific Conditional Use Permit standards.

### Section 4. City Review Process

4.01 The City conducted the following review when considering this conditional use permit request.

1. On March 19, 2024, the Planning Commission held a public hearing. City staff published a hearing notice in the Pioneer Press and sent notices to the surrounding property owners. The Planning Commission gave everyone at the hearing a chance to speak and present written statements. The Planning Commission recommended that the City Council approve this resolution.

2. On April 8, 2024, the City Council discussed this resolution. They considered reports and recommendations from the planning commission and City staff.

Section 5. City Council

5.01 The City Council hereby approves the resolution. Approval is based on the findings outlined in section 3 of this resolution. Approval is subject to the following conditions:

1. All previous CUP conditions, including the CUP granted on July 14, 2014, are terminated.
2. The city council will review the permit in one year.
3. Should there be changes to the building's tenant mix, the property owner must submit these details to the city for review. Before a new tenant operates on the property, the owner must receive approval from the city.
4. Outdoor sales, storage, and display are prohibited on the property unless reviewed by the city council.
5. There shall be no exterior storage of inoperable vehicles related to a vehicle maintenance garage on the property or the adjacent public streets. All vehicles waiting for repair or pick-up must be stored inside the building.
6. There shall be no exterior storage of vehicles listed for sale related to a vehicle sales business on the property or adjacent public streets. The owner must request an amendment to the conditional use permit for any exterior display of vehicles for sale.
7. The owner will submit a trash enclosure plan for the property. A trash enclosure is required around all trash containers or dumpsters on the property and shall be 100 percent opaque. The enclosure must meet city ordinance requirements. The enclosure is required to be maintained at all times.
8. The owner will submit a parking lot striping plan to the city for review. All parking areas will be repaired, and the appropriate size parking stalls and drive aisles must be striped on the property. The parking lot shall be maintained at all times.
9. Should the tenant layout in the building change or if a new use is proposed, all parking requirements must be reviewed by staff beforehand, and all parking requirements must be achieved before a new use can operate on the property.
10. All vehicle deliveries and transport unloading shall be done on-site, not along public streets.

- 11. All signs shall meet the City of Maplewood sign ordinance. The property owner will obtain sign permits as required.
- 12. Before a vehicle maintenance garage can operate on the site, the property owner shall provide interior floor plan specifications and details on the type of paint corrections and paint blending to occur, including planned paint storage on the site. The property owner will meet the requirements of the Fire Marshal and install a paint booth and ventilation systems as necessary.
- 13. The property owner must contact Ramsey County and obtain a hazardous waste license if required.
- 14. The property owner must contact the city's licensing division and obtain any required licenses for the businesses that operate on the property. The city will not issue a business license until the property owner submits a trash enclosure plan and a parking lot striping plan to staff for review.

Seconded by Councilmember Juenemann                      Ayes – All

The motion passed.

Councilmember Juenemann moved to approve a setback variance resolution for the property at 1081 Highway 36 East.

Resolution 24-04-2306  
SETBACK VARIANCE RESOLUTION

BE IT RESOLVED by the City Council of the City of Maplewood, Minnesota, as follows:

Section 1.    Background.

1.01            MSP Commercial (property owner) has requested a setback variance to allow a vehicle maintenance garage to operate on the property closer than 350 feet from a residentially planned property.

1.02            The vehicle maintenance garage would be approximately 200 feet from a residentially planned property.

1.03            The property located at 1081 Highway 36 is legally described as:  
That part of the East 350 feet of the Southwest Quarter of Section 9, Township 29, Range 22, lying Northerly of the Northerly line of State Trunk Highway No. 36-188 and 61-1, according to the United States Government Survey thereof, Ramsey County, Minnesota.

Abstract Property

Tax Parcel Identification: 092922310001

Section 2.    Standards.

2.01 Variance Standard. City Ordinance Section 44-13 refers to a state statute that states a variance may be granted from the requirements of the zoning ordinance when: (1) the variance is in harmony with the general purposes and intent of this ordinance; (2) when the variance is consistent with the comprehensive plan; and (3) when the applicant establishes that there are practical difficulties in complying with the ordinance. Practical difficulties mean: (1) the proposed use is reasonable; (2) the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic conditions; (3) the variance if granted, will not alter the essential character of the locality.

Section 3. Findings.

3.01 The setback variance request meet the required standards for a variance. Staff finds:

1. That the need for a variance is caused by circumstances unique to the property, not created by the property owner, and not solely based on economic conditions;
2. That the proposed use is reasonable; and
3. That the variance will not alter the essential character of the locality; and
4. That the need for a variance is in harmony with the general purposes and intent of this ordinance; and
5. That the variance is consistent with the comprehensive plan.

Section 4. City Review Process

4.01 The City conducted the following review when considering the variance requests.

1. On March 19, 2024, the planning commission held a public hearing. The city staff published a hearing notice in the Pioneer Press and sent notices to the surrounding property owners. The planning commission gave everyone at the hearing a chance to speak and present written statements. The planning commission recommended that the city council approve this resolution.
2. On April 8, 2024, the city council discussed this resolution. They considered reports and recommendations from the planning commission and city staff.

Section 5. City Council

5.01 The city council hereby approves the resolution. Approval of the application is based on the findings outlined in section 3 of this resolution.

Seconded by Councilmember Lee

Ayes – All

The motion passed.

**K. AWARD OF BIDS**

None

**L. ADJOURNMENT**

Mayor Abrams adjourned the meeting at 8:20 p.m.

DRAFT



**CITY COUNCIL STAFF REPORT**  
Meeting Date April 22, 2024

**REPORT TO:** City Council  
**REPORT FROM:** Michael Sable, City Manager  
**PRESENTER:** Michael Sable, City Manager  
**AGENDA ITEM:** Council Calendar Update

**Action Requested:**     Motion             Discussion         Public Hearing  
**Form of Action:**         Resolution         Ordinance         Contract/Agreement     Proclamation

**Policy Issue:**

This item is informational and intended to provide the Council an indication on the current planning for upcoming agenda items and the Work Session schedule. These are not official announcements of the meetings, but a snapshot look at the upcoming meetings for the City Council to plan their calendars.

**Recommended Action:**

No motion needed. This is an informational item.

**Upcoming Agenda Items and Work Sessions Schedule:**

**May 13:**                    Workshop: Cannabis – Policy and Issue Framing; Electric Franchise Fee Ordinance Discussion; Harvest Park Update

**May 28 (Tuesday):**    Workshop: Legislative Session Recap; EAB Public Tree Program

**June 10:**                    Workshop: Community Events and Engagement

**Council Comments:**

Comments regarding Workshops, Council Meetings or other topics of concern or interest.

**Council Schedule for Maplewood Living through October 2024:**

Issue	Contributor	Due Date
May 2024	Lee	April 16, 2024
June 2024	Abrams	May 15, 2024
July 2024	Juenemann	June 17, 2024
August 2024	Cave/TBD	July 17, 2024
September 2024	Villavicencio/TBD	August 19, 2024
October 2024	Lee	September 18, 2024

*Subject to change after election filings in May, as no active candidates will be allowed to contribute.*



## 2024 Major Community Outreach Events

### **Rice Larpenteur Spring Clean-up**

Saturday, April 20 (9 – 11:30 am)

Rice and Larpenteur

### **Earth Week Challenge**

April 22 - 26

Various Open Spaces

### **Tree Planting**

Saturday, May 4 (Time TBD)

Maplewood Nature Center

### **Bike Rodeo**

Tuesday, May 7 (5–7:30 pm)

North Fire Station

### **Tree Pick Up**

Saturday, May 18 (9 am – noon)

Monday, May 20 (5 – 7 pm)

Public Works Garage (1902 Co. Road B East)

### **End of School Celebration**

Friday, June 7 (Noon – 3 pm)

Wakefield Park

**CITY COUNCIL STAFF REPORT**  
Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager  
**REPORT FROM:** Lois Knutson, Senior Administrative Manager  
**PRESENTER:** Michael Sable, City Manager  
**AGENDA ITEM:** Resolution for Commissioner Reappointments

**Action Requested:**  Motion       Discussion       Public Hearing  
**Form of Action:**  Resolution       Ordinance       Contract/Agreement       Proclamation

**Policy Issue:**

The City Council will review the list of commissioners whose terms will expire on April 30, 2024, in addition to one commissioner whose terms expired on December 31, 2023. The commissioners were asked to fill out an assessment to evaluate their time on the commission and to provide input to the council. Those commissioners approved for reappointment will serve another term, with the new term expiring three years from the current term's expiration date.

**Recommended Action:**

Motion to approve the attached resolution for Commissioner reappointments.

**Fiscal Impact:**

Is There a Fiscal Impact?  No       Yes, the true or estimated cost is \$0.00  
 Financing source(s):  Adopted Budget       Budget Modification       New Revenue Source  
 Use of Reserves       Other: n/a

**Strategic Plan Relevance:**

Community Inclusiveness       Financial & Asset Mgmt       Environmental Stewardship  
 Integrated Communication       Operational Effectiveness       Targeted Redevelopment

The City's Commissions and Boards provide an opportunity for citizens to become involved in City government and play a part in the decision making process.

**Background**

There are seven commissioners whose terms will expire on April 30, 2024 and one commissioner whose term expired on December 31, 2023. Fred Dahm (Planning Commission) and Barbara Kearn (Heritage Preservation Commission) are not seeking reappointment.

Below are the attendance records of those seeking reappointment.

### **Community Design Review Board**

Bill Kempe, member since 2/11/2013

Attendance: 2021: 5/7 2022: 8/8 2023: 6/6

Jason Lamers, member since 5/26/2009

Attendance: 2021: 7/7 2022: 6/8 2023: 3/6

### **Heritage Preservation Commission**

Bob Cardinal, member since 1/25/2016

Attendance: 2021: 11/11 2022: 11/11 2023: 5/5

### **Parks & Recreation Commission**

Monica Barton, member since 10/11/2021

Attendance: 2021: 1/1 2022: 6/7 2023: 6/8 2024: 1/2

Mark Harris, member since 10/11/2021

Attendance: 2021: 1/1 2022: 6/7 2023: 7/8 2024: 0/2

### **Planning Commission**

Lue Yang, member since 3/11/2019

Attendance: 2021: 9/10 2022: 8/9 2023: 7/7

### **Attachments**

1. Resolution for Reappointment
2. Reappointment Assessments

**RESOLUTION**

BE IT RESOLVED THAT THE CITY COUNCIL OF MAPLEWOOD, MINNESOTA:

Hereby appoints the following individuals, who the Maplewood City Council has reviewed, to be reappointed to the following commissions:

**Community Design Review Board**

Bill Kempe                      Term Expires on April 30, 2027

Jason Lamers                    Term Expires on April 30, 2027

**Heritage Preservation Commission**

Bob Cardinal                    Term Expires on April 30, 2027

**Parks & Recreation Commission**

Monica Barton                   Term Expires on April 30, 2027

Mark Harris                     Term Expires on April 30, 2027

**Planning Commission**

Lue Yang                         Term Expires on December 31, 2026



# Maplewood Commission Reappointment Assessment

**Date**

03/22/2024

**Your Name \***

Bill Kempe

**Select Commission \***

Community Design Review Board

**Would you like to be reappointed? \***

Yes  No

**Why would you like to be reappointed?**

By coronation.

**How do you feel you contribute to the Commission?**

I can run an efficient meeting

**What successes do you feel the Commission has had during your term?**

Helped maintain city goals.

**Do you have any suggestions to help the Commission function more efficiently?**

**What are some bigger issues/projects the Commission will be facing in the next 6 months?**

**Any other comments for the City Council regarding your reappointment or the commission?**

(i.e. new topics or projects to explore, processes to consider, etc.)



## Maplewood Commission Reappointment Assessment

**Date**

03/25/2024

**Your Name \***

Jason R Lamers

**Select Commission \***

Community Design Review Board

**Would you like to be reappointed? \***

Yes  No

**Why would you like to be reappointed?**

I have served on the CDRB since 2009 and have enjoyed being a part of the community-based feedback as developers look to invest in Maplewood through new construction and renovations to commercial properties. My wife grew up in Maplewood and the two of us have owned 2 homes in the city providing to the community since 2008. My education, background in the construction industry and skillset make me a strong candidate to continue supporting the CDRB.

**How do you feel you contribute to the Commission?**

I have a Master's degree in Landscape Architecture along with having worked in various roles in the construction industry for the past 18 years. my wide range of product knowledge as a director of sales for a multi-billion-dollar materials manufacturer Westlake Royal Building Products gives me a unique set of skills in evaluating the quality of the projects designed and presented to the CDRB board.

**What successes do you feel the Commission has had during your term?**

over the past 15 years I have seen sections of Maplewood transformed through consistent representation on the CDRB board. incrementally improving one building at a time while holding developers accountable for the materials has helped to create a more uniform and architecturally pleasing city.

**Do you have any suggestions to help the Commission function more efficiently?**

staff leadership has been very good for the board they use the feedback the board provides to help drive better construction in the planning process. Continuing to push developers to utilize durable materials in projects like Brick and Stone will help to create a more vibrant and durable city.

**What are some bigger issues/projects the Commission will be facing in the next 6 months?**

the continued need for more multifamily and senior living construction in the city to meet the needs of an aging population. developing these large projects without sacrificing the community feel for residents in single family neighborhoods.

**Any other comments for the City Council regarding your reappointment or the commission?**

I look forward to working with the council to make Maplewood a great city to live in and welcome the opportunity to serve another term on the CDRB board.

(i.e. new topics or projects to explore, processes to consider, etc.)



## Maplewood Commission Reappointment Assessment

**Date**

03/24/2024

**Your Name \***

Bob Cardinal

**Select Commission \***

Heritage Preservation Commission

**Would you like to be reappointed? \***

Yes  No

**Why would you like to be reappointed?**

Having served for several years as Commissioner, and the past two (2) years as Chair, we have more work to complete.

**How do you feel you contribute to the Commission?**

Maplewood is a Certified Local Government (CLG). Helped represent Maplewood at the Historic Preservation Annual Meeting these past two (2) years in Duluth & Mankato.

**What successes do you feel the Commission has had during your term?**

Identified: Maplewood Heritage Preservation Commission -- (Shall) Record Retention Guidelines and Schedules Rules.

**Do you have any suggestions to help the Commission function more efficiently?**

Consider returning to monthly meetings, after staff directed -- change to quarterly meetings in September, 2023.

**What are some bigger issues/projects the Commission will be facing in the next 6 months?**

Present Heritage Award to significant contributor. Quarterly meetings. Establish: Maplewood Timeline of History.

**Any other comments for the City Council regarding your reappointment or the commission?**

Turnover of Commission members in past few years: Pete Boulay; Jason DeMoe; Margaret Fett.

(i.e. new topics or projects to explore, processes to consider, etc.)





# Maplewood Commission Reappointment Assessment

**Date**

03/28/2024

**Your Name \***

Monica Barton

**Select Commission \***

Parks & Recreation Commission

**Would you like to be reappointed? \***

Yes  No

**Why would you like to be reappointed?**

During my time as a Parks & Recreation Commissioner, I've enjoyed my time by listening to the community and being able to help in whatever capacity that I'm able to. I view the work that the department does as a vital part to create a happy and thriving community.

**How do you feel you contribute to the Commission?**

As a representative of the community for Parks and Recreation, I listen to the needs and concerns of members of the community and ask questions during meetings to ensure their voices are heard by the Commission.

**What successes do you feel the Commission has had during your term?**

During my term I feel like the Commission had many successes such as the approval for the Tuj Lub field at Keller Regional Park. This was a great way to include cultural diversity in the parks and give the community a great location to come together and have fun.

**Do you have any suggestions to help the Commission function more efficiently?**

I have no suggestions at this time as I feel like the Commission already functions efficiently, however, I will pass along any suggestions I may have in the future.

**What are some bigger issues/projects the Commission will be facing in the next 6 months?**

At this time, I'm not aware of any larger issues/projects that the Commission will be facing specifically in the next 6 months. However, over next year or so, the new 10-year Master Plan will be created and as such will need a voice for the community.

**Any other comments for the City Council regarding your reappointment or the commission?**

I'd like to thank the City Council and the Commission for giving me a chance to serve my community and to help provide a voice for the citizens of Maplewood.

(i.e. new topics or projects to explore, processes to consider, etc.)



## Maplewood Commission Reappointment Assessment

**Date**

03/22/2024

**Your Name \***

Mark P. Harris

**Select Commission \***

Parks & Recreation Commission

**Would you like to be reappointed? \***

Yes  No

**Why would you like to be reappointed?**

Many projects are in the works and I feel my ability to ask the necessary questions will leave our parks in excellent shape for future generations.

**How do you feel you contribute to the Commission?**

I feel my contributions bring the voice of South Maplewood forward to the commission. I was recently voted to chair the parks commission which indicates my fellow commissioners respect my opinions and bring value to the decision process.

**What successes do you feel the Commission has had during your term?**

We have successfully replaced numerous play areas and improved parks for residents of Maplewood. We are in the process of bringing youth advisors on-board to provide a younger perspective of the wants and needs of a changing population as we focus on developing our parks for the future.

**Do you have any suggestions to help the Commission function more efficiently?**

We have developed very well as a cohesive team over the last few years and respect each others various backgrounds and views. As we continue to move forward we need to be more involved in reach out activities to inform the community of our presence and objectives.

**What are some bigger issues/projects the Commission will be facing in the next 6 months?**

Replacement of tired and worn out equipment and facilities is always a key issue along with the funding and financial concerns in order to facilitate the necessary improvements.

**Any other comments for the City Council regarding your reappointment or the commission?**

During my two years on the commission I have come to realize that change is expensive and does not happen quickly. This does not mean it is overlooked. Our challenge, like any household, is to do the best we can with the resources available and make sure we are prudent in choices and expenditures.

(i.e. new topics or projects to explore, processes to consider, etc.)



# Maplewood Commission Reappointment Assessment

**Date**

04/11/2024

**Your Name \***

Lue Yang

**Select Commission \***

Planning Commission

**Would you like to be reappointed? \***

Yes  No

**Why would you like to be reappointed?**

I enjoy contributing to the future of the City of Maplewood and representing it's community members.

**How do you feel you contribute to the Commission?**

Working in the world of finance and being embedded in commercial real estate development, design, and construction helps me apply my experiences to benefit the commission and City of Maplewood.

**What successes do you feel the Commission has had during your term?**

We further developed our understanding of the role we play in service to the city council and the greater community to ensure the decisions being made are aligned with long term plans and in the best interest of all parties.

**Do you have any suggestions to help the Commission function more efficiently?**

Everything is very orderly and easy to follow. Nothing of concern.

**What are some bigger issues/projects the Commission will be facing in the next 6 months?**

Nothing of concern at this time.

**Any other comments for the City Council regarding your reappointment or the commission?**

None

(i.e. new topics or projects to explore, processes to consider, etc.)



## Maplewood Commission Reappointment Assessment

**Date**

04/02/2024

Ms. Kearn is not seeking reappointment but has submitted comments for council information.

**Your Name \***

Barbara Kearn

**Select Commission \***

Heritage Preservation Commission

**Would you like to be reappointed? \*** Yes  No**How do you feel you contribute to the Commission?**

As a liaison between the heritage preservation commission and the Maplewood area Historical Society

**What successes do you feel the Commission has had during your term?**

Bringing historical information from various collections together in an organized fashion.  
Bringing historical records back to the city that former commission members had in their possession.

**Do you have any suggestions to help the Commission function more efficiently?**

Collaboration with the Maplewood area Historical Society would be helpful.

**What are some bigger issues/projects the Commission will be facing in the next 6 months?**

Choosing one or two residences to be documented as historical sites

**Any other comments for the City Council regarding your reappointment or the commission?**

(i.e. new topics or projects to explore, processes to consider, etc.)

**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Steven Love, Public Works Director/City Engineer

**PRESENTER:** Steven Love

**AGENDA ITEM:** Resolution Proclaiming Arbor Day 2024

**Action Requested:**  Motion  Discussion  Public Hearing

**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

Arbor Day is observed throughout the United States and the world as a day to celebrate trees. Staff requests that the City Council proclaim May 4, 2024, as Arbor Day in Maplewood.

**Recommended Action:**

Motion to approve the resolution proclaiming Arbor Day 2024.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is \$0.00

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: n/a

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

Trees are an essential component of the City's green infrastructure and help mitigate the effects of climate change. This proclamation calls attention to trees and engages the community to celebrate the value of trees.

**Background:**

National Arbor Day is the last Friday of April, but each state and community vary the date to coincide with planting times. In Minnesota, the month of May is typically designated Arbor Month. Minnesota communities observing Arbor Day usually schedule celebrations in late April or in May.

Trees provide numerous benefits to individuals and to the community. They reduce erosion, provide shade, reduce heating and cooling costs, moderate temperature, clean the air, produce oxygen, provide habitat for wildlife, and provide wood and paper products. Trees increase property values and enhance the beauty of our community.

City Council will consider proclaiming Saturday, May 4, 2024 as Arbor Day in Maplewood. An Arbor Day proclamation supports the City's sustainability initiatives and encourages residents to value, plant, and care for trees. A proclamation is also one of the requirements for being designated a Tree City USA. Maplewood has been designated a Tree City each year since 2010 and will continue to reapply annually.

**Attachments:**

1. Resolution Proclaiming Arbor Day 2024

**CITY OF MAPLEWOOD, MINNESOTA  
RESOLUTION NO. \_\_\_\_**

**PROCLAIMING ARBOR DAY 2024**

WHEREAS, Arbor Day provides an opportunity to celebrate the importance of trees and forests to our economy, culture, history, and future of the state; and

WHEREAS, Trees are of great value as they provide clean air and water, shade and energy savings, wildlife habitat, recreational opportunities, wood products, and jobs, while also capturing and storing carbon from the atmosphere, thereby offsetting greenhouse gas emissions; and

WHEREAS, Properly planting and caring for a diverse mix of trees makes community forests more resilient by minimizing the impacts of diseases, insects, and other stressors such as climate change and providing long-term community and environmental benefits; and

WHEREAS, Thoughtfully choosing, planting, and caring for a diverse mix of trees now supports resilient communities into the future.

NOW, THEREFORE, BE IT RESOLVED THAT May 4, 2024, is hereby designated Arbor Day in the City of Maplewood.

Adopted this 22<sup>nd</sup> day of April, 2024.

\_\_\_\_\_  
Marylee Abrams, Mayor

ATTEST:

\_\_\_\_\_  
Andrea Sindt, City Clerk

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**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager  
**REPORT FROM:** Joe Rueb, Finance Director  
**PRESENTER:** Joe Rueb, Finance Director  
**AGENDA ITEM:** Approval of Claims

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<b>Action Requested:</b>	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing
<b>Form of Action:</b>	<input type="checkbox"/> Resolution	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Contract/Agreement <input type="checkbox"/> Proclamation

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**Policy Issue:**

The City Manager has reviewed the bills and authorized payment in accordance with City Council policies.

**Recommended Action:**

Motion to approve the approval of claims.

**ACCOUNTS PAYABLE:**

\$	777,181.98	Checks # 120855 thru # 120908 dated 04/09/24
\$	332,320.79	Checks # 120909 thru # 120985 dated 04/16/24
\$	406,941.37	Disbursements via debits to checking account dated 04/01/24 thru 04/14/24
<hr/>		
\$	1,516,444.14	Total Accounts Payable

**PAYROLL**

\$	712,908.90	Payroll Checks and Direct Deposits dated 04/12/24
<hr/>		
\$	712,908.90	Total Payroll
<hr/>		
\$	<u>2,229,353.04</u>	<u>GRAND TOTAL</u>

**Background**

A detailed listing of these claim has been provided. Please call me at 651-249-2902 if you have any questions on the attached listing. This will allow me to check the supporting documentation on file if necessary.

**Attachments**

1. Listing of Paid Bills

**Check Register  
City of Maplewood**

Check	Date	Vendor	Description	Amount
120855	4/4/2024	1 ONE TIME VENDOR	DIRECT DEPOSIT RETURN 4/3/2024	\$ 361.39
120856	4/9/2024	6433 BENCK MECHANICAL INC	IGNITOR AND LABOR FEES	415.45
120857	4/9/2024	252 CAPITAL CITY FIREFIGHTER ASSOC	2024 MEMBERSHIP DUES	50.00
120858	4/9/2024	7022 CITY OF COTTAGE GROVE	FIRE INSTRUCTOR I COURSE CLASS	327.00
120859	4/9/2024	1789 CITY OF WOODBURY	WOODBURY GRAY KEY SERVICES	5,500.00
120860	4/9/2024	6042 CLEAR GOV INC.	SOFTWARE SUITE BUNDLE	27,201.48
	4/9/2024	6042 CLEAR GOV INC.	TRANSPARENCY SUITE	7,956.75
120861	4/9/2024	5639 COLBERT ENGRAVING & TROPHIES	PAR TAGS PURCHASE	20.75
120862	4/9/2024	7034 COMMERCIAL FLOORING SERVICES	MWFD SOUTH STATION FLOORING	12,504.00
120863	4/9/2024	4371 ELECTRO WATCHMAN INC.	CAMERA MAIN ENTRY	2,970.00
120864	4/9/2024	464 EMERGENCY AUTOMOTIVE TECH, INC	AUTOMOTIVE PARTS AND SERVICE	172.20
120865	4/9/2024	6484 EMS MANAGEMENT & CONSULTANTS	EMS BILLING - JANUARY	10,199.38
120866	4/9/2024	3 ESCROW REFUND	RRFB PED RAMP PROJ - LOWER AFTON RD & LONDIN LANE	41,318.32
120867	4/9/2024	5372 FERRELLGAS	PROPANE REFILL EMTF	3,863.37
120868	4/9/2024	5493 HANDTEVY	HANDTEVY MOBILE ANNUAL RENEWAL	2,467.50
120869	4/9/2024	6009 HEALTHCALL, LLC	PARAMEDIC ELECTRONIC PATIENT CARE SOFTWARE - FEB	920.00
120870	4/9/2024	644 HEALTHPARTNERS	MEDICAL DIRECTION FEE 2024	17,285.00
120871	4/9/2024	644 HEALTHPARTNERS	MEDICAL SUPPLIES	280.15
	4/9/2024	644 HEALTHPARTNERS	CLINICAL SIMULATIONS	2,700.00
120872	4/9/2024	755 JEFFERSON FIRE & SAFETY INC	FIRE PROTECTIVE GEAR	3,542.48
120873	4/9/2024	2137 KENNEDY & GRAVEN CHARTERED	ATTORNEY FEES - JANUARY	24,129.01
120874	4/9/2024	5533 KIRVIDA FIRE	EQUIPMENT & TRIP CHARGE ENGINE #324	223.50
	4/9/2024	5533 KIRVIDA FIRE	CHECK OUTRIGGER MESSAGE - LADDER #315	149.00
	4/9/2024	5533 KIRVIDA FIRE	ENGINE #656 MAINTENANCE	4,847.17
120875	4/9/2024	2173 L-Z TRUCK EQUIPMENT CO INC	STEEL MATERIAL FOR LIFT GATE REPAIR UNIT 541	108.06
120876	4/9/2024	6104 LEGACY SORBENTS & SUPPLY CO.	FLOOR DRY	27.75
120877	4/9/2024	7017 LEO A DALY	PROF SERVICES TRAINING FACILITY	11,386.88
	4/9/2024	7017 LEO A DALY	PROF SERVICES TRAINING FACILITY	10,155.60
	4/9/2024	7017 LEO A DALY	PROF SERVICES TRAINING FACILITY	1,562.40
120878	4/9/2024	6487 LOCALITY MEDIA INC	CONFIGURATION SERVICES	5,534.00
120879	4/9/2024	7035 LOCKRIDGE GRINDAL NAUEN P.L.L.P.	PROFESSIONAL SERVICES - JANUARY	3,333.33
	4/9/2024	7035 LOCKRIDGE GRINDAL NAUEN P.L.L.P.	PROFESSIONAL SERVICES - FEBRUARY	3,333.33
	4/9/2024	7035 LOCKRIDGE GRINDAL NAUEN P.L.L.P.	PROFESSIONAL SERVICES - MARCH	3,333.33
120880	4/9/2024	917 MACQUEEN EMERGENCY	FOAM	1,550.00
	4/9/2024	917 MACQUEEN EMERGENCY	HOSES	6,676.80
120881	4/9/2024	4392 METRO CHIEF FIRE OFFICER ASSOC	FIRE CHIEF DUES FOR MCHOA	200.00
120882	4/9/2024	1044 MN FIRE SERVICE CERT BD	INSTRUCTOR I EXAM	126.00
120883	4/9/2024	4060 MUNICIPAL EMERGENCY SRVS	PROTECTIVE FIRE GLOVES	408.45
	4/9/2024	4060 MUNICIPAL EMERGENCY SRVS	MISC EQUIPMENT	17,330.09
	4/9/2024	4060 MUNICIPAL EMERGENCY SRVS	EQUIPMENT	242.57
	4/9/2024	4060 MUNICIPAL EMERGENCY SRVS	GAS METERS	6,856.94
	4/9/2024	4060 MUNICIPAL EMERGENCY SRVS	EQUIPMENT	287.68
	4/9/2024	4060 MUNICIPAL EMERGENCY SRVS	ENGINE EQUIPMENT	6,282.44
120884	4/9/2024	7033 PRODIGY EMS	Annual subscription for EMS training	2,660.00
120885	4/9/2024	4112 PROFESSIONAL WIRELESS COMM	NEW HANDHELD RADIOS FOR PW MAINTENANCE	2,566.30
120886	4/9/2024	2008 RAMSEY COUNTY PUBLIC WORKS	RRFB PED RAMP PROJ - LOWER AFTON RD & LONDIN LN	33,681.68
120887	4/9/2024	4264 RAMSEY-WASHINGTON	WATERFEST SPONSORSHIP 2024	1,000.00
120888	4/9/2024	5338 REPUBLIC SERVICES #923	2022 TRASH PAYMENTS	1,907.46
	4/9/2024	5338 REPUBLIC SERVICES #923	TRASH ASSMT 2022	54,662.59
	4/9/2024	5338 REPUBLIC SERVICES #923	TRASH ASSMT 2023	67,004.39
120889	4/9/2024	3879 SANSIO	CR MEMO PROFESSIONAL SERVICES ENGAGEMENT	(55.26)
	4/9/2024	3879 SANSIO	SUBSCRIPTION & SANFAX - JANUARY	1,076.00
	4/9/2024	3879 SANSIO	PRO SERVICES ENGAGEMENT NEMSIS TRANSITION	1,800.00
120890	4/9/2024	2632 SERVICE MASTER	CLEANING SERVICE - FEBRUARY	202.62
	4/9/2024	2632 SERVICE MASTER	CLEANING SERVICE - MARCH	202.62
120891	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	62.87
	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	62.87
	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	166.83
	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	130.67
	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	69.82

**Check Register  
City of Maplewood**

<b>Check</b>	<b>Date</b>	<b>Vendor</b>	<b>Description</b>	<b>Amount</b>
	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	70.90
	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	294.19
	4/9/2024	198 ST PAUL REGIONAL WATER SRVS	WATER UTILITY	121.63
120892	4/9/2024	6376 STERICYCLE, INC.	DOCUMENT SHRED SERVICES - JAN	294.74
	4/9/2024	6376 STERICYCLE, INC.	DOCUMENT SHRED SERVICES - FEB	162.72
120893	4/9/2024	4207 STRYKER SALES, LLC	PROCARE SERVICES 2024	8,595.00
	4/9/2024	4207 STRYKER SALES, LLC	QTY 6 MTS POWER LOAD	169,652.40
120894	4/9/2024	1565 SWEEPER SERVICES	SWEEPER PARTS FOR UNIT 703	176.96
120895	4/9/2024	6441 SWITS, LTD	TRANSLATION SERVICES	485.56
120896	4/9/2024	5176 T-MOBILE USA	GPS LOCATE FOR INVESTIGATION 24007516	100.00
120897	4/9/2024	6326 ULINE	RESPIRATOR, LIGHT, VAPOR	721.48
120898	4/9/2024	1699 UNIVERSITY OF MINNESOTA	DONOR LABS	5,700.00
120899	4/9/2024	2879 WASHINGTON COUNTY	NEW UNIT 651 REGISTRATION AND PLATES	3,711.51
120900	4/9/2024	2879 WASHINGTON COUNTY	NEW UNIT 546 REGISTRATION AND PLATES	3,711.51
120901	4/9/2024	2411 ALEX AIR APPARATUS 2 LLC	SOUTH STATION COMPRESSOR	68,980.00
120902	4/9/2024	585 GOPHER STATE ONE-CALL	NET BILLABLE CALL TICKETS - MARCH 2024	464.40
120903	4/9/2024	1202 NYSTROM PUBLISHING CO INC	2024 SPRING CLEAN UP INVOICE PRINTING	214.00
120904	4/9/2024	1337 RAMSEY COUNTY-PROP REC & REV	FLEET SUPPORT FEES - FEBRUARY RADIOS	237.12
120905	4/9/2024	1574 T A SCHIFSKY & SONS, INC	2024 BITUMINOUS PURCHASES - STREETS	401.76
120906	4/9/2024	4845 TENNIS SANITATION LLC	RECYCLING CONTRACT – FEBRUARY	78,135.00
120907	4/9/2024	1190 XCEL ENERGY	ELECTRIC & GAS UTILITY	1,209.72
	4/9/2024	1190 XCEL ENERGY	ELECTRIC & GAS UTILITY	15,769.49
	4/9/2024	1190 XCEL ENERGY	GAS UTILITY	109.49
	4/9/2024	1190 XCEL ENERGY	GAS UTILITY	229.76
	4/9/2024	1190 XCEL ENERGY	ELECTRIC UTILITY	17.67
	4/9/2024	1190 XCEL ENERGY	ELECTRIC UTILITY	49.96
120908	4/9/2024	5013 YALE MECHANICAL LLC	WINTER HVAC MAINT. AT PUBLIC WORKS	1,267.00
	4/9/2024	5013 YALE MECHANICAL LLC	WINTER HVAC MAINT. AT CITY HALL	957.00
<b>54 Checks in this report.</b>				<b><u>\$ 777,181.98</u></b>

**Check Register  
City of Maplewood**

Check	Date	Vendor	Description	Amount
120909	4/16/2024	644 HEALTHPARTNERS	EMS MC REFUND - OVERPAYMENT	\$ 97.00
120910	4/16/2024	644 HEALTHPARTNERS	EMS MC REFUND - OVERPAYMENT	457.50
	4/16/2024	644 HEALTHPARTNERS	EMS MC REFUND - OVERPAYMENT	1,850.00
120911	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	347.15
120912	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	65.00
120913	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	50.00
120914	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	100.00
120915	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	1,778.00
120916	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	50.00
120917	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	1,139.64
120918	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	105.00
120919	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	63.00
120920	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	100.00
120921	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	34.57
120922	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	252.46
	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	56.78
	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	290.53
	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	413.16
120923	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	1,809.50
120924	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	105.91
120925	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	200.00
120926	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	25.00
	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	75.00
120927	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	116.43
120928	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	482.49
	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	308.62
120929	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	111.43
120930	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	602.52
120931	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	204.77
120932	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	125.00
120933	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - PATIENT OVERPAYMENT	90.27
120934	4/16/2024	1 ONE TIME VENDOR	EMS MC REFUND - OVERPAYMENT	34.72
120935	4/16/2024	4326 UNITED HEALTH CARE INS. CO.	EMS MC REFUND - OVERPAYMENT	23.51
120936	4/16/2024	43 ADAM'S PEST CONTROL INC	CANINE INSPECTION RIG 322	319.00
120937	4/16/2024	6302 ALL STATE COMMUNICATIONS	PHONE LINE TROUBLESHOOTING AT LIFT STATION	110.00
120938	4/16/2024	7026 AMERICAN SOLUTIONS FOR BUSINESS	DOOR HANGER CARDS	373.44
120939	4/16/2024	1854 AVI SYSTEMS, INC.	CONFERENCING AV EQUIPMENT FOR FIRE CONF ROOMS	9,046.16
	4/16/2024	1854 AVI SYSTEMS, INC.	SMARTBOARD FOR PSCV	6,592.29
120940	4/16/2024	7024 BEAUDRY OIL & SERVICE INC	CONTRACT GASOLINE - APRIL 2024	11,983.36
120941	4/16/2024	7024 BEAUDRY OIL & SERVICE INC	CONTRACT DIESEL FUEL - APRIL 2024	8,763.46
120942	4/16/2024	228 BRUCE NELSON PLBG. & HTG. INC.	LABOR & MATERIALS GAS LINE LEAK TRAINING FACILITY	384.00
120943	4/16/2024	1771 CITY OF WHITE BEAR LAKE	VIN#9127 TAB RENEWAL	16.25
120944	4/16/2024	5514 COIT COMMERCIAL SERVICES	CARPET CLEANING SERVICES	495.00
120945	4/16/2024	3874 COMMERCIAL FURNITURE SERVICES	CONSULTING SERVICES - CD MOVE	3,800.00
120946	4/16/2024	6320 COMPANION ANIMAL CONTROL	ANIMAL CONTROL SERVICES - MARCH	100.00
120947	4/16/2024	2909 COMPASS MINERALS AMERICA INC.	ROAD SALT	8,003.13
	4/16/2024	2909 COMPASS MINERALS AMERICA INC.	ROAD SALT	8,352.29
120948	4/16/2024	5775 DODGE OF BURNSVILLE INC.	2024 DURANGO PURSUIT V#1C4RDJFG9RC139660	39,551.00
	4/16/2024	5775 DODGE OF BURNSVILLE INC.	2024 DURANGO PURSUIT V#1C4RDJFG0RC139661	39,551.00
	4/16/2024	5775 DODGE OF BURNSVILLE INC.	2024 DURANGO PURSUIT V#1C4RDJFG2RC139662	39,551.00
	4/16/2024	5775 DODGE OF BURNSVILLE INC.	2024 DURANGO PURSUIT V#1C4RDJFG4RC139663	39,551.00
120949	4/16/2024	7036 EMPIRE CONCRETE CUTTING & CORING	TRAINING FACILITY CONCRETE	3,797.00
120950	4/16/2024	6484 EMS MANAGEMENT & CONSULTANTS	EMS BILLING - FEBRUARY	10,208.04
120951	4/16/2024	7032 G & A COLORTECH	REPAIR OF SQUAD #951 V#1FM5K8ARXJGB67997	5,861.95
120952	4/16/2024	7065 GARY CARLSON EQUIPMENT CO.	HAND TOOLS	391.00
120953	4/16/2024	7068 GRUBER'S POWER EQUIPMENT	CHAINSAW AND CUT OFF MACHINE	2,038.00
120954	4/16/2024	5642 KFT FIRE TRAINER, LLC	FOG MACHINE AND MISC PARTS	3,021.22
120955	4/16/2024	846 LANGUAGE LINE SERVICES	PHONE INTERPRETIVE SERVICES MARCH	105.65
120956	4/16/2024	6104 LEGACY SORBENTS & SUPPLY CO.	FLOOR DRY x 20	185.00
120957	4/16/2024	6487 LOCALITY MEDIA INC	IMPLEMENTATION, CONFIG SERVICES & TRAINING RECORDS	1,250.00
120958	4/16/2024	7035 LOCKRIDGE GRINDAL NAUEN P.L.L.P.	PROFESSIONAL SERVICES - APRIL	3,333.33

**Check Register  
City of Maplewood**

<b>Check</b>	<b>Date</b>	<b>Vendor</b>	<b>Description</b>	<b>Amount</b>
120959	4/16/2024	5222 MARTIN-MCALLISTER	PUBLIC SAFETY ASSESSMENT	625.00
120960	4/16/2024	6438 METRO - INET	METRO-INET IT INFRASTRUCTURE - APRIL	9,490.00
120961	4/16/2024	5838 MINNESOTA BENEFIT ASSOCIATION	MONTHLY PREMIUM - MAY 2024	346.73
120962	4/16/2024	7066 MINNESOTA WOMEN'S PRESS, LLC	JOB ADVERTISEMENT ON MN WOMAN'S PRESS WEBSITE	101.00
120963	4/16/2024	1044 MN FIRE SERVICE CERT BD	INSTRUCTOR II EXAM	136.50
	4/16/2024	1044 MN FIRE SERVICE CERT BD	INSTRUCTOR 1 CERT EXAM	126.00
120964	4/16/2024	6257 NINE NORTH	MARCH 2024 AV SERVICES	1,138.80
120965	4/16/2024	6017 NOW MICRO INC	HP LAPTOP REPLACEMENTS	7,059.00
120966	4/16/2024	6269 OPTUM	MARCH 2024 - EMPLOYER HSA FEE	112.75
120967	4/16/2024	6111 QUADIENT FINANCE USA, INC.	POSTAGE - LATE FEES	39.00
120968	4/16/2024	6014 REHDER FORESTRY CONSULTING	MARCH 2024 TREE INSPECTION SERVICES	135.94
120969	4/16/2024	5879 ROADKILL ANIMAL CONTROL	ROADKILL REMOVAL - MARCH 2024	129.00
120970	4/16/2024	7064 SCOTT MACHINE DEVELOPMENT CORP.	POLICE DEPT. OFFICE NAMEPLATES	963.35
120971	4/16/2024	2086 ST PAUL AREA CHAMBER OF COMM	MEMBERSHIP INVESTMENT 2024	450.00
120972	4/16/2024	6376 STERICYCLE, INC.	DOCUMENT SHRED SERVICES - FEB	162.72
120973	4/16/2024	449 TYLER TECHNOLOGIES INC	ENTERPRISE ERP - CONVERSION	8,400.00
120974	4/16/2024	6326 ULINE	DRAWER ORGANIZER FOR EMS & FIRE SUPPLIES	328.57
120975	4/16/2024	211 BRAUN INTERTEC CORP.	PROJ 22-16: CONSTRUCTION MATERIALS TESTING	630.00
	4/16/2024	211 BRAUN INTERTEC CORP.	PROJ 22-17: WOODLYNN-SOUTHLAWN CONST. MAT TESTING	961.00
120976	4/16/2024	5826 ENVISIO SOLUTIONS INC.	ENVISIO YEARLY SOFTWARE SUBSCRIPTION 2024	11,981.97
120977	4/16/2024	5312 ENVUE TELEMATICS, LLC	GEO TAB PRO PLAN APRIL FEE	624.00
120978	4/16/2024	519 FLEXIBLE PIPE TOOLS & EQUIP	REPLACEMENT CABLE FOR CCTV CAMERA, UNIT 623	495.00
120979	4/16/2024	5598 KELLY & LEMMONS, P.A.	PROSECUTION SERVICES - MARCH	16,907.00
120980	4/16/2024	875 LOFFLER COMPANIES, INC.	HR PRINTER TONER CARTRIDGE	81.64
	4/16/2024	875 LOFFLER COMPANIES, INC.	CANON MFP USAGE CHARGES	1,337.58
120981	4/16/2024	1202 NYSTROM PUBLISHING CO INC	MAPLEWOOD LIVING - APRIL	8,054.09
120982	4/16/2024	1337 RAMSEY COUNTY-PROP REC & REV	FLEET SUPPORT FEE - MARCH	574.08
	4/16/2024	1337 RAMSEY COUNTY-PROP REC & REV	FLEET SUPPORT FEES - MARCH	258.96
120983	4/16/2024	1190 XCEL ENERGY	FIRE SIRENS	55.80
	4/16/2024	1190 XCEL ENERGY	ELECTRIC & GAS UTILITY	322.24
120984	4/16/2024	1190 XCEL ENERGY	ELECTRIC UTILITY	53.54
120985	4/16/2024	5013 YALE MECHANICAL LLC	MID-SEASON HVAC MAIN-NORTH FIRE STATION	1,267.00
	4/16/2024	5013 YALE MECHANICAL LLC	WINTER HVAC MAINT. AT CENTRAL FIRE STATION	337.00
	4/16/2024	5013 YALE MECHANICAL LLC	WINTER HVAC MAINT. AT PARK MAINT. GARAGE	337.00
<b>77 Checks in this report.</b>				<b><u>\$ 332,320.79</u></b>

**CITY OF MAPLEWOOD**  
**Disbursements via Debits to Checking Account**

Settlement Date	Payee	Description	Amount
4/1/2024	Accela Credit Card Billing	Credit Card Billing Fee	\$ 15.00
4/1/2024	Delta Dental	Dental Premium	3,642.58
4/8/2024	Delta Dental	Dental Premium	3,037.42
4/12/2024	ICMA (Vantagepointe)	PR - Deferred Compensation	8,505.00
4/8/2024	ICMA (Vantagepointe)	PR - Deferred Compensation	888.06
4/12/2024	ICMA (Vantagepointe)	PR - Retiree Health Savings	1,100.00
4/12/2024	Labor Unions	PR - Union Dues	3,012.79
4/12/2024	MidAmerica	HRA Flex Plan - AUL	15,858.50
4/1/2024	MN State Treasurer	PR - State Payroll Tax	31,206.41
4/5/2024	Optum Health	DCRP & Flex Plan Payments	1,018.95
4/12/2024	Optum Health	DCRP & Flex Plan Payments	1,067.01
4/12/2024	P.E.R.A.	PR - P.E.R.A.	155,793.71
4/12/2024	U.S. Treasurer	PR - Federal Payroll Tax	124,736.60
4/12/2024	US Bank VISA One Card*	Purchasing Card Items	57,059.34
			<u>\$ 406,941.37</u>

**CITY OF MAPLEWOOD  
EMPLOYEE GROSS EARNINGS REPORT  
FOR THE CURRENT PAY PERIOD**

<u>CHECK #</u>	<u>CHECK DATE</u>	<u>EMPLOYEE NAME</u>	<u>AMOUNT</u>	<u>Exp Reimb, Severance, Conversion incl in Amount</u>
	04/12/24	ABRAMS, MARYLEE	\$ 670.40	
	04/12/24	CAVE, REBECCA	590.40	
	04/12/24	JUENEMANN, KATHLEEN	590.40	
	04/12/24	LEE, CHONBURI	590.40	
	04/12/24	VILLAVICENCIO, NICHOLE	590.40	
	04/12/24	DARROW, MICHAEL	6,355.35	
	04/12/24	KNUTSON, LOIS	4,092.25	
	04/12/24	SABLE, MICHAEL	8,283.48	
	04/12/24	CHRISTENSON, SCOTT	2,545.60	
	04/12/24	DOUGLASS, TOM	3,359.73	
	04/12/24	JAHN, DAVID	3,151.18	
	04/12/24	LENTINI, LINDSAY	3,313.33	
	04/12/24	RAMEAUX, THERESE	4,092.26	
	04/12/24	BREIMHURST, LAUREN	2,486.59	
	04/12/24	JACOBSON, CARL	4,729.68	
	04/12/24	RACETTE, THOMAS	3,193.00	
	04/12/24	RUEB, JOSEPH	6,046.62	
	04/12/24	STANLEY, JENNIFER	3,992.22	
	04/12/24	ARNOLD, AJLA	2,490.95	
	04/12/24	EVANS, CHRISTINE	2,947.01	\$ 42.21
	04/12/24	LARSON, MICHELLE	2,504.80	
	04/12/24	SINDT, ANDREA	4,499.46	
	04/12/24	MOY, PAMELA	2,507.11	
	04/12/24	ABDIRISAK, ABDULLAHI	3,422.41	
	04/12/24	ANDERSON, ROBERT	3,904.99	
	04/12/24	BELDE, STANLEY	1,020.00	
	04/12/24	BENJAMIN, MARKESE	4,059.39	
	04/12/24	BERGERON, ASHLEY	4,333.83	
	04/12/24	BIERDEMAN, BRIAN	7,042.48	
	04/12/24	BORN, BRIAN	3,477.79	
	04/12/24	BURT-MCGREGOR, EMILY	4,232.09	
	04/12/24	BUSACK, DANIEL	6,052.93	
	04/12/24	CONDON, MITCHELL	3,988.19	
	04/12/24	COX, RACHEL	1,601.63	
	04/12/24	CRUZ, TREANA	1,381.62	456.22
	04/12/24	DEMULLING, JOSEPH	5,409.20	
	04/12/24	DUGAS, MICHAEL	5,502.81	
	04/12/24	FORSYTHE, MARCUS	4,566.80	
	04/12/24	FRITZE, DEREK	4,603.82	
	04/12/24	GABRIEL, ANTHONY	6,441.19	
	04/12/24	GEISELHART, BENJAMIN	4,457.70	

**CITY OF MAPLEWOOD  
EMPLOYEE GROSS EARNINGS REPORT  
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	04/12/24	GIVAND, JONATHAN	4,004.00	
	04/12/24	GREEN, JAMIE	3,941.08	
	04/12/24	HAWKINSON, TIMOTHY	4,459.39	
	04/12/24	HER, PHENG	4,509.07	
	04/12/24	HER, TERRELL	3,698.23	
	04/12/24	HOEMKE, MICHAEL	5,502.81	
	04/12/24	JOHNSON, BARBARA	2,089.60	
	04/12/24	KADEN, JACOB	3,477.79	
	04/12/24	KIM, WINSTON	3,852.00	
	04/12/24	KONG, TOMMY	4,765.92	
	04/12/24	KRAL, EMMA	3,477.79	
	04/12/24	KROLL, LISA	2,586.40	2,586.40
	04/12/24	KUCHENMEISTER, GINA	2,586.40	
	04/12/24	KUCHENMEISTER, JASON	2,528.80	
	04/12/24	LENERTZ, NICHOLAS	3,926.99	
	04/12/24	LYNCH, KATHERINE	4,229.47	
	04/12/24	MALLET, MICHAEL	3,904.99	
	04/12/24	MARINO, JASON	4,649.22	
	04/12/24	MARK, OLAF	4,004.00	
	04/12/24	MORALES, MARIO	2,246.32	
	04/12/24	MURRAY, RACHEL	4,521.60	
	04/12/24	NYE, MICHAEL	4,819.39	
	04/12/24	PASDO, JOSEPH	3,659.75	
	04/12/24	PATROS, CLARE	1,932.80	
	04/12/24	PETERS, DANIEL	4,063.19	
	04/12/24	PIPKIN, JULIA	3,341.17	
	04/12/24	QUIRK, JAMES	4,197.24	
	04/12/24	RETHWILL, SCOTT	3,977.17	
	04/12/24	SALCHOW, CONNOR	4,762.46	
	04/12/24	SCHROEDER, LEE	4,136.19	
	04/12/24	SHANLEY, HAYLEY	2,427.71	
	04/12/24	SHEA, STEPHANIE	3,158.62	
	04/12/24	STARKEY, ROBERT	4,613.99	
	04/12/24	STEINER, JOSEPH	5,502.81	
	04/12/24	STOCK, AUBREY	5,523.65	
	04/12/24	SUEDKAMP, ADAM	5,078.22	
	04/12/24	SWETALA, NOAH	3,991.89	
	04/12/24	TAUZELL, BRIAN	5,688.63	
	04/12/24	ULVENES, AMANDA	1,988.19	
	04/12/24	WEAVER, TAWNY	3,693.13	
	04/12/24	WENZEL, JAY	4,301.90	



**CITY OF MAPLEWOOD  
EMPLOYEE GROSS EARNINGS REPORT  
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<u>CHECK #</u>	<u>CHECK DATE</u>	<u>EMPLOYEE NAME</u>	<u>AMOUNT</u>	<u>Exp Reimb, Severance, Conversion incl in Amount</u>
	04/12/24	WERTH, JENNIFER	2,637.43	
	04/12/24	WIETHORN, AMANDA	3,904.99	
	04/12/24	XIONG, KAO	4,219.39	
	04/12/24	XIONG, PETER	3,559.20	
	04/12/24	XIONG, TUOYER	4,535.29	
	04/12/24	YANG, TANGURAY	1,932.80	
	04/12/24	YANG, THANG	3,798.33	
	04/12/24	ZAPPA, ANDREW	5,473.69	
	04/12/24	BARRETTE, CHARLES	4,233.39	
	04/12/24	BAUMAN, ANDREW	4,192.05	
	04/12/24	BEITLER, NATHAN	4,006.93	
	04/12/24	BERG, TERESA	1,806.25	
	04/12/24	CAMPBELL, MACLANE	3,434.92	
	04/12/24	CHANG, KENG	420.00	
	04/12/24	COOK, NICKLAUS	7,361.41	
	04/12/24	COOK, TANNER	3,771.60	
	04/12/24	CRAWFORD, RAYMOND	4,180.50	
	04/12/24	CRUMMY, CHARLES	4,484.63	
	04/12/24	DABRUZZI, THOMAS	4,998.44	
	04/12/24	DAVISON, BRADLEY	4,168.73	
	04/12/24	HAGEN, JOHN	4,110.32	
	04/12/24	HAGEN, MICHAEL	4,332.35	
	04/12/24	HALWEG, JODI	4,073.23	
	04/12/24	HANG, RYAN	3,111.36	
	04/12/24	HAWTHORNE, ROCHELLE	4,153.69	
	04/12/24	KUBAT, ERIC	4,591.03	
	04/12/24	LANDER, CHARLES	4,620.20	
	04/12/24	LANIK, JAKE	4,986.56	
	04/12/24	MALESKI, MICHAEL	4,550.83	
	04/12/24	MCGEE, BRADLEY	4,850.57	
	04/12/24	MERKATORIS, BRETT	5,182.24	
	04/12/24	MILLER, SETH	4,087.87	
	04/12/24	MONDOR, MICHAEL	6,924.36	
	04/12/24	MOUTON, JOHANNA	1,899.80	
	04/12/24	NEILY, STEVEN	4,147.98	
	04/12/24	NELSON, GRADON	4,946.78	
	04/12/24	NIELSEN, KENNETH	4,221.14	
	04/12/24	NOVAK, JEROME	4,204.34	
	04/12/24	ORLANDO, TYLER	3,514.40	
	04/12/24	POWERS, KENNETH	4,590.20	
	04/12/24	SCHROEDER, RYAN	4,927.20	

**CITY OF MAPLEWOOD  
EMPLOYEE GROSS EARNINGS REPORT  
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	04/12/24	SEDLACEK, JEFFREY	4,512.24	
	04/12/24	SOHRWEIDE, TYSON	7,274.67	
	04/12/24	SPANDE, KAYLA	2,702.27	
	04/12/24	WARDELL, JORDAN	4,977.83	
	04/12/24	WILLIAMSON, MICHAEL	3,968.31	
	04/12/24	ZAPPA, ERIC	4,590.20	
	04/12/24	CORTESI, LUANNE	2,504.80	
	04/12/24	JANASZAK, MEGHAN	3,695.52	
	04/12/24	BRINK, TROY	3,914.66	
	04/12/24	BUCKLEY, BRENT	3,910.70	
	04/12/24	EDGE, DOUGLAS	3,606.04	
	04/12/24	HERBST, JONATHEN	2,980.96	
	04/12/24	JORDAN, TIMOTHY	2,385.79	
	04/12/24	MEISSNER, BRENT	3,259.55	
	04/12/24	MLODZIK, JASON	3,784.84	
	04/12/24	MORRIS-KARL, AIDEN	2,951.23	
	04/12/24	RUNNING, ROBERT	3,397.97	
	04/12/24	TEVLIN, TODD	3,560.23	
	04/12/24	YANG, SOLOMAN	2,645.96	
	04/12/24	DUCHARME, JOHN	3,643.82	
	04/12/24	ENGSTROM, ANDREW	3,641.51	
	04/12/24	JAROSCH, JONATHAN	4,918.83	
	04/12/24	LOVE, STEVEN	7,041.12	
	04/12/24	STEJSKAL, JAYSON	3,237.79	
	04/12/24	STRONG, TYLER	3,728.73	
	04/12/24	AMENYA, FLORENCE	60.00	
	04/12/24	CAMPBELL, NOAH	91.00	
	04/12/24	GERNES, CAROLE	3,184.25	
	04/12/24	GORACKI, CECELIA	125.00	
	04/12/24	HERBER, GREGORY	60.00	
	04/12/24	LEE, MALY	60.00	
	04/12/24	MCKANE, QUINN	211.25	
	04/12/24	FRIBERG, DAVID	2,625.29	
	04/12/24	HAYS, TAMARA	3,401.44	
	04/12/24	HINNENKAMP, GARY	3,486.79	
	04/12/24	NAUGHTON, JOHN	3,197.15	
	04/12/24	ORE, JORDAN	3,172.53	
	04/12/24	STOKES, KAL	2,829.13	
	04/12/24	BEGGS, REGAN	2,747.29	
	04/12/24	HAMMOND, ELIZABETH	2,725.94	
	04/12/24	JOHNSON, ELIZABETH	2,744.99	

**CITY OF MAPLEWOOD  
EMPLOYEE GROSS EARNINGS REPORT  
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	04/12/24	JOHNSON, RANDY	4,918.83	
	04/12/24	PARR, DANETTE	7,328.57	
	04/12/24	SCHORR, JENNIFER	2,180.19	
	04/12/24	FINWALL, SHANN	4,091.41	
	04/12/24	MARTIN, MICHAEL	4,837.30	
	04/12/24	LENTZ, DANIEL	3,496.99	
	04/12/24	THIENES, PAUL	3,318.23	
	04/12/24	WESTLUND, RONALD	3,315.35	
	04/12/24	YOUNG, MATTHEW	3,008.81	
	04/12/24	WELLENS, MOLLY	2,801.90	
	04/12/24	BJORK, BRANDON	119.50	
	04/12/24	BRENEMAN, NEIL	3,695.52	
	04/12/24	GORACKI, GERALD	92.50	
	04/12/24	KORF, CAIN	60.00	
	04/12/24	MOORE, PATRICK	170.50	
	04/12/24	ROBBINS, AUDRA	5,046.33	
	04/12/24	BERGO, CHAD	4,026.61	
	04/12/24	SCHMITZ, KEVIN	2,757.29	
	04/12/24	SHEERAN JR, JOSEPH	4,919.07	
	04/12/24	ADAMS, DAVID	3,215.02	
	04/12/24	JENSEN, JOSEPH	3,306.35	
	04/12/24	JONES, DONALD	3,540.25	
	04/12/24	SCHULTZ, SCOTT	4,946.33	
	04/12/24	WILBER, JEFFREY	3,404.70	
	04/12/24	PRIEM, STEVEN	3,691.50	
	04/12/24	WOEHRLE, MATTHEW	3,602.92	
	04/12/24	XIONG, BOON	3,136.29	
	04/12/24	FOWLDS, MYCHAL	6,078.83	
	04/12/24	FRANZEN, NICHOLAS	5,315.81	
	04/12/24	GERONSIN, ALEXANDER	3,610.01	
	04/12/24	RENNER, MICHAEL	3,230.49	
			<u>\$ 712,908.90</u>	<u>\$ 3,084.83</u>

## Purchasing Card Items

Transaction Date	Posting Date	Merchant Name	Transaction Amount	Name
3/26/2024	4/1/2024	INSIGHT PUBLIC SECTOR	\$ 1,795.10	ALEX GERONSIN
3/27/2024	3/27/2024	AMAZON.COM*RA26O4GX2	284.90	ALEX GERONSIN
3/22/2024	3/25/2024	COURTYARD ST. CLOUD	524.84	ANDREA SINDT
3/28/2024	3/29/2024	CINTAS CORP	86.35	AUDRA ROBBINS
3/25/2024	3/26/2024	CUB FOODS #1599	42.96	BARB JOHNSON
3/28/2024	3/29/2024	AMZN MKTP US*RA1AR4CZ1	68.82	BARB JOHNSON
3/28/2024	3/29/2024	AMZN MKTP US*RA6AS5CB1	17.94	BARB JOHNSON
3/30/2024	4/1/2024	AMZN MKTP US*RA6WH90O1	59.94	BARB JOHNSON
4/1/2024	4/1/2024	AMZN MKTP US*DY2525LD3	49.45	BARB JOHNSON
3/29/2024	4/1/2024	MIDWAY FORD	21.11	BOON XIONG
4/1/2024	4/2/2024	TRI-STATE BOBCAT	1,872.33	BOON XIONG
4/4/2024	4/5/2024	MIDWAY FORD	17.23	BOON XIONG
3/26/2024	3/28/2024	MENARDS 3385	10.68	BRAD MCGEE
3/27/2024	3/28/2024	HELMETS R US	921.00	BRAD MCGEE
3/27/2024	3/28/2024	TRI-STATE BOBCAT	203.59	BRENT BUCKLEY
4/3/2024	4/4/2024	SITEONE LANDSCAPE SUPPLY,	129.30	BRENT BUCKLEY
4/3/2024	4/4/2024	TRI-STATE BOBCAT	17.60	BRENT BUCKLEY
3/22/2024	3/25/2024	MENS WEARHOUSE #4101	1,139.01	BRIAN BIERDEMAN
3/30/2024	4/1/2024	BURGGRAFS ACE HARDWARE	324.04	BRIAN BIERDEMAN
3/22/2024	3/25/2024	BLUE TO GOLD, LLC	450.00	BRIAN TAUZELL
3/22/2024	3/25/2024	LEEANN CHIN 0035 ST CLOUD	22.00	CHRISTINE EVANS
3/22/2024	3/25/2024	COURTYARD ST. CLOUD	491.06	CHRISTINE EVANS
3/25/2024	3/26/2024	SQ *HOTSY MINNESOTA	267.85	DANIEL BUSACK
3/25/2024	3/27/2024	CARIBOU COFFEE CO #1197	38.99	DANIEL BUSACK
3/28/2024	3/28/2024	ASICS CORPORATION	89.95	DANIEL BUSACK
3/26/2024	3/28/2024	THE HOME DEPOT #2801	32.95	DAVID JAHN
3/27/2024	4/4/2024	WWW.DALCOONLINE.COM	1,027.61	DAVID JAHN
3/28/2024	4/1/2024	WWW.DALCOONLINE.COM	305.24	DAVID JAHN
3/23/2024	3/25/2024	THE HOME DEPOT #2801	16.97	ERIC KUBAT
3/22/2024	3/25/2024	SQ *PROFESSIONAL LAW ENFO	50.00	GINA KUCHENMEISTER
3/28/2024	3/28/2024	ULINE *SHIP SUPPLIES	381.40	JASON KUCHENMEISTER
3/29/2024	4/1/2024	IN *ARROWHEAD SCIENTIFIC	158.19	JASON KUCHENMEISTER
3/30/2024	4/1/2024	AMAZON.COM*RA04M3A51	40.85	JASON KUCHENMEISTER
4/1/2024	4/2/2024	AMZN MKTP US*546NT3PT3	94.09	JASON KUCHENMEISTER
4/3/2024	4/4/2024	FEDEX OFFIC61700006171	59.58	JASON KUCHENMEISTER
3/29/2024	4/1/2024	SAFE-FAST(MW)	39.68	JOE JENSEN
3/27/2024	3/28/2024	WWW.ARTLIST.IO	125.86	JOE SHEERAN
4/4/2024	4/5/2024	CUB FOODS #01595	27.98	JOHANNA MOUTON
4/4/2024	4/5/2024	AMAZON.COM*OV5W50KF3	52.70	JOHANNA MOUTON
4/4/2024	4/5/2024	AMZN MKTP US*NP1TR10P3	24.77	JOHANNA MOUTON
3/21/2024	3/25/2024	MENARDS OAKDALE MN	9.79	JOHN NAUGHTON
3/22/2024	3/25/2024	AMAZON.COM*RH0GT3D32	108.35	JOHN NAUGHTON
3/31/2024	4/1/2024	AMAZON.COM	(164.95)	JOHN NAUGHTON
4/2/2024	4/3/2024	BOARD OF AELSLAGID	122.50	JON JAROSCH
3/22/2024	3/25/2024	THE HOME DEPOT #2801	28.12	JORDAN ORE
3/27/2024	3/29/2024	CALIBRE PRESS	359.00	JORDAN WARDELL

## Purchasing Card Items

Transaction Date	Posting Date	Merchant Name	Transaction Amount	Name
3/31/2024	4/1/2024	WWW.PEACHJAR.COM	300.00	JORDAN WARDELL
3/26/2024	3/29/2024	USPCA	75.00	JOSEPH DEMULLING
3/26/2024	3/29/2024	USPCA	75.00	JOSEPH DEMULLING
4/1/2024	4/2/2024	TARGET 00011858	10.99	JOSEPH DEMULLING
3/22/2024	3/25/2024	THE UPS STORE 2171	19.67	JOSEPH STEINER
3/27/2024	3/28/2024	STATE OF MN POST BOARD	90.00	JOSEPH STEINER
3/27/2024	3/28/2024	POST BOARD SERVICE FEE	1.94	JOSEPH STEINER
3/29/2024	4/1/2024	88 TACTICAL	650.00	JOSEPH STEINER
3/31/2024	4/1/2024	GOLFGALAXY.COM	67.99	JOSEPH STEINER
4/1/2024	4/2/2024	GOLFGALAXY.COM	42.49	JOSEPH STEINER
4/1/2024	4/2/2024	GOLFGALAXY.COM	42.49	JOSEPH STEINER
4/1/2024	4/2/2024	GOLFGALAXY.COM	147.86	JOSEPH STEINER
4/2/2024	4/4/2024	SP C&G HOLSTERS	(84.99)	JOSEPH STEINER
4/3/2024	4/4/2024	HERTZ #0175019	464.53	JOSEPH STEINER
3/28/2024	3/29/2024	MTI	175.10	KAL STOKES
3/22/2024	3/25/2024	TARGET 00011858	61.47	KAYLA SPANDE
3/21/2024	3/25/2024	BOUND TREE MEDICAL LLC	39.74	KENNETH POWERS
3/25/2024	3/26/2024	LIFE ASSIST INC	1,044.68	KENNETH POWERS
3/26/2024	3/28/2024	BOUND TREE MEDICAL LLC	2,286.41	KENNETH POWERS
3/26/2024	3/27/2024	LEAGUE OF MINNESOTA CITI	425.00	LOIS KNUTSON
3/29/2024	4/1/2024	STERICYCLE INC/SHRED-IT	81.35	LOIS KNUTSON
4/2/2024	4/3/2024	COREMARK METALS -MN	855.64	MATT WOHRLE
4/2/2024	4/3/2024	FLEETPRIDE553	746.94	MATT WOHRLE
4/3/2024	4/4/2024	COREMARK METALS -MN	350.84	MATT WOHRLE
3/26/2024	3/26/2024	REV.COM	45.60	MICHAEL DUGAS
4/3/2024	4/4/2024	REV.COM	51.30	MICHAEL DUGAS
4/3/2024	4/4/2024	REV.COM	15.20	MICHAEL DUGAS
3/27/2024	3/28/2024	AIRGAS - NORTH	702.05	MICHAEL HAGEN
3/27/2024	3/28/2024	AIRGAS - NORTH	333.00	MICHAEL HAGEN
4/1/2024	4/2/2024	AIRGAS - NORTH	153.25	MICHAEL HAGEN
4/1/2024	4/2/2024	AIRGAS - NORTH	336.96	MICHAEL HAGEN
4/1/2024	4/2/2024	AIRGAS - NORTH	376.40	MICHAEL HAGEN
4/4/2024	4/5/2024	AIRGAS - NORTH	120.17	MICHAEL HAGEN
4/4/2024	4/5/2024	AIRGAS - NORTH	302.24	MICHAEL HAGEN
4/4/2024	4/5/2024	ASPEN MILLS	246.70	MICHAEL HAGEN
4/5/2024	4/5/2024	AMZN MKTP US*NQ8AG1M43	218.44	MICHAEL HAGEN
3/22/2024	3/25/2024	BATTERIES PLUS - #0031	33.85	MICHAEL MALESKI
4/2/2024	4/3/2024	ASPEN MILLS	156.91	MICHAEL MALESKI
4/2/2024	4/4/2024	PEARLE VISION	279.95	MICHAEL MALESKI
4/3/2024	4/5/2024	THE HOME DEPOT #2801	45.91	MICHAEL MALESKI
4/1/2024	4/2/2024	IN *MARIE RIDGEWAY LICSW,	290.00	MICHAEL MONDOR
3/23/2024	3/25/2024	AMZN MKTP US*RH01D59W2	410.64	MICHAEL RENNER
3/27/2024	3/28/2024	AMZN MKTP US*HO2KQ7703	508.08	MICHAEL RENNER
3/30/2024	4/1/2024	AMAZON.COM*UN0RG4OJ3	158.67	MICHAEL RENNER
3/30/2024	4/1/2024	AMZN MKTP US*2W28S0XW3	410.10	MICHAEL RENNER
4/4/2024	4/4/2024	SHRM MINNESOTA STATE C	200.00	MIKE DARROW

## Purchasing Card Items

Transaction Date	Posting Date	Merchant Name	Transaction Amount	Name
4/1/2024	4/2/2024	PIONEER PRESS CIRC	14.00	MIKE MARTIN
3/29/2024	4/1/2024	SHI INTERNATIONAL CORP	3,017.02	MYCHAL FOWLDS
4/1/2024	4/2/2024	VZWLSS*APOCC VISB	1,317.47	MYCHAL FOWLDS
4/4/2024	4/5/2024	AMZN MKTP US*RO8RL1OU1	31.86	MYCHAL FOWLDS
4/4/2024	4/5/2024	AMZN MKTP US*784I76UJ3	20.07	MYCHAL FOWLDS
3/25/2024	3/27/2024	SAMS CLUB RENEWAL	110.00	NEIL BRENEMAN
3/27/2024	3/29/2024	SAMSClub.COM	582.88	NEIL BRENEMAN
3/28/2024	3/29/2024	TARGET 00009316	23.94	NEIL BRENEMAN
3/29/2024	4/1/2024	UNIVERSAL ATHLETIC, LL	266.12	NEIL BRENEMAN
4/2/2024	4/3/2024	UNIVERSAL ATHLETIC, LL	180.00	NEIL BRENEMAN
4/3/2024	4/4/2024	SAMSClub #6309	(35.88)	NEIL BRENEMAN
4/4/2024	4/5/2024	MN RECREATION AND PARK A	620.00	NEIL BRENEMAN
3/23/2024	3/25/2024	WASABI TECHNOLOGIES	7.12	NICK FRANZEN
3/26/2024	3/28/2024	SHI INTERNATIONAL CORP	1,129.00	NICK FRANZEN
3/27/2024	3/28/2024	MSFT * E0500RJNQH	104.40	NICK FRANZEN
3/29/2024	4/1/2024	CDW GOVT #QL31326	185.62	NICK FRANZEN
3/27/2024	3/29/2024	CALIBRE PRESS	399.00	RACHEL MURRAY
3/26/2024	3/27/2024	INT'L CODE COUNCIL INC	995.00	RANDY JOHNSON
3/29/2024	4/1/2024	DEPARTMENT OF LABOR AND I	85.00	RANDY JOHNSON
4/4/2024	4/5/2024	VERSALOK OAKDALE	79.90	ROBERT RUNNING
4/4/2024	4/5/2024	SITEONE LANDSCAPE SUPPLY,	86.72	ROBERT RUNNING
4/4/2024	4/5/2024	NTE 5413	34.99	ROBERT RUNNING
3/26/2024	3/27/2024	TIDAL WAVE MAPLEWOOD	32.48	RYAN SCHROEDER
3/29/2024	4/1/2024	MN DVS WHT BRLK127698 FEE	0.70	RYAN SCHROEDER
3/29/2024	4/1/2024	MN DVS WHT BR LK 127 698	32.50	RYAN SCHROEDER
3/22/2024	3/25/2024	RED WING SHOE #727	207.65	SCOTT CHRISTENSON
3/26/2024	3/27/2024	OVERHEAD DOOR COMPANY OF	771.95	SCOTT CHRISTENSON
3/29/2024	4/1/2024	BREDEMUS HARDWARE COMPAN	273.96	SCOTT CHRISTENSON
3/22/2024	3/25/2024	SQ *PROFESSIONAL LAW ENFO	50.00	STEPHANIE SHEA
3/25/2024	3/26/2024	THOMSON WEST*TCD	700.69	STEPHANIE SHEA
3/26/2024	3/28/2024	ODP BUS SOL LLC # 101090	62.44	STEPHANIE SHEA
3/28/2024	3/29/2024	CINTAS CORP	109.00	STEPHANIE SHEA
4/3/2024	4/4/2024	MINNESOTA SHERIFFS ASSOC	175.00	STEPHANIE SHEA
4/4/2024	4/5/2024	GALLS	443.29	STEPHANIE SHEA
4/4/2024	4/5/2024	SQ *PROFESSIONAL LAW ENFO	155.00	STEPHANIE SHEA
4/4/2024	4/5/2024	SQ *PROFESSIONAL LAW ENFO	155.00	STEPHANIE SHEA
4/4/2024	4/5/2024	CINTAS CORP	109.00	STEPHANIE SHEA
4/4/2024	4/5/2024	POST BOARD LICENSING	1,260.00	STEPHANIE SHEA
3/29/2024	4/1/2024	LEAGUE OF MINNESOTA CITI	20.00	STEVE LOVE
3/22/2024	3/25/2024	PIONEER RIM AND WHEEL COM	24.79	STEVEN PRIEM
3/22/2024	3/25/2024	PIONEER RIM AND WHEEL COM	20.68	STEVEN PRIEM
3/26/2024	3/27/2024	FACTORY MOTOR PARTS (19)	48.89	STEVEN PRIEM
3/26/2024	3/27/2024	FACTORY MOTOR PARTS (19)	23.95	STEVEN PRIEM
3/26/2024	3/27/2024	TRI-STATE BOBCAT	3,135.79	STEVEN PRIEM
3/26/2024	3/28/2024	MENARDS 3385	15.13	STEVEN PRIEM
3/28/2024	3/29/2024	AN FORD WHITE BEAR LAK	(500.00)	STEVEN PRIEM

## Purchasing Card Items

Transaction Date	Posting Date	Merchant Name	Transaction Amount	Name
3/28/2024	3/29/2024	POMPS TIRE 021	2,828.64	STEVEN PRIEM
3/28/2024	3/29/2024	AN FORD WHITE BEAR LAK	7,261.38	STEVEN PRIEM
3/28/2024	3/29/2024	IN *MINNESOTA HOIST INSPE	1,333.22	STEVEN PRIEM
3/28/2024	3/29/2024	FACTORY MOTOR PARTS (19)	6.84	STEVEN PRIEM
3/28/2024	3/29/2024	FACTORY MOTOR PARTS (19)	29.12	STEVEN PRIEM
4/1/2024	4/2/2024	TRI-STATE BOBCAT	75.28	STEVEN PRIEM
4/1/2024	4/3/2024	MINNESOTA TRUCKING ASSOCI	110.00	STEVEN PRIEM
4/3/2024	4/4/2024	SQ *FROST INC.	177.97	STEVEN PRIEM
4/4/2024	4/5/2024	FACTORY MOTOR PARTS (19)	46.72	STEVEN PRIEM
4/4/2024	4/5/2024	FACTORY MOTOR PARTS (19)	56.16	STEVEN PRIEM
4/4/2024	4/5/2024	BATTERIES PLUS - #0031	41.17	STEVEN PRIEM
3/22/2024	3/25/2024	U OF M CONTLEARNING OL	100.00	TAMARA HAYS
3/24/2024	3/25/2024	CARHARTT COMPANY GEAR	627.94	TAMARA HAYS
4/2/2024	4/3/2024	GRUBERS POWER EQUIPMEN	357.97	TAMARA HAYS
4/2/2024	4/3/2024	FLEET FARM 2700	30.98	TAMARA HAYS
4/3/2024	4/5/2024	THE HOME DEPOT #2801	143.63	THOMAS DABRUZZI
3/25/2024	3/27/2024	ECKBERG LAMMERS PC	319.00	TIMOTHY HAWKINSON
3/28/2024	4/1/2024	THE HOME DEPOT #2801	78.11	TODD TEVLIN
4/2/2024	4/4/2024	THE HOME DEPOT 2801	88.61	TODD TEVLIN
3/27/2024	3/28/2024	CINTAS CORP	144.57	TROY BRINK
3/28/2024	4/1/2024	CERTIFIED LABORATORIES	699.45	TROY BRINK
3/29/2024	4/1/2024	4EVER PRODUCTS	221.28	TROY BRINK
4/3/2024	4/4/2024	CINTAS CORP	486.90	TROY BRINK
			<u>\$ 57,059.34</u>	

**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Andrea Sindt, City Clerk  
Christine Evans, Deputy City Clerk

**PRESENTER:** Andrea Sindt, City Clerk

**AGENDA ITEM:** Local Lawful Gambling Permit for St Paul's Monastery, 2675 Benet Road

**Action Requested:**  Motion  Discussion  Public Hearing

**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

A request for a Local Lawful Gambling permit has been submitted by St Paul's Monastery. Approval of the request would allow lawful gambling activity to be conducted during the organization's Assumption Feast at the Monastery held at St Paul's Monastery, 2675 Benet Road, on August 15, 2024.

**Recommended Action:**

Motion to approve the Local Lawful Gambling permit for St Paul's Monastery, 2675 Benet Road, for their event on August 15, 2024.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is 0.00

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: n/a

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

Council approval is required prior to issuance of a local gambling permit, per City Code Sec. 22-12.

**Background:**

Lawful gambling activity conducted at this event is exempt from state licensure under MN §349.166. MN §349.213 authorizes cities to require a local permit for conduct of lawful gambling exempt from state licensing requirements.

**Attachments:**

None



**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Michael Martin, AICP, Assistant Community Development Director

**PRESENTER:** Danette Parr, Community Development Director

**AGENDA ITEM:** Development Agreement for Landscaping Improvements, Roers Maplewood Apartments LLC, 1160 Frost Avenue East

**Action Requested:**  Motion  Discussion  Public Hearing

**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

The city council approved plans on December 12, 2022, for a 150-unit market-rate multifamily development at 1160 Frost Avenue East. As part of this approval, the council required that a cash escrow or letter of credit be provided to the city to ensure all landscaping requirements are installed.

The developer – Roers Maplewood Apartments, LLC – requests a formal development agreement to outline the requirements and release of the letter of credit for landscaping improvements.

**Recommended Action:**

Motion to approve a development agreement for landscaping improvements between the City of Maplewood and Roers Maplewood Apartments, LLC, and authorize the mayor, city clerk, and city attorney to complete and execute the agreement.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is \$0

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: This action is only signifying support of the potential project.

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

City staff works with developers to carry out all conditions of approvals related to land use projects that have been approved by the city council.

**Background:**

The developer – Roers Maplewood Apartments, LLC – intends to start constructing its multifamily project at 1160 Frost Avenue later this spring. Before the city issues any permits, staff works to ensure all conditions of approval have been met. One condition of the council's December 12, 2022

approval detailed that the applicant shall provide the city with a cash escrow or an irrevocable letter of credit for all required exterior improvements. The amount shall be 150 percent of the cost of the work. This standard condition is included in every development project in Maplewood.

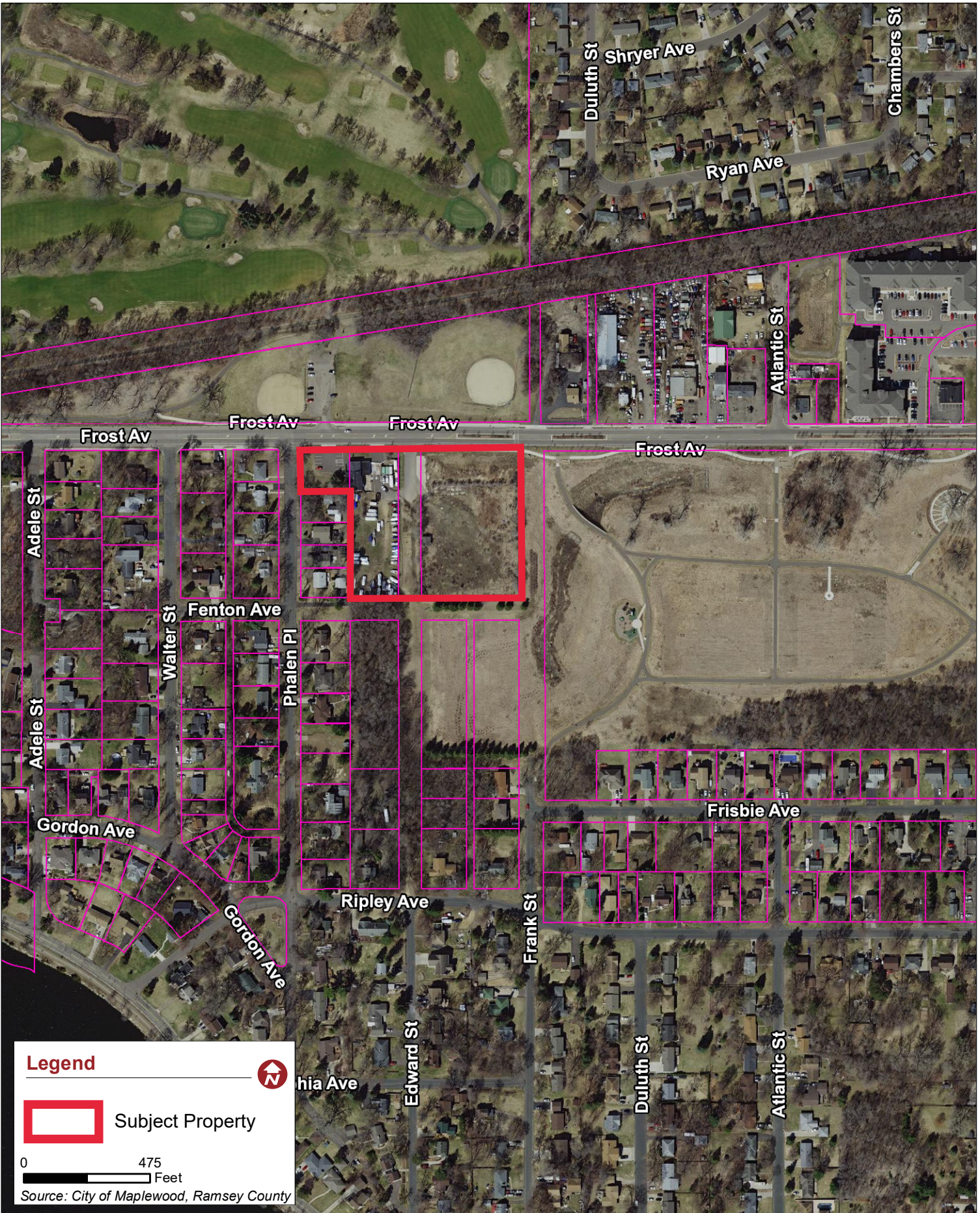
The developer has requested that a formal development agreement be executed to outline the requirements and terms of the letter of credit it intends to submit to the city. This is a unique request to the process; however, staff have determined nothing objectionable in executing such a document.

The agreement details the letter of credit amount that will be submitted to the city, the date landscape improvements will be in place, and the city's course of action if the developer defaults. Again, these actions occur with any development project in the city; in this unique case, the developer would also like an agreement in place.

The city attorney has reviewed this agreement and is comfortable with the city council granting approval.

**Attachments:**

1. Location Map
2. Development Agreement for Landscaping Improvements



**DEVELOPMENT AGREEMENT  
(Landscaping Improvements)**

This Development Agreement (the “Agreement”) is made as of [MMMM DD], 2024, by and between the CITY OF MAPLEWOOD, a Minnesota municipal corporation (the “City”), and ROERS MAPLEWOOD APARTMENTS LLC, a Delaware limited liability company (the “Developer”). The Developer and the City are collectively referred to herein as the “Parties.”

**RECITALS**

- A. Developer is the fee owner of real property in the City of Maplewood legally described as follows:

Parcel 1:

Lots 1 through 20 inclusive, in Block 1, Kavanagh and Dawson’s Addition to Gladstone, together with the vacated alley in said Block 1, Ramsey County, Minnesota.

Together with that part of the east half of vacated Edward Street lying southerly of a line drawn from the northeast corner of Block 2, said plat, to the northwest corner of said Block 1 and northerly of a line drawn from the southeast corner of said Block 2 to the southwest corner of said Block 1.

Together with that part of the north 1/2 of vacated Fenton Avenue lying easterly of the southerly extension of the westerly line of said Block 1 and westerly of the southerly extension of the easterly line of said Block 1.

Together with that part of vacated Frank Street lying southerly of the easterly extension of the northerly line of said Block 1, and easterly of the southerly extension of the easterly line of said Block 1, and northerly of the southerly line of the north 1/2 of vacated Fenton Avenue, and westerly of the east line of said plat.

(Abstract Property)

Parcel 2:

Lots 1 to 10, inclusive, Block 2, Kavanagh and Dawson's Addition to Gladstone, and that portion of the vacated alley and vacated Edward Street which accrued to said lots by reason of the vacation thereof, Ramsey County, Minnesota.

Lots 11 to 13, inclusive, Block 2, Kavanagh and Dawson's Addition to Gladstone, and that portion of the vacated alley which accrued to said lots by reason of the vacation thereof, Ramsey County, Minnesota.

(Abstract Property)

Such foregoing real property is referred to in this Agreement as the "Property."

- B. Developer intends to construct a 150-unit multifamily housing facility on the Property (the "Development").
- C. The City and the Developer now desire to enter into this Development Agreement ("Agreement") setting forth certain requirements and obligations of the Developer relating to the Development.
- D. The City requires that the Developer perform work and install certain on-site improvements within the Property, which work and improvements consist of landscaping (the "Improvements") as reflected in the site plan and other plans approved by the City (the "Approved Plans").

NOW, therefore, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Development Plans; Installation by Developer.** The Improvements shall be developed in accordance with the Approved Plans and in accordance with Exhibit A attached hereto. The City will perform all construction inspection for the Improvements, at the Developer's expense. Construction inspection includes but is not limited to inspection, documentation, and monitoring. The Developer shall install, or cause to be installed, and shall pay for, the Improvements.
2. **Time of Performance.** The Developer shall install all required Improvements by December 31, 2026 subject to delays due to inclement weather, casualty, labor strikes, material shortages, or other force majeure not within the Developer's reasonable control. The Developer may, however, request an extension of time from the City. If an extension is granted, it shall be conditioned upon updating the security posted by the Developer to, if necessary, reflect cost increases and the extended completion date.
3. **Security for Developer Improvements.** To guarantee compliance with the terms of this Agreement, payment of the costs of all Improvements, and construction of all

Improvements, the Developer shall furnish the City with an irrevocable letter of credit (such letter of credit, "Security") from Veridian Credit Union (or another lender reasonably acceptable to the City and the Developer) in the amount of Three Hundred Fourteen Thousand One Hundred Fifteen Dollars and No/100 Cents (\$314,115.00). The amount of the Security represents one hundred fifty percent (150%) of the planned costs of the Improvements, such costs totaling Two Hundred Nine Thousand Four Hundred Ten Dollars and No/100 Cents (\$209,410.00). The Security shall substantially be in the form attached hereto as Exhibit B.

The Security shall secure compliance with all terms of this Agreement and all obligations of the Developer under it. In the event of a default under this Agreement by the Developer, the City shall furnish the Developer with written notice by certified mail of Developer's default(s) under the terms of this Agreement. If the Developer does not remove said default(s) within thirty (30) days of receiving such notice, the City may draw on the Security and take such steps as it deems necessary to remedy the default. With City approval, the Security may be reduced from time to time as financial obligations are paid and Improvements and other Developer obligations are completed to the City's requirements.

4. **License.** The Developer hereby grants the City, its agents, employees, officers and contractors a license to enter the Property to perform all work and inspections deemed appropriate by the City. Such license shall terminate upon acceptance by the City of the Improvements.
5. **Developer's Default.** In the event of default by the Developer as to any of the work to be performed by it hereunder, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer is first given notice of the work in default, not less than ten (10) days in advance. This Agreement is a license for the City to act, and it shall not be necessary for the City to seek a court order for permission to enter the land. When the City does any such work, the City may, in addition to its other remedies, draw on the Security.
6. **Miscellaneous.**
  - a. The Developer represents to the City that the development of the Property shall comply with all city, county, metropolitan, state and federal laws and regulations.
  - b. Third parties shall have no recourse against the City under this Agreement.
  - c. If any portion, section, subsection, sentence, clause, paragraph or phase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.
  - d. If building permits are issued prior to the completion and acceptance of the Improvements, the Developer assumes all liability and costs resulting in delays in completion of the Improvements and damage to the Improvements caused by the

City, the Developer, its contractors, subcontractors, material men, employees, agents or third parties.

- e. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the Parties and approved by written resolution of the Maplewood City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
  - f. Each right, power or remedy herein conferred upon the City is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, available to the City, at law or in equity, or under any other agreement, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy.
  - g. The Developer may not assign this Agreement without the written permission of the Maplewood City Council.
7. **Notices.** Required notices to the Developer shall be in writing, and shall be either hand delivered to the Developer, its employees or agents, or mailed to the Developer by registered mail at the following address:

Roers Maplewood Apartments LLC  
Two Carlson Parkway North, Suite 400  
Plymouth, Minnesota 55447  
Attention: General Counsel

Notices to the City shall be in writing and shall be either hand delivered to the City Manager, or mailed to the City by registered mail in care of the City Manager at the following address:

Maplewood City Manager  
Maplewood City Hall  
1830 County Road B East  
Maplewood, Minnesota 55109

*[Remainder of page intentionally left blank; signatures follow.]*







**EXHIBIT A**  
**(Landscape Improvements Plan)**  
*(attached)*

**PLAN-TYPE**  
LANDSCAPE ARCHITECTURE

1. I AM NOT CERTAIN THAT THIS PLAN, SPECIFICATIONS AND NOTES COMPLY WITH ALL CITY ORDINANCES AND REGULATIONS. I AM NOT PROVIDING ANY WARRANTY OF FITNESS FOR ANY PARTICULAR USE OR PURPOSE. I AM NOT PROVIDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE.

DATE: 08-20-2023

PROJECT NUMBER: 20000

PROJECT NAME: LOUIE

DESIGNER: J & L

PROJECT NAME: FROST AVE APARTMENTS

1136 FROST AVE, MAPLEWOOD, MN

ISSUE LOG

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

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NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

NO. DESCRIPTION

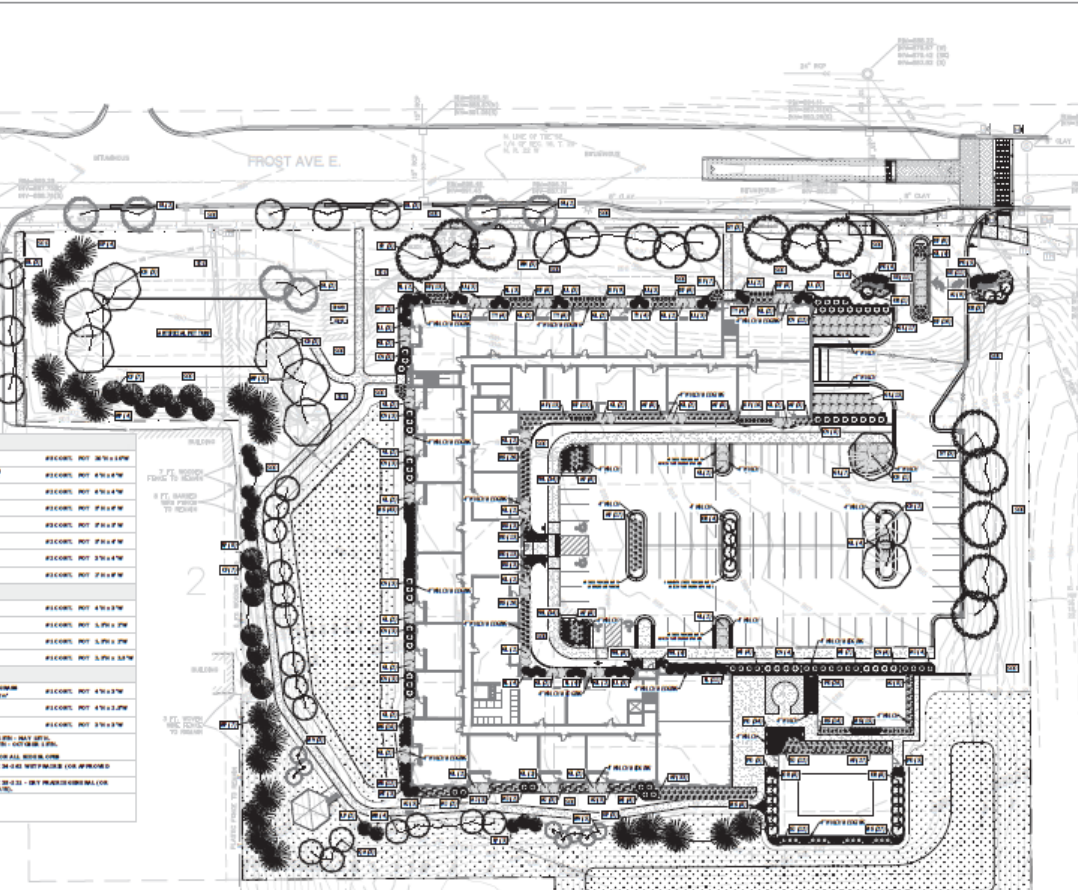
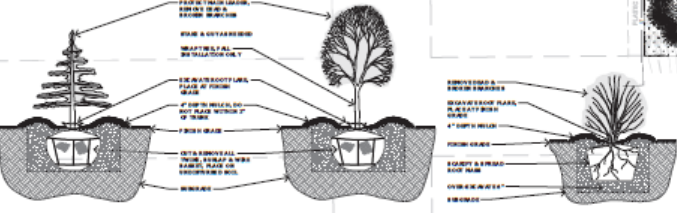
NO. DESCRIPTION

- NOTES**
- OBTAIN ALL NECESSARY PERMITS FOR PLANTING IN ALL R.O.W. AND VERIFY ALL UTILITIES WHICH MAY AFFECT THESE WORKS.
  - COMPLETE WORK PER OWNERS CONSTRUCTION SCHEDULE AND COORDINATE WORK WITH OTHERS ON SITE.
  - ALL PLANT MATERIALS TO BE GUARANTEED ONE (1) FULL YEAR FROM THE COMPLETION AND ACCEPTANCE BY OWNER, WITH ONE YEAR REPLACEMENT AT APPROXIMATE TIME.
  - REPLACEMENT TOP SOIL (WHEN REQUIRED) SHOULD BE CLEAN, FREE OF DEBRIS, ROCKS AND WEEDS.
  - VERIFY TOP SOIL DEPTH AND ACCEPT BY OWNER OF ANY DEFICIENCY.
  - SOIL TO BE A HOMOGENEOUS UNIFORM VARIETY. NO GUARANTEE ON SOIL EXCEPT SOIL THAT IS NOT ACCEPTABLE AT TIME OF COMPLETION. STAKE SOIL ON SLOPES 3:1 AND GREATER.
  - WHERE EXISTING HARDSCAPE AREAS ARE TO BE REPLACED WITH LANDSCAPE, PROVISIONS SHOULD BE TAKEN TO COORDINATE EXCAVATION OF SUBSOIL TO A DEPTH OF 4" WITH GRADING CONTRACTOR. REPLACE WITH COMPACTED TOPSOIL. ALSO LEAVE TO BE LANDSCAPED AND SOILED SHALL BE GRADED SMOOTH AND EVEN.
  - SOIL AREAS WHICH ARE DISTURBED BY CONSTRUCTION INCLUDING ALL S.O.W. AND ADJACENT PROPERTIES.
  - PROVIDE MULCH ON ALL SEEDS AREAS THAT ARE SLOPE 3:1. MULCH APPLICATION FOR ALL OTHER SEEDS AREAS SHALL BE 1" DEPTH OR DISCED & TROW DEPENDING ON SEED TYPE.
  - INSTALL BLACK VINYL FIBER REINFORCING ALL PLANTING BEDS AS SHOWN ON PLAN.
  - MULCH TO BE FINELY SCREENED, UNWEED & HARDWOOD ORGANIC MULCH INSTALLED TO 4" DEPTH.
  - NO WEED FABRIC TO BE INSTALLED UNDER MULCH.
  - NO FODDING AROUND TREES OUTSIDE OF BRUSH BEDS.
  - ROCK MULCH SHALL BE 1 1/2" DUMPS WITH WASSER MULCH. INSTALLED TO 3" DEPTH WITH APPROVED WEED FABRIC UNDER.
  - INSTALL IRRIGATION SYSTEM PER IRRIGATION PLAN. IRRIGATION BE SIZES SHOULD ENCOMPASS ALL LANDSCAPE AREAS WITH BIDS AND PLANTINGS. S.O.W. TO BE IRRIGATED FROM SPINNIER HEADS LOCATED WITHIN PROPERTY BOUNDARY. MINIMIZE COVER SPAN.
  - COORDINATE INSTALLATION OF ALL PIPES UNDER OTHER AREAS WITH GENERAL CONTRACTOR.
  - CLEAN ALL ADJACENT AREAS AFTER ALL LANDSCAPE INSTALLATION IS COMPLETE AND ACCEPTED BY OWNER, DAILY CLEANING TO BE COMPLETED IF REQUIRED BY THE MUNICIPALITY.

- LANDSCAPE REQUIREMENTS**
- ONE (1) OVERSTORY TREE PER PARKING LOT ISLAND
  - BUILDING TO BE SETTER LANDSCAPING
  - BOUNDARY TREES AT REGULAR INTERVALS BETWEEN SIDEWALK AND ROAD (MIN. WIDTH 5')

**LANDSCAPE PLANT LEGEND**

SYMBOL	DESCRIPTION	PLANT	SIZE	QUANTITY	NOTES
SY 1	SEMI-DWARF STURGEON	Thuja occidentalis 'Smaragd' (Smaragd Green)	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 2	COMMON HEDERA	Thuja occidentalis 'Smaragd' (Smaragd Green)	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 3	ROUND LEAFED HEDERA	Thuja occidentalis 'Smaragd' (Smaragd Green)	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 4	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 5	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 6	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 7	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 8	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 9	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 10	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 11	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 12	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 13	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 14	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 15	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 16	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 17	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 18	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 19	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W
SY 20	SHRUB HYDRANGEA	Hydrangea macrophylla 'Endless Summer'	3" P.C.M. 800 2400 x 400 W	100	REPLACE NOT 2400 x 400 W



**EXHIBIT B**  
**(Form of Security)**  
*(attached)*

IRREVOCABLE STANDBY LETTER OF CREDIT

DATE: [\_\_\_\_\_]

VERIDIAN CREDIT UNION

LETTER OF CREDIT NO. \_\_\_\_\_ [Letter of Credit Number]

1827 ANSBOROUGH AVE.

WATERLOO, IA 50701

To: City of Maplewood, Minnesota, 1830 County Rd B E, Maplewood, MN 55109  
(Beneficiary)

DEAR SIR OR MADAM: We hereby open our Irrevocable Standby Letter of Credit in your favor, for the account of Roers Maplewood Apartments LLC (the "Borrower") in the aggregate amount of THREE HUNDRED FOURTEEN THOUSAND ONE HUNDRED FIFTEEN and no/100ths US DOLLARS (US\$314,115.00) available by payment of your draft(s) at sight drawn on ourselves substantially in the form attached as Exhibit "A", without accompanying documents except as specified below.

Drafts drawn under this credit must state on their face "Drawn under VERIDIAN CREDIT UNION Irrevocable Letter of Credit Number \_\_\_\_\_ [Letter of Credit Number] dated [\_\_\_\_\_]."

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit, for all or any part of this credit, shall be duly honored if presented at this office on or before 4:00 p.m. on [\_\_\_\_\_].

The following documents must be presented at our office on or before the expiry date in accordance with the terms and conditions of this Letter of Credit:

1. Sight Draft substantially in the form attached as Exhibit "A".
2. A certificate signed or purporting to be signed by the city manager or assistant city manager of Beneficiary substantially in the form of Exhibit "B" attached hereto stating as follows: "The *amount* is due."

We will accept such statement as binding and correct without having to investigate or having to be responsible for the accuracy, truthfulness, conclusory correctness or validity thereof or any part thereof and notwithstanding the claim of any person to the contrary.

It is a condition of this Letter of Credit that it shall be deemed automatically extended for one (1) year from the present and any future expiry date hereof, unless we shall notify you by certified mail dated at least forty-five (45) days prior to such date that we elect not to renew this Letter of Credit, such notice to be effective upon your receipt. Upon receipt by you of such notice, you may draw hereunder in accordance with the terms and conditions set forth herein.

Upon the earlier of (i) our honoring your draft(s) totaling \$314,115.00 in the aggregate presented on or before this Letter of Credit expires pursuant to the terms herein, or (ii) the surrender to us by you of this Letter of Credit for cancellation, this Letter of Credit shall automatically terminate.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, established by the International Chamber of Commerce, Publication No. 500, as in effect on the date of issuance of this credit.

This Letter of Credit is not assignable.

This is a notation Letter of Credit. Each draft hereunder must be indorsed on the reverse of this Letter of Credit, each draft must indicate that such notation has been made, and this Letter of Credit must be attached to the final draft when the credit is exhausted. This Letter of Credit may be drawn on only if Borrower fails to comply with that certain Development Agreement (Landscaping Improvements) dated \_\_\_\_\_, 2024, by and between Developer and the City of Maplewood, a Minnesota municipal corporation (such agreement, the "Development Agreement") only in the dollar amount needed to bring Borrower into compliance with the Development Agreement.

Josh Boyce

SINCERELY,

---

Josh Boyce, Commercial Loan Officer

EXHIBIT A  
SIGHT DRAFT

DATE:

NUMBER: \_\_\_\_\_ [Letter of Credit Number]

VERIDIAN CREDIT UNION

AT SIGHT:

PAY TO THE ORDER OF CITY OF MAPLEWOOD, MINNESOTA, 1830 COUNTY RD B E,  
MAPLEWOOD, MN 55109 THE SUM OF US \_\_\_\_\_ AND 00/100  
DOLLARS (US\$ \_\_\_\_\_). "DRAWN UNDER VERIDIAN CREDIT UNION  
IRREVOCABLE LETTER OF CREDIT NUMBER \_\_\_\_\_ [Letter of  
Credit Number] DATED [\_\_\_\_\_]."

By \_\_\_\_\_  
Title \_\_\_\_\_

EXHIBIT B  
LETTERHEAD OF BENEFICIARY

To: VERIDIAN CREDIT UNION

Letter of Credit Operations

Attention: Re: Irrevocable Standby Letter of Credit No. \_\_\_\_\_ [Letter of Credit Number]

Gentlemen:

In accordance with the terms of the referenced Letter of Credit, in my capacity as \_\_\_\_\_, [City Manager / Assistant City Manager] of the City of Maplewood, a Minnesota municipal corporation, I hereby certify that:

"THE AMOUNT IS DUE."

You are further directed to wire to the full sum of \_\_\_\_\_ Dollars (US\$ \_\_\_\_\_) on this date as follows:

ABA No. \_\_\_\_\_

Attention: \_\_\_\_\_

The sight draft payable to City of Maplewood, Minnesota is attached hereto as the following page.

Original standby Letter of Credit no. \_\_\_\_\_ [Letter of Credit Number] (with amendments, if any) is enclosed.

Sincerely, \_\_\_\_\_

\_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_



**CITY COUNCIL STAFF REPORT**  
Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Brian Bierdeman, Director of Public Safety  
Lois Knutson, Senior Administrative Manager

**PRESENTER:** Brian Bierdeman, Director of Public Safety

**AGENDA ITEM:** Criminal Justice Data Network

- a. Resolution Approving State of Minnesota Joint Powers Agreements with the City of Maplewood on Behalf of its City Attorney
- b. State of Minnesota Joint Powers Agreement for Criminal Justice Data Network
- c. Court Data Services Subscriber Amendment to CJDN Subscriber Agreement

**Action Requested:**  Motion       Discussion       Public Hearing

**Form of Action:**       Resolution       Ordinance       Contract/Agreement       Proclamation

**Policy Issue:**

The City needs to renew our Master Joint Powers Agreement (JPA) and Court Services Amendment, as the previous agreements have expired. The purpose of the Master JPA and Court Data Services Amendment is to allow for continued access to BCA data, systems, and tools for criminal justice purposes, through the BCA's criminal justice data communications network (CJDN).

**Recommended Action:**

- a. Motion to approve the Resolution Approving State of Minnesota Joint Powers Agreements with the City of Maplewood on Behalf of its City Attorney – Prosecution Services.
- b. Motion to approve the State of Minnesota Joint Powers Agreement for Criminal Justice Data Network.
- c. Motion to approve Court Data Services Subscriber Amendment to CJDN Subscriber Agreement.

**Fiscal Impact:**

Is There a Fiscal Impact?     No     Yes, the true or estimated cost is 0.00

Financing source(s):     Adopted Budget     Budget Modification     New Revenue Source  
 Use of Reserves     Other: n/a

**Strategic Plan Relevance:**

Community Inclusiveness       Financial & Asset Mgmt       Environmental Stewardship

Integrated Communication       Operational Effectiveness       Targeted Redevelopment

N/A

**Background:**

An updated Joint Powers Agreement with the Bureau of Criminal Apprehension and the State of Minnesota must be signed for the City Attorney – Prosecution Services to continue to receive access to criminal justice data communications. Access to this information is required for the prosecutor to perform their duties.

**Attachments:**

1. Resolution Approving State of Minnesota Joint Powers Agreements with the City of Maplewood on Behalf of its City Attorney – Prosecution Services
2. State of Minnesota Joint Powers Agreement for Criminal Justice Data Network
3. Court Data Services Subscriber Amendment to CJDN Subscriber Agreement

**RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS AGREEMENTS WITH  
THE CITY OF MAPLEWOOD ON BEHALF OF ITS PROSECUTING ATTORNEY AND  
POLICE DEPARTMENT**

WHEREAS, the City of Maplewood, MN on behalf of its Prosecuting Attorney and Police Department desires to enter into Joint Powers Agreements with the State of Minnesota, Department of Public Safety, Bureau of Criminal Apprehension to use systems and tools available over the State's criminal justice data communications network for which the City is eligible. The Joint Powers Agreements further provide the City with the ability to add, modify and delete connectivity, systems and tools over the five-year life of the agreement and obligates the City to pay the costs for the network connection.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Maplewood, Minnesota as follows:

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Maplewood on behalf of its Prosecuting Attorney and Police Department, are hereby approved.
2. That the Director of Public Safety, Brian Bierdeman, or his or her successor, is designated the Authorized Representative for the Police Department. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
3. That the Prosecuting Attorney, Joseph Kelley, or his or her successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City's connection to the systems and tools offered by the State.
4. That Marylee Abrams, the Mayor for the City of Maplewood, and Andrea Sindt, the City Clerk, are authorized to sign the State of Minnesota Joint Powers Agreements.

Passed and Adopted by the Council on this 22<sup>nd</sup> day of April, 2024.



# State of Minnesota Joint Powers Agreement

This Agreement is between the State of Minnesota, acting through its Department of Public Safety on behalf of the Bureau of Criminal Apprehension ("BCA"), and the City of Maplewood of behalf of its Prosecuting Attorney ("Governmental Unit"). The BCA and the Governmental Unit may be referred to jointly as "Parties."

## Recitals

Under Minn. Stat. § 471.59, the BCA and the Governmental Unit are empowered to engage in agreements that are necessary to exercise their powers. Under Minn. Stat. § 299C.46, the BCA must provide a criminal justice data communications network to benefit political subdivisions as defined under Minn. Stat. § 299C.46, subd. 2 and subd. 2(a). The Governmental Unit is authorized by law to utilize the criminal justice data communications network pursuant to the terms set out in this Agreement. In addition, BCA either maintains repositories of data or has access to repositories of data that benefit authorized political subdivisions in performing their duties. The Governmental Unit wants to access data in support of its official duties.

The purpose of this Agreement is to create a method by which the Governmental Unit has access to those systems and tools for which it has eligibility, and to memorialize the requirements to obtain access and the limitations on the access.

## Agreement

### 1 Term of Agreement

- 1.1 **Effective Date.** This Agreement is effective on the date the BCA obtains all required signatures under Minn. Stat. § 16C.05, subdivision 2.
- 1.2 **Expiration Date.** This Agreement expires five years from the date it is effective.

### 2 Agreement Between the Parties

- 2.1 **General Access.** BCA agrees to provide Governmental Unit with access to the Minnesota Criminal Justice Data Communications Network (CJDN) and those systems and tools which the Governmental Unit is authorized by law to access via the CJDN for the purposes outlined in Minn. Stat. § 299C.46.
- 2.2 **Methods of Access.**

The BCA offers three (3) methods of access to its systems and tools. The methods of access are:

- A. **Direct access** occurs when individual users at the Governmental Unit use the Governmental Unit's equipment to access the BCA's systems and tools. This is generally accomplished by an individual user entering a query into one of BCA's systems or tools.
- B. **Indirect Access** occurs when individual users at the Governmental Unit go to another Governmental Unit to obtain data and information from BCA's systems and tools. This method of access generally results in the Governmental Unit with indirect access obtaining the needed data and information in a physical format like a paper report.
- C. **Computer-to-Computer System Interface** occurs when the Governmental Unit's computer exchanges data and information with BCA's computer systems and tools using an interface. Without limitation, interface types include: state message switch, web services, enterprise service bus and message queuing.

For purposes of this Agreement, Governmental Unit employees or contractors may use any of these methods to use BCA's systems and tools as described in this Agreement. Governmental Unit will select a

method of access and can change the methodology following the process in Clause 2.10.

- 2.3 Federal Systems Access.** In addition, pursuant to 28 CFR §20.30-38 and Minn. Stat. §299C.58, BCA may provide Governmental Unit with access to the Federal Bureau of Investigation (FBI) National Crime Information Center.
- 2.4 Governmental Unit Policies.** Both the BCA and the FBI's Criminal Justice Information Systems (FBI-CJIS) have policies, regulations and laws on access, use, audit, dissemination, hit confirmation, logging, quality assurance, screening (pre-employment), security, timeliness, training, use of the system, and validation. Governmental Unit has created its own policies to ensure that Governmental Unit's employees and contractors comply with all applicable requirements. Governmental Unit ensures this compliance through appropriate enforcement. These BCA and FBI-CJIS policies and regulations, as amended and updated from time to time, are incorporated into this Agreement by reference. The policies are available at <https://bcanextest.x.state.mn.us/launchpad/>.
- 2.5 Governmental Unit Resources.** To assist Governmental Unit in complying with the federal and state requirements on access to and use of the various systems and tools, information is available at <https://sps.x.state.mn.us/sites/bcaservicecatalog/default.aspx>. Additional information on appropriate use is found in the Minnesota Bureau of Criminal Apprehension Policy on Appropriate Use of Systems and Data available at <https://bcanextest.x.state.mn.us/launchpad/cjisdocs/docs.cgi?cmd=FS&ID=795&TYPE=DOCS>.
- 2.6 Access Granted.**
- A. Governmental Unit is granted permission to use all current and future BCA systems and tools for which Governmental Unit is eligible. Eligibility is dependent on Governmental Unit (i) satisfying all applicable federal or state statutory requirements; (ii) complying with the terms of this Agreement; and (iii) acceptance by BCA of Governmental Unit's written request for use of a specific system or tool.
  - B. To facilitate changes in systems and tools, Governmental Unit grants its Authorized Representative authority to make written requests for those systems and tools provided by BCA that the Governmental Unit needs to meet its criminal justice obligations and for which Governmental Unit is eligible.
- 2.7 Future Access.** On written request from the Governmental Unit, BCA also may provide Governmental Unit with access to those systems or tools which may become available after the signing of this Agreement, to the extent that the access is authorized by applicable state and federal law. Governmental Unit agrees to be bound by the terms and conditions contained in this Agreement that when utilizing new systems or tools provided under this Agreement.
- 2.8 Limitations on Access.** BCA agrees that it will comply with applicable state and federal laws when making information accessible. Governmental Unit agrees that it will comply with applicable state and federal laws when accessing, entering, using, disseminating, and storing data. Each party is responsible for its own compliance with the most current applicable state and federal laws.
- 2.9 Supersedes Prior Agreements.** This Agreement supersedes any and all prior agreements between the BCA and the Governmental Unit regarding access to and use of systems and tools provided by BCA.
- 2.10 Requirement to Update Information.** The parties agree that if there is a change to any of the information whether required by law or this Agreement, the party will send the new information to the other party in writing within 30 days of the change. This clause does not apply to changes in systems or tools provided under this Agreement.

This requirement to give notice additionally applies to changes in the individual or organization serving the Governmental Unit as its prosecutor. Any change in performance of the prosecutorial function must be provided to the BCA in writing by giving notice to the Service Desk, [BCA.ServiceDesk@state.mn.us](mailto:BCA.ServiceDesk@state.mn.us).

- 2.11 Transaction Record.** The BCA creates and maintains a transaction record for each exchange of data utilizing its systems and tools. In order to meet FBI-CJIS requirements and to perform the audits described in Clause 7, there must be a method of identifying which individual users at the Governmental Unit conducted a

particular transaction.

If Governmental Unit uses either direct access as described in Clause 2.2A or indirect access as described in Clause 2.2B, BCA's transaction record meets FBI-CJIS requirements.

When Governmental Unit's method of access is a computer-to-computer interface as described in Clause 2.2C, the Governmental Unit must keep a transaction record sufficient to satisfy FBI-CJIS requirements and permit the audits described in Clause 7 to occur.

If a Governmental Unit accesses data from the Driver and Vehicle Services Division in the Minnesota Department of Public Safety and keeps a copy of the data, Governmental Unit must have a transaction record of all subsequent access to the data that are kept by the Governmental Unit. The transaction record must include the individual user who requested access, and the date, time and content of the request. The transaction record must also include the date, time and content of the response along with the destination to which the data were sent. The transaction record must be maintained for a minimum of six (6) years from the date the transaction occurred and must be made available to the BCA within one (1) business day of the BCA's request.

- 2.12 Court Information Access.** Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Governmental Unit if the Governmental Unit completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by the Governmental Unit under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Governmental Unit's access to and/or submission of the Court Records delivered through the BCA systems and tools.
- 2.13 Vendor Personnel Screening.** The BCA will conduct all vendor personnel screening on behalf of Governmental Unit as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Governmental Unit.

### **3 Payment**

The Governmental Unit currently accesses the criminal justice data communications network described in Minn. Stat. §299C.46. At the time this Agreement is signed, BCA understands that a third party will be responsible for the cost of access.

The Governmental Unit will identify the third party and provide the BCA with the contact information and its contact person for billing purposes so that billing can be established. The Governmental Unit will provide updated information to BCA's Authorized Representative within ten business days when this information changes.

If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, additional fees, if any, are addressed in that amendment.

### **4 Authorized Representatives**

The BCA's Authorized Representative is the person below, or her successor:

Name:	Diane Bartell, Deputy Superintendent
Address:	Minnesota Department of Public Safety; Bureau of Criminal Apprehension 1430 Maryland Avenue

Saint Paul, MN 55106  
Telephone: 651.793.2590  
Email Address: [Diane.Bartell@state.mn.us](mailto:Diane.Bartell@state.mn.us)

The Governmental Unit's Authorized Representative is the person below, or his/her successor:

Name: Joseph Kelly, Attorney  
Address: 2350 Wycliff St, Ste 200  
St. Paul, MN 55114  
Telephone: 651.224.3781  
Email Address: [jkelly@kellyandlemmons.com](mailto:jkelly@kellyandlemmons.com)

**5 Assignment, Amendments, Waiver, and Agreement Complete**

- 5.1 Assignment.** Neither party may assign nor transfer any rights or obligations under this Agreement.
- 5.2 Amendments.** Any amendment to this Agreement, except those described in Clauses 2.6 and 2.7 above must be in writing and will not be effective until it has been signed and approved by the same parties who signed and approved the original agreement, their successors in office, or another individual duly authorized.
- 5.3 Waiver.** If either party fails to enforce any provision of this Agreement, that failure does not waive the provision or the right to enforce it.
- 5.4 Agreement Complete.** This Agreement contains all negotiations and agreements between the BCA and the Governmental Unit. No other understanding regarding this Agreement, whether written or oral, may be used to bind either party.

**6 Liability**

Each party will be responsible for its own acts and behavior and the results thereof and shall not be responsible or liable for the other party's actions and consequences of those actions. The Minnesota Torts Claims Act, Minn. Stat. § 3.736 and other applicable laws govern the BCA's liability. The Minnesota Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws, governs the Governmental Unit's liability.

**7 Audits**

**7.1** Under Minn. Stat. § 16C.05, subd. 5, the Governmental Unit's books, records, documents, internal policies and accounting procedures and practices relevant to this Agreement are subject to examination by the BCA, the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.

Under Minn. Stat. § 6.551, the State Auditor may examine the books, records, documents, and accounting procedures and practices of BCA. The examination shall be limited to the books, records, documents, and accounting procedures and practices that are relevant to this Agreement.

- 7.2** Under applicable state and federal law, the Governmental Unit's records are subject to examination by the BCA to ensure compliance with laws, regulations and policies about access, use, and dissemination of data.
- 7.3** If the Governmental Unit accesses federal databases, the Governmental Unit's records are subject to examination by the FBI and BCA; the Governmental Unit will cooperate with FBI and BCA auditors and make any requested data available for review and audit.
- 7.4** If the Governmental Unit accesses state databases, the Governmental Unit's records are subject to examination by the BCA; the Governmental Unit will cooperate with the BCA auditors and make any requested data available for review and audit.

- 7.5** To facilitate the audits required by state and federal law, Governmental Unit is required to have an inventory of the equipment used to access the data covered by this Agreement and the physical location of each.

## **8 Government Data Practices**

- 8.1 BCA and Governmental Unit.** The Governmental Unit and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Governmental Unit or the BCA.
- 8.2 Court Records.** If Governmental Unit chooses to execute the Court Data Services Subscriber Amendment referred to in Clause 2.12 in order to access and/or submit Court Records via BCA's systems, the following provisions regarding data practices also apply. The Court is not subject to Minn. Stat. Ch. 13 but is subject to the *Rules of Public Access to Records of the Judicial Branch* promulgated by the Minnesota Supreme Court. All parties acknowledge and agree that Minn. Stat. § 13.03, subdivision 4(e) requires that the BCA and the Governmental Unit comply with the *Rules of Public Access* for those data received from Court under the Court Data Services Subscriber Amendment. All parties also acknowledge and agree that the use of, access to or submission of Court Records, as that term is defined in the Court Data Services Subscriber Amendment, may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law. All parties acknowledge and agree that these applicable restrictions must be followed in the appropriate circumstances.

## **9 Investigation of Alleged Violations; Sanctions**

For purposes of this clause, "Individual User" means an employee or contractor of Governmental Unit.

- 9.1 Investigation.** The Governmental Unit and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Governmental Unit and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Governmental Unit of the suspected violation, subject to any restrictions in applicable law. When Governmental Unit becomes aware that a violation has occurred, Governmental Unit will inform BCA subject to any restrictions in applicable law.
- 9.2 Sanctions Involving Only BCA Systems and Tools.**  
The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Governmental Unit internal discipline processes, including those governed by a collective bargaining agreement.
- 9.2.1** For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Governmental Unit must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Governmental Unit must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Governmental Unit and BCA's determination controls.
- 9.2.2** If BCA determines that Governmental Unit has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Governmental Unit's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.



### 9.3 Sanctions Involving Only Court Data Services

The following provisions apply to those systems and tools covered by the Court Data Services Subscriber Amendment, if it has been signed by Governmental Unit. As part of the agreement between the Court and the BCA for the delivery of the systems and tools that are covered by the Court Data Services Subscriber Amendment, BCA is required to suspend or terminate access to or use of the systems and tools either on its own initiative or when directed by the Court. The decision to suspend or terminate access may be made as soon as an alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. The decision to suspend or terminate may also be made based on a request from the Authorized Representative of Governmental Unit. The agreement further provides that only the Court has the authority to reinstate access and use.

**9.3.1** Governmental Unit understands that if it has signed the Court Data Services Subscriber Amendment and if Governmental Unit's Individual Users violate the provisions of that Amendment, access and use will be suspended by BCA or Court. Governmental Unit also understands that reinstatement is only at the direction of the Court.

**9.3.2** Governmental Unit further agrees that if Governmental Unit believes that one or more of its Individual Users have violated the terms of the Amendment, it will notify BCA and Court so that an investigation as described in Clause 9.1 may occur.

## 10 Venue

Venue for all legal proceedings involving this Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

## 11 Termination

**11.1 Termination.** The BCA or the Governmental Unit may terminate this Agreement at any time, with or without cause, upon 30 days' written notice to the other party's Authorized Representative.

**11.2 Termination for Insufficient Funding.** Either party may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written notice to the other party's authorized representative. The Governmental Unit is not obligated to pay for any services that are provided after notice and effective date of termination. However, the BCA will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. Neither party will be assessed any penalty if the agreement is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. Notice of the lack of funding must be provided within a reasonable time of the affected party receiving that notice.

## 12 Continuing Obligations

The following clauses survive the expiration or cancellation of this Agreement: Liability; Audits; Government Data Practices; 9. Investigation of Alleged Violations; Sanctions; and Venue.

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**The Parties indicate their agreement and authority to execute this Agreement by signing below.**

**1. GOVERNMENTAL UNIT**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

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

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

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

**2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL APPREHENSION**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

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

**3. COMMISSIONER OF ADMINISTRATION**

As delegated to the Office of State Procurement

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

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

## COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

This Court Data Services Subscriber Amendment (“Subscriber Amendment”) is entered into by the State of Minnesota, acting through its Department of Public Safety, Bureau of Criminal Apprehension, (“BCA”) and the City of Maplewood on behalf of its Prosecuting Attorney (“Agency”), and by and for the benefit of the State of Minnesota acting through its State Court Administrator’s Office (“Court”) who shall be entitled to enforce any provisions hereof through any legal action against any party.

### Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 191046, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

The CJDN Subscriber Agreement is amended by the addition of the following provisions:

1. **TERM; TERMINATION; ONGOING OBLIGATIONS.** This Subscriber Amendment shall be effective on the date finally executed by all parties and shall remain in effect until expiration or termination of the CJDN Subscriber Agreement unless terminated earlier as provided in this Subscriber Amendment. Any party may terminate this Subscriber Amendment with or without cause by giving written notice to all other parties. The effective date of the termination shall be thirty days after the other party's receipt of the notice of termination, unless a later date is specified in the notice. The provisions of sections 5 through 9, 12.b., 12.c., and 15 through 24 shall survive any termination of this Subscriber Amendment as shall any other provisions which by their nature are intended or expected to survive such termination. Upon termination, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

2. **Definitions.** Unless otherwise specifically defined, each term used herein shall have the meaning assigned to such term in the CJDN Subscriber Agreement.

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an

Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

**b. “Court Data Services”** means one or more of the services set forth on the Justice Agency Resource webpage of the Minnesota Judicial Branch website (for which the current address is [www.courts.state.mn.us](http://www.courts.state.mn.us)) or other location designated by the Court, as the same may be amended from time to time by the Court.

**c. “Court Records”** means all information in any form made available by the Court to Subscriber through the BCA for the purposes of carrying out this Subscriber Amendment, including:

- i. **“Court Case Information”** means any information in the Court Records that conveys information about a particular case or controversy, including without limitation Court Confidential Case Information, as defined herein.
- ii. **“Court Confidential Case Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that conveys information about a particular case or controversy.
- iii. **“Court Confidential Security and Activation Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access and that explains how to use or gain access to Court Data Services, including but not limited to login account names, passwords, TCP/IP addresses, Court Data Services user manuals, Court Data Services Programs, Court Data Services Databases, and other technical information.
- iv. **“Court Confidential Information”** means any information in the Court Records that is inaccessible to the public pursuant to the Rules of Public Access, including without limitation both i) Court Confidential Case Information; and ii) Court Confidential Security and Activation Information.

**d. “DCA”** shall mean the district courts of the state of Minnesota and their respective staff.

**e. “Policies & Notices”** means the policies and notices published by the Court in connection with each of its Court Data Services, on a website or other location designated by the Court, as the same may be amended from time to time by the Court. Policies & Notices for each Authorized Court Data Service identified in an approved request form under section 3, below, are hereby made part of this Subscriber Amendment by this reference and provide additional terms and conditions that govern Subscriber’s use of Court Records accessed through such services, including but not limited to provisions on access and use limitations.

**f. “Rules of Public Access”** means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records* or *Limits on Public Access to*

*Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is [www.courts.state.mn.us](http://www.courts.state.mn.us).

**g.** “**Court**” shall mean the State of Minnesota, State Court Administrator's Office.

**h.** “**Subscriber**” shall mean the Agency.

**i.** “**Subscriber Records**” means any information in any form made available by the Subscriber to the Court for the purposes of carrying out this Subscriber Amendment.

**3. REQUESTS FOR AUTHORIZED COURT DATA SERVICES.** Following execution of this Subscriber Amendment by all parties, Subscriber may submit to the BCA one or more separate requests for Authorized Court Data Services. The BCA is authorized in the Master Authorization Agreement to process, credential and approve such requests on behalf of Court and all such requests approved by the BCA are adopted and incorporated herein by this reference the same as if set forth verbatim herein.

**a. Activation.** Activation of the requested Authorized Court Data Service(s) shall occur promptly following approval.

**b. Rejection.** Requests may be rejected for any reason, at the discretion of the BCA and/or the Court.

**c. Requests for Termination of One or More Authorized Court Data Services.** The Subscriber may request the termination of an Authorized Court Data Services previously requested by submitting a notice to Court with a copy to the BCA. Promptly upon receipt of a request for termination of an Authorized Court Data Service, the BCA will deactivate the service requested. The termination of one or more Authorized Court Data Services does not terminate this Subscriber Amendment. Provisions for termination of this Subscriber Amendment are set forth in section 1. Upon termination of Authorized Court Data Services, the Subscriber shall perform the responsibilities set forth in paragraph 7(f) hereof.

**4. SCOPE OF ACCESS TO COURT RECORDS LIMITED.** Subscriber’s access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber’s duties required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber’s access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

**5. GUARANTEES OF CONFIDENTIALITY.** Subscriber agrees:

**a.** To not disclose Court Confidential Information to any third party except where necessary to carry out the Subscriber's duties as required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body.

**b.** To take all appropriate action, whether by instruction, agreement, or otherwise, to insure the protection, confidentiality and security of Court Confidential Information and to satisfy Subscriber's obligations under this Subscriber Amendment.

**c.** To limit the use of and access to Court Confidential Information to Subscriber's bona fide personnel whose use or access is necessary to effect the purposes of this Subscriber Amendment, and to advise each individual who is permitted use of and/or access to any Court Confidential Information of the restrictions upon disclosure and use contained in this Subscriber Amendment, requiring each individual who is permitted use of and/or access to Court Confidential Information to acknowledge in writing that the individual has read and understands such restrictions. Subscriber shall keep such acknowledgements on file for one year following termination of the Subscriber Amendment and/or CJDN Subscriber Agreement, whichever is longer, and shall provide the Court with access to, and copies of, such acknowledgements upon request. For purposes of this Subscriber Amendment, Subscriber's bona fide personnel shall mean individuals who are employees of Subscriber or provide services to Subscriber either on a voluntary basis or as independent contractors with Subscriber.

**d.** That, without limiting section 1 of this Subscriber Amendment, the obligations of Subscriber and its bona fide personnel with respect to the confidentiality and security of Court Confidential Information shall survive the termination of this Subscriber Amendment and the CJDN Subscriber Agreement and the termination of their relationship with Subscriber.

**e.** That, notwithstanding any federal or state law applicable to the nondisclosure obligations of Subscriber and Subscriber's bona fide personnel under this Subscriber Amendment, such obligations of Subscriber and Subscriber's bona fide personnel are founded independently on the provisions of this Subscriber Amendment.

**6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS.** Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

**7. LICENSE AND PROTECTION OF PROPRIETARY RIGHTS.** During the term of this Subscriber Amendment, subject to the terms and conditions hereof, the Court hereby grants to Subscriber a nonexclusive, nontransferable, limited license to use Court Data Services Programs and Court Data Services Databases to access or receive the Authorized Court Data Services identified in an approved request form under section 3, above, and related Court Records. Court reserves the right to make modifications to the Authorized Court Data Services, Court Data Services Programs, and Court Data Services Databases, and related materials without notice to Subscriber. These modifications shall be treated in all respects as their previous counterparts.

**a. Court Data Services Programs.** Court is the copyright owner and licensor of the Court Data Services Programs. The combination of ideas, procedures, processes, systems, logic, coherence and methods of operation embodied within the Court Data Services Programs, and all information contained in documentation pertaining to the Court Data Services Programs, including but not limited to manuals, user documentation, and passwords, are trade secret information of Court and its licensors.

**b. Court Data Services Databases.** Court is the copyright owner and licensor of the Court Data Services Databases and of all copyrightable aspects and components thereof. All specifications and information pertaining to the Court Data Services Databases and their structure, sequence and organization, including without limitation data schemas such as the Court XML Schema, are trade secret information of Court and its licensors.

**c. Marks.** Subscriber shall neither have nor claim any right, title, or interest in or use of any trademark used in connection with Authorized Court Data Services, including but not limited to the marks “MNCIS” and “Odyssey.”

**d. Restrictions on Duplication, Disclosure, and Use.** Trade secret information of Court and its licensors will be treated by Subscriber in the same manner as Court Confidential Information. In addition, Subscriber will not copy any part of the Court Data Services Programs or Court Data Services Databases, or reverse engineer or otherwise attempt to discern the source code of the Court Data Services Programs or Court Data Services Databases, or use any trademark of Court or its licensors, in any way or for any purpose not specifically and expressly authorized by this Subscriber Amendment. As used herein, "trade secret information of Court and its licensors" means any information possessed by Court which derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. "Trade secret information of Court and its licensors" does not, however, include information which was known to Subscriber prior to Subscriber's receipt thereof, either directly or indirectly, from Court or its licensors, information which is independently developed by Subscriber without reference to or use of information received from Court or its licensors, or information which would not qualify as a trade secret under Minnesota law. It will not be a violation of this section 7, sub-section d, for Subscriber to make up to one copy of training materials and configuration documentation, if any, for each individual authorized to access, use, or configure Authorized Court Data Services, solely for its own use in connection with this Subscriber Amendment. Subscriber will take all steps reasonably necessary to protect the copyright, trade secret, and trademark rights of Court and its licensors and Subscriber will advise its bona fide personnel who are permitted access to any of the Court Data Services Programs and Court Data Services Databases, and trade secret information of Court and its licensors, of the restrictions upon duplication, disclosure and use contained in this Subscriber Amendment.

**e. Proprietary Notices.** Subscriber will not remove any copyright or proprietary notices included in and/or on the Court Data Services Programs or Court Data Services Databases, related documentation, or trade secret information of Court and its licensors, or any part thereof, made available by Court directly or through the BCA, if any, and Subscriber will include in and/or on any copy of the Court Data Services Programs or Court Data Services Databases, or trade secret information of Court and its licensors and any documents pertaining thereto, the same copyright and other proprietary notices as appear on the copies made

available to Subscriber by Court directly or through the BCA, except that copyright notices shall be updated and other proprietary notices added as may be appropriate.

**f. Title; Return.** The Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration material, if any, and logon account information and passwords, if any, made available by the Court to Subscriber directly or through the BCA and all copies, including partial copies, thereof are and remain the property of the respective licensor. Except as expressly provided in section 12.b., within ten days of the effective date of termination of this Subscriber Amendment or the CJDN Subscriber Agreement or within ten days of a request for termination of Authorized Court Data Service as described in section 4, Subscriber shall either: (i) uninstall and return any and all copies of the applicable Court Data Services Programs and Court Data Services Databases, and related documentation, including but not limited to training and configuration materials, if any, and logon account information, if any; or (2) destroy the same and certify in writing to the Court that the same have been destroyed.

**8. INJUNCTIVE RELIEF.** Subscriber acknowledges that the Court, Court's licensors, and DCA will be irreparably harmed if Subscriber's obligations under this Subscriber Amendment are not specifically enforced and that the Court, Court's licensors, and DCA would not have an adequate remedy at law in the event of an actual or threatened violation by Subscriber of its obligations. Therefore, Subscriber agrees that the Court, Court's licensors, and DCA shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Subscriber or its bona fide personnel without the necessity of the Court, Court's licensors, or DCA showing actual damages or that monetary damages would not afford an adequate remedy. Unless Subscriber is an office, officer, agency, department, division, or bureau of the state of Minnesota, Subscriber shall be liable to the Court, Court's licensors, and DCA for reasonable attorneys fees incurred by the Court, Court's licensors, and DCA in obtaining any relief pursuant to this Subscriber Amendment.

**9. LIABILITY.** Subscriber and the Court agree that, except as otherwise expressly provided herein, each party will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of any others and the results thereof. Liability shall be governed by applicable law. Without limiting the foregoing, liability of the Court and any Subscriber that is an office, officer, agency, department, division, or bureau of the state of Minnesota shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, section 3.376, and other applicable law. Without limiting the foregoing, if Subscriber is a political subdivision of the state of Minnesota, liability of the Subscriber shall be governed by the provisions of Minn. Stat. Ch. 466 (Tort Liability, Political Subdivisions) or other applicable law. Subscriber and Court further acknowledge that the liability, if any, of the BCA is governed by a separate agreement between the Court and the BCA dated December 13, 2010 with DPS-M -0958.

**10. AVAILABILITY.** Specific terms of availability shall be established by the Court and communicated to Subscriber by the Court and/or the BCA. The Court reserves the right to terminate this Subscriber Amendment immediately and/or temporarily suspend Subscriber's Authorized Court Data Services in the event the capacity of any host computer system or legislative appropriation of funds is determined solely by the Court to be insufficient to meet the computer needs of the courts served by the host computer system.

**11.** [reserved]



**12. ADDITIONAL USER OBLIGATIONS.** The obligations of the Subscriber set forth in this section are in addition to the other obligations of the Subscriber set forth elsewhere in this Subscriber Amendment.

**a. Judicial Policy Statement.** Subscriber agrees to comply with all policies identified in Policies & Notices applicable to Court Records accessed by Subscriber using Authorized Court Data Services. Upon failure of the Subscriber to comply with such policies, the Court shall have the option of immediately suspending the Subscriber's Authorized Court Data Services on a temporary basis and/or immediately terminating this Subscriber Amendment.

**b. Access and Use; Log.** Subscriber shall be responsible for all access to and use of Authorized Court Data Services and Court Records by Subscriber's bona fide personnel or by means of Subscriber's equipment or passwords, whether or not Subscriber has knowledge of or authorizes such access and use. Subscriber shall also maintain a log identifying all persons to whom Subscriber has disclosed its Court Confidential Security and Activation Information, such as user ID(s) and password(s), including the date of such disclosure. Subscriber shall maintain such logs for a minimum period of six years from the date of disclosure, and shall provide the Court with access to, and copies of, such logs upon request. The Court may conduct audits of Subscriber's logs and use of Authorized Court Data Services and Court Records from time to time. Upon Subscriber's failure to maintain such logs, to maintain accurate logs, or to promptly provide access by the Court to such logs, the Court may terminate this Subscriber Amendment without prior notice to Subscriber.

**c. Personnel.** Subscriber agrees to investigate, at the request of the Court and/or the BCA, allegations of misconduct pertaining to Subscriber's bona fide personnel having access to or use of Authorized Court Data Services, Court Confidential Information, or trade secret information of the Court and its licensors where such persons are alleged to have violated the provisions of this Subscriber Amendment, Policies & Notices, Judicial Branch policies, or other security requirements or laws regulating access to the Court Records.

**d. Minnesota Data Practices Act Applicability.** If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

**13. FEES; INVOICES.** Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber

Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

**14. MODIFICATION OF FEES.** Court may modify the fees by amending the Policies & Notices as provided herein, and the modified fees shall be effective on the date specified in the Policies & Notices, which shall not be less than thirty days from the publication of the Policies & Notices. Subscriber shall have the option of accepting such changes or terminating this Subscriber Amendment as provided in section 1 hereof.

**15. WARRANTY DISCLAIMERS.**

**a. WARRANTY EXCLUSIONS.** EXCEPT AS SPECIFICALLY AND EXPRESSLY PROVIDED HEREIN, COURT, COURT'S LICENSORS, AND DCA MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, NOR ARE ANY WARRANTIES TO BE IMPLIED, WITH RESPECT TO THE INFORMATION, SERVICES OR COMPUTER PROGRAMS MADE AVAILABLE UNDER THIS AGREEMENT.

**b. ACCURACY AND COMPLETENESS OF INFORMATION.** WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, COURT, COURT'S LICENSORS, AND DCA MAKE NO WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION CONTAINED IN THE COURT RECORDS.

**16. RELATIONSHIP OF THE PARTIES.** Subscriber is an independent contractor and shall not be deemed for any purpose to be an employee, partner, agent or franchisee of the Court, Court's licensors, or DCA. Neither Subscriber nor the Court, Court's licensors, or DCA shall have the right nor the authority to assume, create or incur any liability or obligation of any kind, express or implied, against or in the name of or on behalf of the other.

**17. NOTICE.** Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

**18. NON-WAIVER.** The failure by any party at any time to enforce any of the provisions of this Subscriber Amendment or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, remedy or option or in any way affect the validity of this Subscriber Amendment. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

**19. FORCE MAJEURE.** Neither Subscriber nor Court shall be responsible for failure or delay in the performance of their respective obligations hereunder caused by acts beyond their reasonable control.

**20. SEVERABILITY.** Every provision of this Subscriber Amendment shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Subscriber Amendment so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Subscriber Amendment, and all other provisions shall remain in full force and effect.

**21. ASSIGNMENT AND BINDING EFFECT.** Except as otherwise expressly permitted herein, neither Subscriber nor Court may assign, delegate and/or otherwise transfer this Subscriber Amendment or any of its rights or obligations hereunder without the prior written consent of the other. This Subscriber Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, including any other legal entity into, by or with which Subscriber may be merged, acquired or consolidated.

**22. GOVERNING LAW.** This Subscriber Amendment shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States and of the State of Minnesota.

**23. VENUE AND JURISDICTION.** Any action arising out of or relating to this Subscriber Amendment, its performance, enforcement or breach will be venued in a state or federal court situated within the State of Minnesota. Subscriber hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for that purpose.

**24. INTEGRATION.** This Subscriber Amendment contains all negotiations and agreements between the parties. No other understanding regarding this Subscriber Amendment, whether written or oral, may be used to bind either party, provided that all terms and conditions of the CJDN Subscriber Agreement and all previous amendments remain in full force and effect except as supplemented or modified by this Subscriber Amendment.

IN WITNESS WHEREOF, the Parties have, by their duly authorized officers, executed this Subscriber Amendment in duplicate, intending to be bound thereby.

**1. SUBSCRIBER (AGENCY)**

Subscriber must attach written verification of authority to sign on behalf of and bind the entity, such as an opinion of counsel or resolution.

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

**2. DEPARTMENT OF PUBLIC SAFETY,  
BUREAU OF CRIMINAL APPREHENSION**

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

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

(with delegated authority)

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

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with delegated authority)

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

**3. COMMISSIONER OF ADMINISTRATION**  
delegated to Materials Management Division

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

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

**4. COURTS**  
Authority granted to Bureau of Criminal Apprehension

Name: \_\_\_\_\_  
(PRINTED)

Signed: \_\_\_\_\_

Title: \_\_\_\_\_  
(with authorized authority)

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

**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager  
**REPORT FROM:** Brian Bierdeman, Public Safety Director  
**PRESENTER:** Brian Bierdeman, Public Safety Director  
**AGENDA ITEM:** Public Safety Cardiovascular and Metabolic Screenings Agreement

**Action Requested:**  Motion  Discussion  Public Hearing  
**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

City Council approval is requested to sign the contract with Sigma Tactical Wellness to conduct Cardiovascular and Metabolic Screenings for Public Safety staff.

**Recommended Action:**

Motion to approve the Public Safety Cardiovascular and Metabolic Screenings Agreement.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is \$64,000.00  
 Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: Public Safety Grant

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

Police Department Strategic Plan Strategy #6: Multi-faceted approach to wellness.

Objective: Promote and facilitate a whole health program specific to law enforcement

**Background:**

Police Officers and First Responders have a life expectancy that is almost 22 years less than the lives of the civilians they serve. Studies have found that the primary reason for this reduced life expectancy is that officers and first responders are far more likely to suffer from heart disease at a younger age than the general population. The average age of a heart attack for the civilian population is 65 years old, while in the law enforcement / first responder community, the average age of a heart attack is 46 years old. In addition, traditional screening methods to identify a risk of heart disease for civilians have not been effective in catching the early signs of heart disease for officers and first responders.

In response to traditional screenings failing to identify risk factors in officers and first responders, Sigma Tactical Wellness has developed a state-of-the-art comprehensive cardiac screening designed to detect early stages of cardiovascular disease before a heart attack or stroke develops. The screening consists of non-invasive vascular imaging, as well as inflammatory biomarker analysis, which has been proven to be superior to traditional cardiovascular screening methods or even coronary artery calcium scoring.

The Maplewood Public Safety Department would like to partner with Sigma Tactical Wellness to conduct voluntary screenings for all Public Safety staff. The cost is \$799 per screening, and this will be entirely funded utilizing funds from the approximately \$1.2 million Public Safety Grant that the city received. We are estimating approximately 80 participants, which would cost approximately \$64,000.

This program aligns directly with the Maplewood Police Department Strategic Plan and demonstrates our continued efforts to find the most innovative solutions to ensure the wellness of our personnel is a top priority.

**Attachments:**

1. Maplewood Public Safety Sigma Services Agreement

**SERVICES AGREEMENT**

This Services Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_ (the “**Effective Date**”) by \_\_\_\_\_ (the “**Client**”) and JS MD Sigma PLLC (“**Sigma**”). Client and Sigma may be referred to individually as a “**Party**” and collectively as the “**Parties.**” The Parties agree as follows:

1. **SIGMA’S SERVICES.** Sigma will perform the services as specified in **Exhibit A** (collectively, the “**Services**”).

2. **BILLING, TAXES, AND INSURANCE**

2.1. As consideration for the Services provided, Client shall pay Sigma fees in accordance with the fee schedule set forth in **Exhibit A (“Fee Schedule”)**. Unless otherwise provided in the Fee Schedule, Sigma will invoice Client for the Services provided, and Client shall pay Sigma’s invoices within thirty (30) days of receipt of invoice. Any late payment will be subject to an interest penalty of the lower of: (a) one percent (1.0%) per month or (b) the maximum rate permissible by law, until paid in full. Client shall complete the Account Set-up Form attached hereto as **Exhibit B** and provide other billing information requested by Sigma.

2.2. Client is responsible for payment of all taxes (including without limitation sales tax) imposed by any federal, state or local governmental entity on the transactions contemplated by this Agreement, excluding only Sigma’s income taxes.

2.3. Both Parties shall maintain at their sole cost and expense during the term of this Agreement adequate insurance customary to each Party’s operations. Each Party shall furnish to the other Party, at such Party’s request, certificates of insurance or other adequate evidence of coverage.

3. **CLIENT’S OBLIGATIONS**

3.1. Client shall (i) allow Sigma to conduct presentations and workshops to educate Client and its workforce regarding the services offered by Sigma; (ii) be responsible for providing, at no cost to Sigma, all equipment, facilities, supplies, utilities, including high-speed internet and telephone service, and other services as Sigma shall reasonably determine from time to time to be necessary for the performance of Services. Client shall consult and collaborate with Sigma with respect to operational needs related to equipment, facilities, supplies, utilities, and other services to be provided pursuant to this Section.

3.2. Client shall be solely responsible for ensuring that all required patient consents and/or acknowledgments are obtained and documented in accordance with best practices and applicable laws and shall inform Sigma immediately of all communications received from regulatory authorities, notices of claims or potential claims related to any Services, and forward any written communications related thereto to Sigma.

4. **COLLABORATION.** Client will meet with Sigma from time to time as requested to collaborate and coordinate on the delivery of the Services.

5. **QUALITY AND COMPLIANCE**

- 5.1. Each Party shall comply with all applicable laws and regulations in effect.
- 5.2. Client agrees to maintain books, records and accounts relating to the receipt of the Services, and Sigma and its auditors shall be provided reasonable access to such books, records, and accounts and the right to perform a limited business review to verify compliance with this Agreement.
- 5.3. The Parties agree that (i) the benefits to each Party under this Agreement do not require, are not payment for, and are not in any way contingent upon referring an individual to a person for the furnishing or arranging for the furnishing of any health care item or service or ordering of any health care item or services; and (ii) the compensation payable under this Agreement is based solely on the fair market value for the Services provided and not upon the volume or value of referrals or any business, if any, generated between the Parties.
- 5.4. Nothing in these terms and conditions shall be construed as permitting Client to exercise control over the professional judgment or professional methods of Sigma and its professionals.

## 6. INTELLECTUAL PROPERTY

- 6.1. Sigma owns all right, title and interest (including patent rights, copyrights, trade secret rights, mask work rights, trademark rights, and all other intellectual property rights of any sort throughout the world) in and to the Services and documentation and derivative works thereof. Any use by Client of Sigma's then-current names, marks, logos, and other identifiers for the Services (i) requires Sigma's prior written approval, (ii) shall comply with Sigma's standards and usage guidelines for such use, and (iii) shall cease upon expiration or termination of this Agreement.
- 6.2. Client agrees to comply with Sigma's branding guidelines with respect to the Services. Client shall not issue any press releases or similar public communication relating to this Agreement or the Services without the prior written approval of Sigma.

## 7. CONFIDENTIALITY

- 7.1. The Parties shall each take all reasonable efforts to ensure that this Agreement and any information related to the business, plans, technology, products or other information of the other Party acquired by virtue of this Agreement shall be kept confidential and shall not be disclosed or made use of except as necessary for the acquiring Party to perform its obligations under this Agreement. The provisions of this clause shall not apply to the extent that the information (i) is required to be used or disclosed to comply with applicable laws or regulations or with a court order, (ii) was in the public domain prior to its use or disclosure, (iii) was independently developed or discovered without use of the other Party's confidential information, or (iv) was revealed by a third party having no obligation of confidentiality with regard to the information.
- 7.2. The Parties shall protect the privacy of all patient health information in accordance with the Privacy and Security Rules promulgated under the Health Insurance Portability and Accountability Act ("HIPAA") as well as other applicable federal and state laws. A Party having knowledge of any unauthorized or improper



uses or disclosures made while performing hereunder shall promptly report such unauthorized use or disclosure to the other Party.

7.3. Notwithstanding anything herein to the contrary, Sigma understands that any data on individuals made available to it shall be administered consistent with Minn. Stat., Chapter 13, the Minnesota Government Data Practices Act.

**DISCLAIMERS AND LIMIT OF LIABILITY**

8. 8.1. SIGMA DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT (I) THE RESULTS OF THE SERVICES SHALL BE FIT FOR ANY PARTICULAR PURPOSE, OR (II) THE SERVICES WILL PRODUCE A PARTICULAR RESULT OR BE 100% SUCCESSFUL OR ACCURATE.

8.2. In the event of any deficiently performed Services, Client’s sole remedy against Sigma in such instance shall be for Sigma to re-perform the Services at its own cost, and Sigma’s total liability to Client (whether for breach of contract, negligence or otherwise) with respect to the Services under the Agreement shall be limited to the revenue it received from Client during this Agreement. Except for damages arising out of willful or reckless conduct or a violation of applicable law, neither Party shall be liable to the other for indirect, incidental, consequential, exemplary or special damages, including without limitation damages for lost profit, regardless of the form of action, whether contract, warranty, strict liability or tort.

8.3. Client represents and warrants that, as of the Effective Date and during the term of this Agreement: (i) Client possesses and agrees to maintain all licenses, registrations and approvals necessary for its performance of this Agreement, and (ii) Client is not precluded by any contract or other obligation from entering into or performing under this Agreement.

**9. TERM AND TERMINATION**

9.1. The initial term of this Agreement commences on the Effective Date and terminates upon the completion of the Services or 04-01-2025, whichever occurs first.

9.2. Either Party may terminate this Agreement without cause upon sixty (60) days’ prior written notice. A Party may terminate this Agreement upon providing the other Party written notice of breach of this Agreement by the other Party, if the other Party fails to cure the breach within fifteen (15) days of receiving the notice of breach. In the event of termination of this Agreement, all compensation for Services performed prior to the date of termination shall be payable to Sigma in accordance with this Agreement.

1. All obligations of a Party set forth in this Agreement that by their nature continue beyond expiration, termination, or cancellation of this Agreement (including, without limitation, the warranties, indemnification obligations, confidentiality requirements and ownership and property rights) shall survive any such expiration, termination or cancellation shall survive expiration, termination, or cancellation of this Agreement for any reason.

2. **NOTICES.** Any notices, demands or consents required or permitted under this Agreement (“**Notices**”) shall be in writing in English, addressed as set forth below, and deemed effectively given: (a) upon personal delivery (with signature evidence of delivery); (b) upon delivery confirmation if sent by prepaid first class registered or certified mail (return receipt requested), or by an internationally-recognized express courier service (providing evidence of delivery); or (c) upon the date of transmission (or the next business day, if it is not a business day), if sent by facsimile or email.

**If to Sigma:** JS MD Sigma PLLC  
1 Championship Drive  
Austin, TX 78738

**If to Client:** City of Maplewood  
\_\_\_\_\_  
1830 County Road B East, Maplewood  
\_\_\_\_\_  
MN 55109  
\_\_\_\_\_

1. **MISCELLANEOUS.** The Parties shall be independent contractors in their performance under this Agreement. This Agreement (including the exhibits attached hereto) constitutes the entire agreement between the Parties with regard to the subject matters hereof and may not be amended or modified without each Party’s agreement in writing. Neither Party may assign or transfer this Agreement and/or the rights and obligations hereunder except that Sigma may assign this Agreement to its affiliates or in connection with the transfer or sale of all or substantially all of its assets, or the assets which are the subject matter of this Agreement, or its merger with another entity. Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the Parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota, without regard to its conflicts of laws provisions. Except as otherwise expressly provided herein, the provisions of this Agreement are for the benefit of the Parties hereto and not for any other person or entity.

*Signature page follows*

**JS MD Sigma PLLC**

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

**Name:** Jonathan Sheinberg \_\_\_\_\_

**Title:** CMO \_\_\_\_\_

**Date:** 01-23-2024 \_\_\_\_\_

**CLIENT**

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

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

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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

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

**Exhibit A**

**SERVICES**

The following shall constitute the “**Services**” for purposes of this Agreement:

- The provision of cardiovascular and metabolic screening to Clients’ workforce members and/or their beneficiaries. Each such screening scheduled to be provided by Sigma to one of Client’s workforce members and/or their beneficiaries is herein referred to as an “**Encounter**”).

**FEE SCHEDULE**

Client shall for members of the City of Maplewood only, pay Sigma **[\$799.00]** \$799 for each cardiovascular and metabolic screening associated with an Encounter that is either:

- Fully rendered by Sigma;
- Initiated but not fully rendered at the request or demand of Client or the workforce member/beneficiary; or
- Not fully rendered by Sigma due to the health condition of the workforce member/beneficiary at the time of presenting for the screening.
- Not rendered by Sigma due to the Encounter being canceled by Client, or the workforce member/beneficiary, within 24 hours of the date and time the screening was scheduled by Sigma to be provided;
- Lab draw completed on individual and no show or appointment cancelled less than 24hrs prior to screening appointment.

Each of the above Encounters shall be deemed a “**Payable Encounter**” for purposes of this Agreement.

Client shall be invoiced and will prepay Sigma for the number of scheduled or reasonably anticipated cardiovascular and metabolic screenings to be provided by Sigma based on the number of Encounters. Invoicing will be sent immediately after lab draws are completed. Sigma will refund Client for any amounts prepaid by Client for any Encounter that after the completion of the Services does not qualify as a Payable Encounter, promptly upon termination of this Agreement. Final aggregate data report will be delivered within 7 days of receipt of payment and completion of program. (Note: some data may not be available when enrollment numbers are low due to participant privacy concerns)

Labs drawn at a patient service center Labs drawn at a Patient Service Center (PSC), outside of pre scheduled department lab draws will incur an additional fee of \$25 per participant to be paid by:

Department  Participant

Clinician appointments cancelled less than 24hrs in advance or 'no show' appointments will be charged a rescheduling fee of \$25 payable by:

Department  Participant

*Exceptions may be granted at the discretion of Sigma representative ie, Line of duty needs*

**Exhibit B****Account Set-up Form****Client General Information**

Client Legal Name	
Street Address	
City, Country, Post Code	
Emergency Contact:	Telephone:
Email:	Tax ID#: 8836897

**Billing Information**

To whose individual attention should invoices be sent?	
At what address?	
Telephone:	Email:



## Exhibit A

### Scope of Work

**Below is the scope services rendered on behalf of Maplewood Police Department for  
Advanced Cardiovascular and Metabolic Screening for**

**eligible participants at the rate of seven hundred and ninety nine DOLLARS  
(\$799.00) per experience.**

**This includes all of the following components:**

- **Exercise electrocardiogram (ECG) with physician interpretation and evaluation.**
- **Cardiometabolic stress test with expiratory gas analysis which determines the contributions of fat and carbohydrate into total daily energy expenditure (indirect calorimetry).**
- **Advanced lipid panel including cardiac inflammatory biomarker analysis which are used to predict the risk of heart attack. Laboratory analysis also includes hematology, liver/kidney function, thyroid function, electrolytes, and advanced markers of diabetes including HbgA1c and fasting glucose level.**
- **Carotid Intima-media thickness (CIMT) ultrasound. This test is performed on-site and interpreted in real-time. The presence of carotid plaque is a surrogate marker for heart disease.**
- **Consultation with an advanced practice provider (advanced-practice nurse/practitioner or physician's assistant).**

- **Consultation with exercise physiologist.**
- **In-depth nutritional analysis based on individual results of cardiometabolic testing.**
- **Aggregated data report prepared and delivered to command staff containing several data points as a cross-section of personnel health status.**

**As a courtesy to civilian-spouses who may not be covered under the departmental budget, Sigma Tactical Wellness offers the program, as a courtesy, at Eight hundred and forty nine DOLLARS (\$849.00). An additional fee of \$25 will be charged for lab services provided outside the scheduled department lab draw. This will extend to as many participants as may be willing to undergo screening. The department will not be responsible for providing any funding for spouses or other outside patients.**



**CITY COUNCIL STAFF REPORT**  
Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Steven Love, Director of Public Works/City Engineer  
Scott Schultz, Utility/Fleet Superintendent

**PRESENTER:** Steven Love

**AGENDA ITEM:** Purchase of Equipment for Buildout of a 1-Ton Truck

**Action Requested:**  Motion       Discussion       Public Hearing

**Form of Action:**       Resolution       Ordinance       Contract/Agreement       Proclamation

**Policy Issue:**

The City of Maplewood's 2024-2027 Capital Improvement Plan (CIP) identifies the buildout of the 5 replacement trucks. City Council approval is needed to move forward with this purchase for the buildout of Unit 651.

**Recommended Action:**

Motion to approve the purchase of equipment to buildout a Public Works 1-ton truck and direct the Mayor and City Manager to enter into a contract for the purchase under MN State Contract # with ABM Equipment for the total purchase cost of \$31,048.00.

**Fiscal Impact:**

Is There a Fiscal Impact?     No     Yes, the true or estimated cost is \$31,048.00

    Financing source(s):     Adopted Budget     Budget Modification     New Revenue Source  
    Use of Reserves     Other: The 2024 CIP identifies \$165,000.00 for the buildouts of 5 Public Works trucks. The truck chassis for one truck, Unit 651, has been received. The cost of the buildout is \$31,048.00. The Finance Director has reviewed the fleet fund balance and there are sufficient funds to move forward with this purchase.

**Strategic Plan Relevance:**

Community Inclusiveness       Financial & Asset Mgmt       Environmental Stewardship

Integrated Communication       Operational Effectiveness       Targeted Redevelopment

**Background:**

The current 2008 1-ton stake truck is in need for replacement. This truck is used year round in the park maintenance division. The unit is equipped with a flat bed, lift gate and snow plow. It used for

trashing operations throughout the park system as well as snow plowing in the winter months. The old unit has high mileage and is in need of costly repairs. The old truck will be sent to state auction.

For past purchases of vehicles, the agenda reports included both the cost for ordering the chassis and the cost for the vehicle body/equipment buildout. Supply chain issues have caused a long delay between when a truck is ordered and when the chassis are delivered. In March of 2023 the City Council authorized the purchase of 5 truck chassis. To date we have received 4 of the 5 truck chassis that the City Council authorized for purchase. Supply chain issues have also resulted in large increases to buildout costs. Staff has received an accurate buildout quote for Unit 651 in the amount of \$31,048.00 and is detailed as follows:

- |                     |                    |
|---------------------|--------------------|
| • ABM Equipment     | \$31,048.00        |
| • <b>Total Cost</b> | <b>\$31,048.00</b> |

The old unit will be sent to state auction once the new unit is ready. All proceeds from the auction will be deposited in the Fleet Fund for future purchases.

**Attachments:**

1. Quote/Specs from ABM Equipment



333 2<sup>nd</sup> Street NE  
Hopkins, MN 55343  
952-938-5451  
800-229-5451  
Fax 952-938-0159  
[www.abmequip.com](http://www.abmequip.com)

**Custom Truck Equipment for the Utility, Construction, Municipal and Refuse Industries**

April 8, 2024

City Of Maplewood  
1902 County Rd B East  
Maplewood Mn 55109  
Phone# 651-249-2430  
E Mail: [scott.schultz@maplewoodmn.gov](mailto:scott.schultz@maplewoodmn.gov)

Chassis is 2024 Chev 3500 60"ca

Above prices good for 30 days from date on quote.

**ONE (1) TAFCO MAGNUM ALUMINUM PLATFORM BODY:**

- Length: 9ft'
- Width: 93.5" overall
- Flooring: 2" x 6" Tongue and groove wood floor
- Front: Straight 42" Bulkhead with window permanent weld on
- Sides: 26" High, fold down aluminum 2" x 2" construction. Front and rear latch.  
(4) Four horizontal supports and (4) four vertical supports. Cover lower section  
With aluminum treadplate.
- Crossmembers: 3" Structural steel channel on 18" centers
- Longsills: 5" Structural steel channel
- Stake Pockets: 24" centers size for 2"x 4"
- Rear Bumper: Not included
- Mudflaps: Included

**BASE PRICE:** Includes mounting to clean chassis, DOT body lights, hookup of OEM tail lights **\$ 14,204.00**

**OPTIONS/ADDITIONS:**

- Tommy Gate model# G2-92-1650 EA37 85" x 37" plus 6" ramp. 1300lbs capacity, extruded aluminum platform construction. Recessed tail lights included.  
Note platform will be 20-1/16" high when stowed. **\$ 7,326.00**
- 5/8" Pull plate with pintle/ball combo with 2-5/16" ball and safety chain rings. **\$ 2,400.00**
- 7 prong RV and 6 prong round sockets at pull plate **\$ 575.00**
- Furnish and install (2) two 6" round rear led amber strobes, under Tommy Gate. **\$ 775.00**
- Furnish and install (2) two grill mounted led amber strobes. **\$ 775.00**
- Furnish and install (1) one Whelen led rectangular amber strobe on bulkhead mount, Install all strobes on "hot" lighted cab switch. **\$ 1,200.00**
- (6) Six flush to floor tie downs 3 both sides evenly spaced. **\$ 300.00**
- Install 6" high tubing at top leading edge of bulkhead for strobe protection and to stop material from sliding off bulkhead. **\$ 350.00**
- One (1) aluminum treadplate underbed toolbox 36" x 18" x 18" mounted underdeck curb side. **\$ 1,943.00**
- Install poly rear fenders with mud flaps. **\$ 1,200.00**

**SUBTOTAL OF ABOVE.....\$ 31,048.00** Sales tax not included

If you have any questions, please feel free to call.

Sincerely:  
Charlie Miller

*BRINGING YOU THE BEST NAMES IN THE BUSINESS*  
An Equal Opportunity Employer

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**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Michael Martin, AICP, Assistant Community Development Director

**PRESENTER:** Danette Parr, Community Development Director

**AGENDA ITEM:** Public Vacation Request, 2786 and 2792 Keller Parkway  
 a. Public Hearing  
 b. Public Vacation of an Easement Resolution

**Action Requested:**  Motion  Discussion  Public Hearing

**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

Steve/Stacy Poindexter and Lillian Magidow/Daniel Barthel are requesting that the Maplewood City Council approve their request for a public vacation of an unused utility easement that runs through the backyards of their properties located at 2786 and 2792 Keller Parkway. The city council is required to hold a public hearing related to a public vacation.

**Recommended Action:**

- a. Hold the Public Hearing
- b. Motion to approve a resolution for the public vacation of an easement located within the sites at 2786 and 2792 Keller Parkway.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is \$0

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: N/A

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

The city deemed the applicant's application complete on March 22, 2024. By state law, a final decision on a vacation request must be made within 120 days of the submittal of a complete application. The 120-day review deadline is July 20, 2024.

**Background:**

The applicants request the public vacation of a utility easement initially taken when the lots were platted in 1963. The easement runs through the backyards of 2786 and 2792 Keller Parkway and limits improvements the applicants would potentially want to make. No utilities are located within this easement, and none are planned to be constructed.

The city council is required to hold a public hearing for public vacation requests. Staff has sent public hearing notices to all property owners within the same plat of these two properties.

When approving public vacations, if a majority of the abutting property owners sign a petition, the city council may approve the vacation by a simple majority vote. On this specific request, a majority of abutting property owners have signed a petition in support, and the city council can approve it with a simple majority vote.

### Department Comments

#### *Engineering*

Jon Jarosch has reviewed this request and has the following comments: No known public utilities lie within the requested easement vacation area. Likewise, the Engineering Department does not foresee the need to extend public utilities into these easement areas in the future. As such, Engineering does not have any concerns with the proposed vacation request.

Private utility holders in the area have been notified of the proposed vacation request, but no comments have been received as of the date of this report.

### Attachments:

1. Public Vacation of an Easement Resolution
2. Overview Map
3. Site Map
4. Lake Gervais View Addition Plat
5. Petition Document
6. Presentation

**PUBLIC VACATION OF AN EASEMENT RESOLUTION**

BE IT RESOLVED by the City Council of the City of Maplewood, Minnesota, as follows:

Section 1. Background.

- 1.01 Steve/Stacy Poindexter and Lillian Magidow/Daniel Barthel, petitioned the Maplewood City Council to vacate an unused public utility easement that is entirely within the properties at 2786 and 2792 Keller Parkway.
- 1.02 The utility easement was originally recorded within the Lake Gervais View Addition plat on January 2, 1963.
- 1.03 The portion of the 10-foot-wide utility easement to be vacated bisects the parcels of Block 2, Lots 4 and 5, as shown on the Lake Gervais View Addition plat.
- 1.04 A hearing notice on said petition was published twice in the City of Maplewood's official newspaper, and a written notice was mailed to the affected property owners.
- 1.05 On April 22, 2024, the City Council held a hearing on such petition, at which time all persons for and against the granting of said petition were heard.

Section 2. Standards

- 2.01 Minnesota state statute requires that no vacation shall be made unless it appears in the interest of the public to do so.

Section 3. Findings.

- 3.01 The Maplewood City Council makes the following findings:
  - 1. There is no anticipated public need for the described unused public easement.
  - 2. The vacation is not counter to the public interest.

Section 4. City Council

- 4.01 The city council hereby \_\_\_\_\_ the resolution. Approval is based on the findings outlined in Section 3 of this resolution.



**Legend**



Subject Properties



Subject Easement

0 110  
Feet

Source: City of Maplewood, Ramsey County



**MINOR SUBDIVISION FOR:  
KAREN BENKER**

**LEGAL DESCRIPTION PER DEEDS:**

Per Document No. 1598624  
Lot Five (5), Block Two (2), Lake Gervais View Addition, according to the plat thereof on file and of record in the office of the Register of Deeds within and for said County and State, and that part of Government Lot One (1), Section Four (4), Township Twenty-nine (29), Range Twenty-two (22), lying southerly of the southerly line of said Lot Five (5) between the southerly extensions of the easterly and westerly lines of said Lot Five (5) to Gervais Lake.

Per Document No. 1830052  
That part of Outlot 1, Block 3, Lake Gervais View Addition, Village of Maplewood, Ramsey County, Minnesota described as follows: Beginning at the most northerly corner of Lot 3, Block 2; thence South 20 degrees 56' 30" East, along the easterly line of said Lot 3, a distance of 80.00 feet to the most easterly corner of said Lot 3 and also being the most northerly corner of Lot 4, Block 2; thence S. 65 degrees 44' East, along the most northerly line of Lots 4 and 5, a distance of 85.98 feet, to the most easterly corner of Lot 5 and also being the most southerly corner of Outlot 1; thence North 24 degrees 16' East, along an easterly line of Outlot 1, a distance of 220.15 feet to an angle point in the easterly line of said Outlot 1; thence S. 65 degrees 20' 32" West, a distance of 217.26 feet to the point of beginning being the most northerly corner of Lot 3, Block 2, Lake Gervais View Addition, and there terminating.

Per Document No. 1855373  
That part of Government Lot one (1), Section four (4), Township twenty-nine (29), Range twenty-two (22), lying southerly of the southerly line of Lot four (4), Block two (2), Lake Gervais View Addition, according to the recorded plat thereof, and between the southerly extensions of the easterly and westerly lines of said Lot four (4), to Gervais Lake.

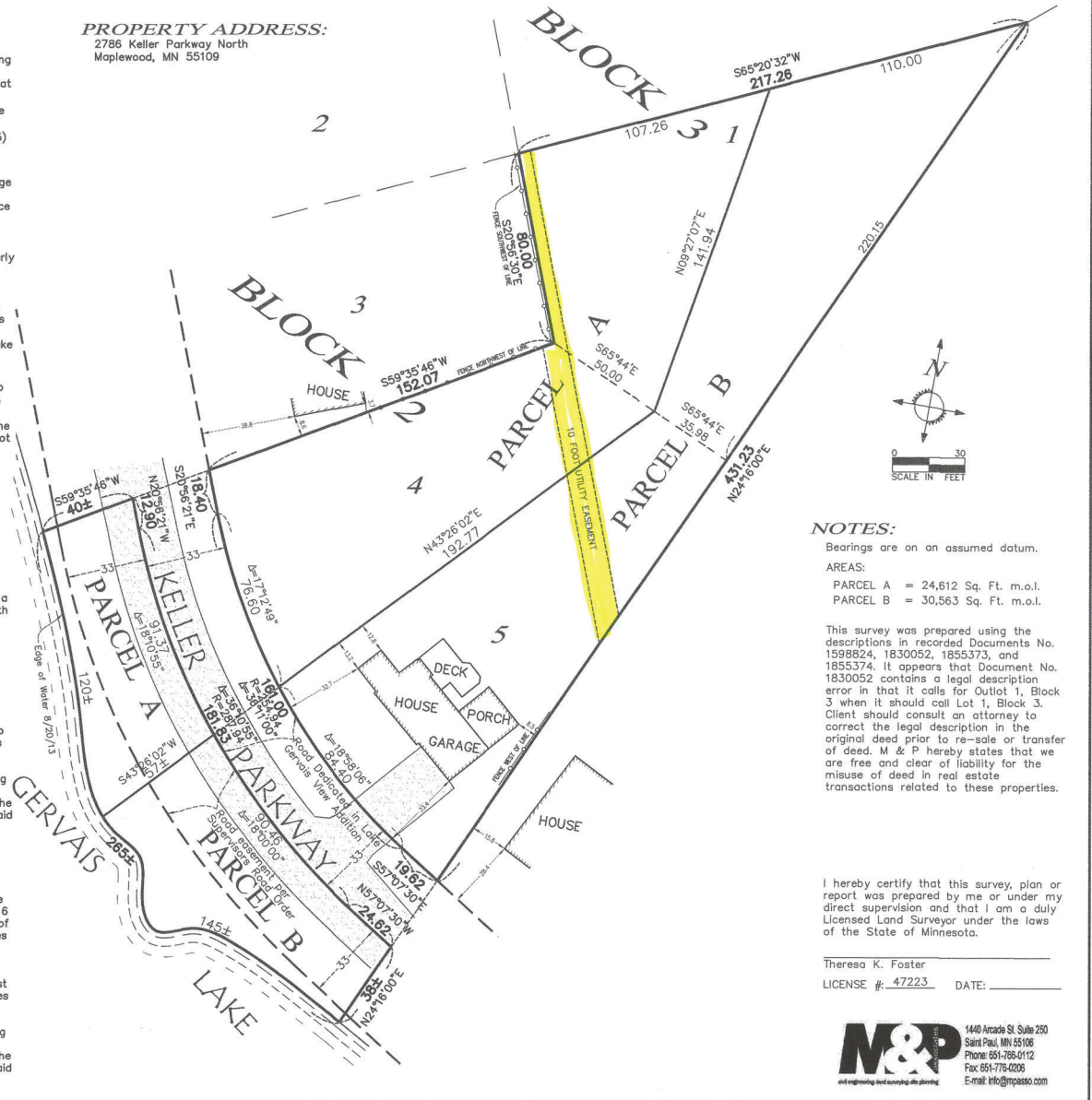
Per Document No. 1855374  
Lot Four (4), Block Two (2), Lake Gervais View Addition.

**PROPOSED DESCRIPTIONS:**

**PARCEL A**  
Lot 4, Block 2, Lake Gervais View Addition, Ramsey County, Minnesota,  
AND that part of Lot 1, Block 3, Lake Gervais View Addition, Ramsey County, Minnesota described as follows: Commencing at the most southerly corner of said Lot 1; thence North 24 degrees 16 minutes East, along the easterly line of said Lot 1, a distance of 220.15 feet, to a corner of said Lot 1; thence South 65 degrees 20 minutes 32 seconds West, along a line towards the most northerly corner of Lot 3, Block 2, said Lake Gervais View Addition, a distance of 110.00 feet to the point of beginning; thence continuing South 65 degrees 20 minutes 32 seconds West, a distance of 107.26 feet to said most northerly corner of Lot 3; thence South 20 degrees 56 minutes 30 seconds East along the northeasterly line of said Lot 3, a distance of 80.00 feet to the most northerly corner of Lot 4, said Block 2; thence South 65 degrees 44 minutes East, along the northeasterly line of said Lot 4, a distance of 50.00 feet to the most easterly corner of said Lot 4; thence North 9 degrees 27 minutes 07 seconds East, a distance of 141.94 feet to the point of beginning.  
AND all that part of Government Lot 1 Section 4, T29, R22 lying Southwesterly of the southwesterly line of Lot 4, Block 2, Lake Gervais View Addition, Ramsey County, Minnesota, and between the extensions of the southeasterly and the northwesterly lines of said Lot 4.

**PARCEL B**  
Lot 5, Block 2, Lake Gervais View Addition, Ramsey County, Minnesota,  
AND that part of Lot 1, Block 3, Lake Gervais View Addition, Ramsey County, Minnesota described as follows: Beginning at the most southerly corner of said Lot 1; thence North 24 degrees 16 minutes East, along the easterly line of said Lot 1, a distance of 220.15 feet, to a corner of said Lot 1; thence South 65 degrees 20 minutes 32 seconds West, along a line towards the most northerly corner of Lot 3, Block 2, said Lake Gervais View Addition, a distance of 110.00 feet; thence South 9 degrees 27 minutes 07 seconds West, a distance of 141.94 feet to the most northerly corner of Lot 5, said Block 2; thence South 65 degrees 44 minutes East, along the northeasterly line of said Lot 5, a distance of 35.98 feet to the point of beginning.  
AND all that part of Government Lot 1 Section 4, T29, R22 lying Southwesterly of the southwesterly line of Lot 5, Block 2, Lake Gervais View Addition, Ramsey County, Minnesota, and between the extensions of the southeasterly and the northwesterly lines of said Lot 5.

**PROPERTY ADDRESS:**  
2786 Keller Parkway North  
Maplewood, MN 55109



**NOTES:**  
Bearings are on an assumed datum.  
AREAS:  
PARCEL A = 24,612 Sq. Ft. m.o.l.  
PARCEL B = 30,563 Sq. Ft. m.o.l.

This survey was prepared using the descriptions in recorded Documents No. 1598624, 1830052, 1855373, and 1855374. It appears that Document No. 1830052 contains a legal description error in that it calls for Outlot 1, Block 3 when it should call Lot 1, Block 3. Client should consult an attorney to correct the legal description in the original deed prior to re-sale or transfer of deed. M & P herby states that we are free and clear of liability for the misuse of deed in real estate transactions related to these properties.

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Theresa K. Foster  
LICENSE # 47223      DATE: \_\_\_\_\_

**M&P**  
1440 Arcade St. Suite 250  
Saint Paul, MN 55106  
Phone: 651-766-0112  
Fax: 651-775-0206  
E-mail: info@mypasso.com

DRAWN BY: J.A.      PROJECT NUMBER: 3400.0010

# LAKE GERVAIS VIEW ADDITION

## VILLAGE OF MAPLEWOOD

### RAMSEY COUNTY, MINN.

COPY

**DONALD H. CAMPBELL**  
LAND SURVEYOR

BEARINGS SHOWN ARE ASSUMED  
O DENOTES IRON MONUMENT  
SCALE: 1"=100'  
MAY 1961

I hereby certify to having surveyed the property described on this plat as LAKE GERVAIS VIEW ADDITION and have placed iron monuments at the corners as shown and the same is correct. There is no wet land nor any traveled road or easement on or across same except as shown.

*Donald H. Campbell*  
Registered Surveyor  
Minnesota Certificate No. 5712

State of Minnesota } ss. The above certificate was subscribed and sworn to before me, a Notary Public  
County of Ramsey } within and for said County and State on this 17<sup>th</sup> day of April A.D. 1962.

*Edward B. Ford*  
Notary Public, Ramsey County, Minnesota  
My Commission Expires EDWARD B. FORD  
Notary Public, Ramsey County, Minn.  
My Commission Expires April 15, 1969

This is to certify that we Edward Kohlmann and Louise Antoinette Kohlmann, his wife, owners of the following described property: That part of Government Lot 1, Section 4, Township 29 North, Range 22 West, Ramsey County, Minnesota described as follows: Commencing at the Northwest corner of said Government Lot 1, (also being the West 1/4 corner of said Section 4); thence South 89 degrees 14 minutes East along the East and West 1/4 line of said Section 4, a distance of 664.25 feet; thence South and parallel with the West line of said Section 4, a distance of 537.0 feet; thence South 50 degrees 20 minutes West a distance of 260.5 feet; thence South 24 degrees 16 minutes West a distance of 464.61 feet; to the centerline of Keller Parkway; thence North 57 degrees 07 minutes 30 seconds West along said centerline of Keller Parkway a distance of 24.62 feet; thence on a curve to the right, said curve having a delta angle of 36 degrees 11 minutes and a centerline radius of 287.94 feet, a distance of 181.94 feet; thence North 20 degrees 56 minutes 30 seconds West a distance of 324.4 feet; thence on a curve to the right, said curve having a delta angle of 20 degrees 56 minutes 30 seconds and a centerline radius of 44.68 feet, a distance of 161.43 feet, to a point on the West line of said Government Lot 1, distant 537.55 feet South of the Northwest corner thereof; thence North along said West line of Government Lot 1, also being the centerline of Arcade Street a distance of 537.55 feet to the point of commencement; and First State Bank of Saint Paul, a Minnesota corporation, mortgagee of the following described property: The North 20 feet of the West 233 feet of Government Lot 1, Section 4, Township 29 North, Range 22 West, Ramsey County, Minnesota. Have caused the same to be surveyed and hereafter known as LAKE GERVAIS VIEW ADDITION as shown by this plat and hereby dedicate to the public all streets and easements therein. Witness our hands and seals this 13<sup>th</sup> day of June A.D. 1962. In witness whereof said First State Bank of Saint Paul, a Minnesota corporation has caused these presents to be signed by its proper officers and its corporate to be hereunto affixed this 13<sup>th</sup> day of June A.D. 1962.

*Paul C. Hennings* and *Donald H. Campbell* as to Edward Kohlmann *Edward Kohlmann*  
*Paul C. Hennings* and *Donald H. Campbell* as to Louise Antoinette Kohlmann *Louise Antoinette Kohlmann*  
*Paul C. Hennings* and *Donald H. Campbell* as to James R. King *James R. King* in President  
*Paul C. Hennings* and *Donald H. Campbell* as to Earl E. Olson *Earl E. Olson* in Vice-President

State of Minnesota } ss.  
County of Ramsey } On this 13<sup>th</sup> day of June A.D. 1962, before me personally appeared Edward Kohlmann and Louise Antoinette Kohlmann, his wife, to me known to be the persons described in and who executed the foregoing instrument and they acknowledged that they executed the same as their own free act and deed.

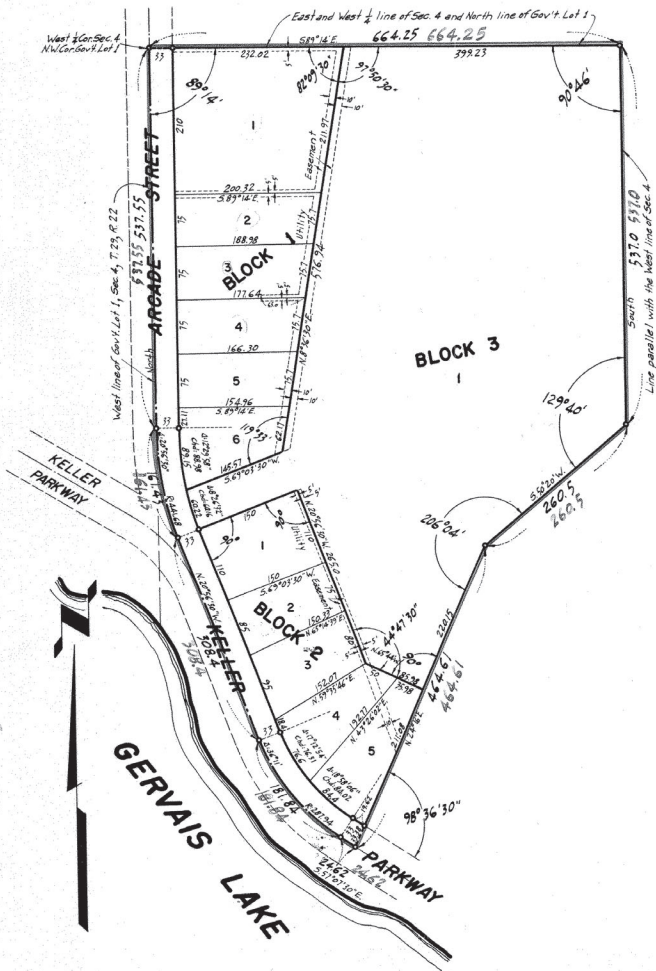
*Donald H. Campbell*  
DONALD H. CAMPBELL, Minn.  
Notary Public, Ramsey County, Minnesota  
My Commission Expires 4 June 1963

State of Minnesota } ss.  
County of Ramsey } On this 2<sup>nd</sup> day of July A.D. 1962, before me, a Notary Public, within and for said County and State, personally appeared Warren K. Finze and Earl E. Olson who each being duly sworn did say that they are respectively President and Vice-President of First State Bank of Saint Paul, a Minnesota corporation, the corporation named in the foregoing instrument and the seal affixed to the same instrument is the corporate seal of said corporation and that the said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said Warren K. Finze and Earl E. Olson acknowledge said instrument to be the free act and deed of said corporation.

*Donald H. Campbell*  
DONALD H. CAMPBELL, Minn.  
Notary Public, Ramsey County, Minnesota  
My Commission Expires 4 June 1963

Accepted and approved this 28<sup>th</sup> day of July A.D. 1962.  
*Alvah R. Campfuston*  
*Lupe Berkett*  
*Beleg* } Plat Commission  
*Merion Rosen* } Commissioner of Public Works  
Accepted and approved by the Village Council of Maplewood, Minnesota on this 31<sup>st</sup> day of March A.D. 1962.  
*James M. Nelson* Village Clerk

Recorded Jan 2, 1963.  
Abstract # 1530578



**PUBLIC VACATION PETITION**

We, the undersigned, are a majority of the land owners abutting on the (street, alley or easement) described as:

We petition the City Council to vacate the above-described area:

Signature

Name (print or type)

Address

*[Handwritten signature]*

Gregory Swenson

2800 Keller Pkwy  
Maplewood, MA  
05109

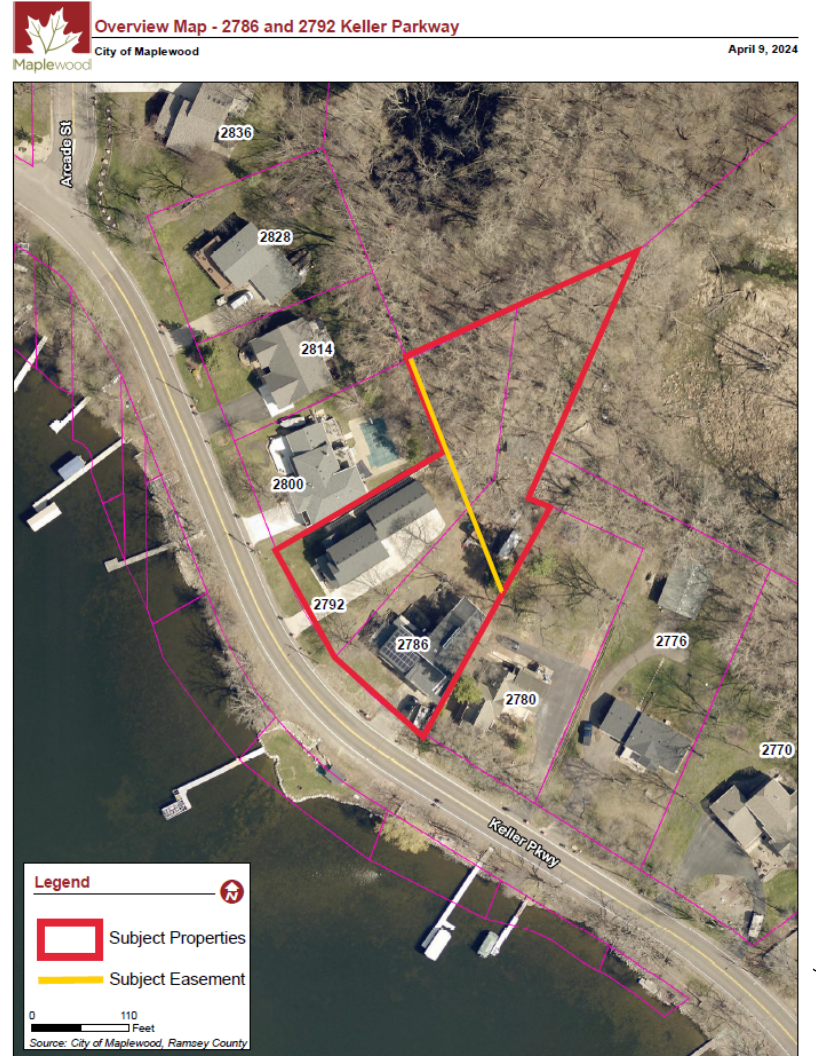
Multiple sets of horizontal lines for additional signatures, names, and addresses.





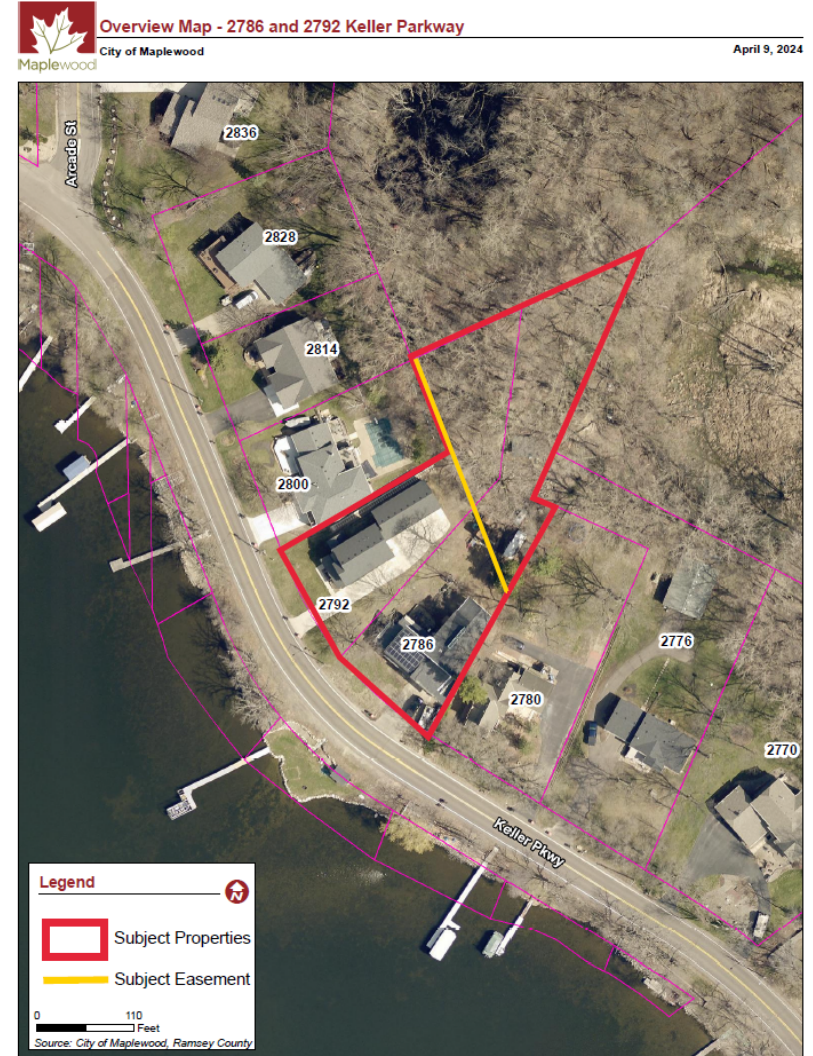
## Easement Vacation, 2786/2792 Keller Pkwy

- Applicants request vacation of an unused utility easement in their backyards
  - Prevents property owners from constructing improvements
- Recommended Action:
  - Hold Public Hearing
  - Approve resolution for the public vacation of an easement



# Easement Vacation, 2786/2792 Keller Pkwy

- City's engineering dept reviewed
  - No utilities are located in the easement
  - No utilities are planned for the easement
  - Supports request to vacate
  
- Public notification:
  - Notices sent to property owners within the plat
  - Published in the newspaper, twice
  - Petition of support signed by required neighbor

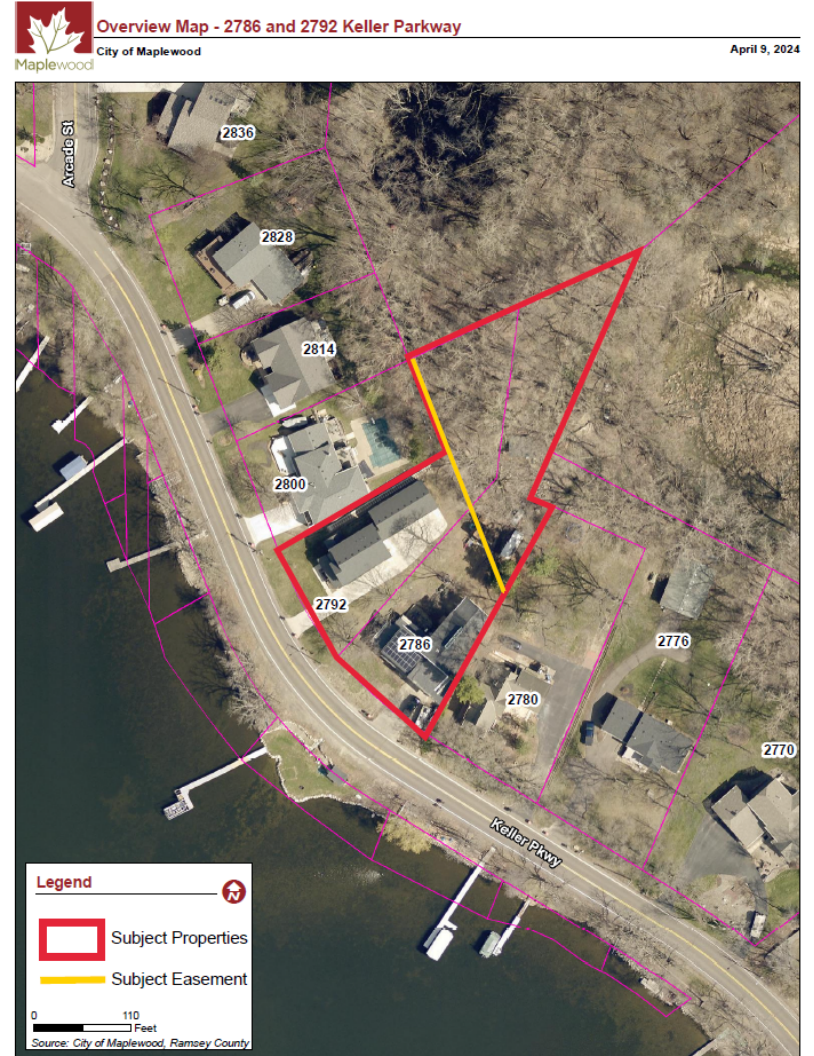




# Easement Vacation, 2786/2792 Keller Pkwy

Recommended Action:

- a. Hold the Public Hearing
- b. Motion to approve a resolution for the public vacation of an easement located within the sites at 2786 and 2792 Keller Parkway.



**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager  
**REPORT FROM:** David Anderson, Assistant City Attorney  
**PRESENTER:** Steven Love, Public Works Director/City Engineer  
**AGENDA ITEM:** Abatement Agreement for Property Located at 1742 ½ English Street

**Action Requested:**  Motion  Discussion  Public Hearing  
**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

The subject property (the “Property”) at 1742 ½ English Street contains a legally nonconforming residential dwelling. In 2023, the city council ordered the abatement of the hazardous and nuisance conditions. The Council will consider the abatement agreement that has been negotiated to resolve the conditions.

**Recommended Action:**

Motion to approve and authorize the execution of the Abatement Agreement for the property located at 1742 ½ English Street.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is indeterminable and depends on how much of the work is completed by the owner. The estimated cost of all work is approximately \$25,000, and the city will perform such work to the extent it is not completed by the owner and front the costs related thereto. The agreement and the law expressly authorize the city to recover such costs via a special assessment against the Property, which would then go onto the Property’s tax rolls for future payment by the owner.

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: n/a

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

Agreement will address environmental issues.

**Background:**

The small parcel that makes up the Property does not directly abut public right-of-way and is substandard under existing city regulations. It is accessed via a shared driveway. In late 2021, an inspection revealed that the Property contains a noncompliant individual subsurface sewage

treatment system (“SSTS”). More specifically, wastewater generated from the dwelling located on the Property was being deposited into an on-site cesspool that was presumably installed when the dwelling was constructed in approximately 1940. Cesspools are expressly prohibited under state and local law because they do not effectively treat wastewater or protect groundwater.

On February 13, 2023, in light of the above, the city council deemed the structure hazardous and ordered the abatement of the hazardous and nuisance conditions on the Property. The city council resolution authorized the city attorney to initiate legal proceedings against the Property’s owner in an effort to make the Property safe and bring it into compliance with state and local laws. The two options made available to the property owner were to either (i) replace the cesspool with a compliant method for treating wastewater generated on the Property; or (ii) demolish the structure.

On May 9, 2023, the owner was personally served with the city’s abatement order and hired an attorney to represent him in these proceedings. Despite some efforts by the owner, neither of the two options provided for in the order have been completed yet. The owner determined that the Property is too small to accommodate a new SSTS. Additionally, the owner has been unable to install a private sewer service line to the Property. Although the owner recently represented that he intends to demolish the structure, that has not yet happened and the city’s deadline for filing this matter in district court (May 9, 2024) is quickly approaching.

Rather than initiating formal legal proceedings in district court, the city attorney has negotiated the attached abatement agreement with the owner. The agreement provides the property owner through August of 2024 to demolish the structure, remove the cesspool, and seal the well, all in accordance with state and local laws. If the property owner fails to meet said deadline, the city will be authorized to demolish the structure and assess the costs related thereto against the Property.

Because the existing structure is a lawful nonconformity, the agreement provides language allowing the owner to construct a replacement structure under very limited circumstances, provided that he submits a completed building permit application no later than August 30, 2025. This is consistent with state law, which expressly allows an owner to replace a lawful nonconforming structure within one year of its discontinuation. It is worth noting that any such replacement structure must not exceed the existing building’s three-dimensional footprint and must adequately treat wastewater generated on the Property.

Staff recommends approval of the agreement, which provides a means to ensure the abatement of the hazardous and nuisance conditions on the Property and spares both parties the time and expense associated with district court proceedings. City staff and the city attorney will be present during the meeting if there are questions about the draft agreement.

**Attachments:**

1. Location Map
2. Abatement Agreement
3. February 13, 2023 Staff Report
4. City Resolution 23-02-2176 (Approved February 13, 2023)
5. SSTS Inspection Report



**LOCATION MAP**  
**Depiction of the Property**



**ABATEMENT AGREEMENT**

This Abatement Agreement (the “Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2024, by and between the city of Maplewood, a Minnesota municipal corporation (the “City”), and Jose Vega, a single person (the “Owner”). The City and the Owner shall be referred to collectively herein as the “Parties.”

**RECITALS**

**WHEREAS**, the Owner is fee owner of certain real property located at 1742 ½ English Street in the city of Maplewood, Ramsey County, Minnesota and legally described on the attached Exhibit A (the “Property”); and

**WHEREAS**, the Property is approximately 0.08 acres in size and does not directly abut a public right-of-way; and

**WHEREAS**, the Property contains a residential structure (the “Structure”), but because the Property does not have street frontage or private easement rights to install utility service lines, connecting the Structure to public sewer is not presently viable; and

**WHEREAS**, in lieu of connecting to public sewer, the Structure has been historically served by a privately owned individual subsurface sewage treatment system that was installed in approximately 1940 (the “SSTS”); and

**WHEREAS**, a City-required inspection of the SSTS was performed and revealed that the SSTS consists only of a cesspool (the “Cesspool”); and

**WHEREAS**, pursuant to Minnesota Rules, section 7080.1500, subp. 4.B, cesspools are noncompliant sewage treatment systems because they do not adequately protect local groundwater; and

**WHEREAS**, following the above inspection, the City informed the Owner of the noncompliant Cesspool, and the Owner has been unable to replace it with a compliant method for disposing of sewage produced within the Structure; and

**WHEREAS**, based on the Cesspool and the inability to safely dispose of sewage produced within the Structure, the City has determined that (i) the Structure is “hazardous,” as defined by Minnesota Statutes, section 463.15, (ii) the Structure is “unsafe,” as defined by Minnesota Rules, section 1300.0180, and (iii) the Structure is a public nuisance under numerous provisions contained in the Maplewood City Code (the “City Code”) and Minnesota Statutes; and

**WHEREAS**, additionally, section 713.2 of the Minnesota State Plumbing Code, which is part of the building code and adopted by reference in section 12-36 of the City Code, expressly requires buildings that are not connected to public sewer to be served by an approved private sewage disposal system; and

**WHEREAS**, pursuant to both Minnesota Statutes, chapter 463 and chapter 18 of the City Code, the Owner has been duly served with a summons, complaint, and abatement order that require the Owner abate the Property’s hazardous and nuisance conditions and, in the event that he fails to do so, the City is further provided with the express legal authority to facilitate said abatement on its own and assess the Property for the cost thereof; and

**WHEREAS**, by entering into this Agreement, the Parties wish to jointly facilitate the abatement of the conditions described herein and avoid litigation in district court, as authorized by Minnesota Statutes, section 463.151.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties hereby agree as follows:

### **AGREEMENT**

1. **Recitals.** The Parties agree that the foregoing Recitals are true and correct and are fully incorporated into this Agreement.
2. **The Property.** The Parties acknowledge that based on the present condition of the Structure and the inability to safely and effectively dispose of wastewater produced therein, the Structure is hazardous, as that term is defined by Minnesota Statutes, section 463.15, the Structure is unsafe, as that term is defined by Minnesota Rules, section 1300.0180, and the Structure is a public health nuisance under City Code, sections 18-28(b), 18-31(14), and 18-30. The Owner represents that he has a valid interest in the Property, including the Structure located thereon, and that he has the full legal power and authority to enter into this Agreement.
3. **Abatement Work.** The Owner understands and acknowledges that due to the circumstances described herein, demolishing the Structure is the most efficient and cost-effective manner to abate the Structure’s hazardous and unsafe condition. Accordingly, the Owner, at his own cost and expense, agrees to demolish the Structure in its entirety and in accordance with all state and local regulations on or before August 30, 2024 (the “Deadline”). Demolition of the Structure by the Deadline, as required in the preceding sentence, shall consist of removing and properly disposing of the entire Structure and all of its appurtenances, proper abandonment of the

Cesspool, sealing the well on the Property, and removing all personal property from the Property, all in accordance with state and local regulations and any applicable permitting requirements (collectively, the “Work”). For the avoidance of doubt, the entire Structure and all components of it must be completely removed from the Property, including, but not limited to, the slab-on-grade foundation. Abandonment of the cesspool and sealing of the well must both be performed by a licensed professional and meet applicable state and local requirements. The licensed professional(s) must fill out and submit to the City all necessary paperwork associated with the Work, including, but not necessarily limited to, an MPCA SSTS Abandonment Reporting Form. If the Owner fails to perform all such Work by the Deadline, the Parties agree that the City or its contractors may immediately enter onto the Property, perform any outstanding Work, and thereafter assess all of its costs in doing so pursuant to section 6 of this Agreement, without the need for any further action, approval, or court order.

4. **District Court Proceedings.** By entering into this Agreement, the City agrees that it will not file formal legal proceedings in district court against the Owner regarding this matter unless the Owner breaches any of the terms of this Agreement and the City is required to enforce its rights hereunder.

5. **Cost Estimate.** The estimated cost to complete the Work is \$25,000 (“Estimated Cost”), provided that the Parties understand and agree that actual costs may amount to up to 150 percent of that figure, or \$37,500. The Parties agree that if the Owner fails to complete any of the Work in accordance with the requirements contained in section 3 of this Agreement, and the City subsequently performs said Work, as expressly authorized herein, 100 percent of the actual cost of the work performed by the City shall be assessed against the Property in accordance with section 6 below.

6. **Special Assessment of City Expenses; Waivers.** The City is authorized, pursuant to Minnesota Statutes, section 463.21, the City Code, and this Agreement, to assess the expenses that it incurs to undertake the Work in an amount not to exceed 150 percent of the Estimated Cost of the Work contained in section 5 of this Agreement. If the Owner fails to comply with section 3 of this Agreement and the City subsequently exercises its right to perform the Work, then the Owner, for himself and his successors and assigns, waives the right to object to the City’s assessment of 100 percent of the cost thereof, provided again that it does not exceed 150 percent of the Estimated Cost contained in section 5 of this Agreement. The Owner, for himself and his successors or assigns, further waives the right to appeal the levy of such special assessment pursuant to Minnesota Statutes, section 429.081 or any other law, and further specifically agrees with respect to such special assessment against the Property that:

- (a) Any requirements of Minnesota Statutes, chapter 429 with which the City does not comply are hereby waived;
- (b) The total cost assessed to the Property hereunder will be in an amount equal to the increase in fair market value of the Property resulting from the Work, and that such increase in fair market value is a special benefit resulting from said work; and
- (c) Assessment of the actual cost of the Work against the Property as outlined above is reasonable, fair, and equitable and there are no other properties against which such costs should be assessed.

The City shall provide for the payment of such special assessment in five equal annual installments, with interest at the annual rate of five percent (5%) accruing from the date of adoption of the assessment. The City will provide a written notice of the amount of the assessment prior to its approval and certification to the county for placement on the taxes of the Property to the then-current fee owner of the Property.

**7. Right of Entry.**

- (a) The Owner hereby grants to the City, and its agents, employees, contractors, and invitees, the right to immediately enter upon the Property for the purpose of conducting all activities on the Property necessary to accomplish the Work in accordance with this Agreement, for the further purpose of storing materials, equipment, and other items thereon which are needed in connection with the said Work, and for the purpose of inspecting the Property and the Structure at any time to determine compliance with this Agreement.
- (b) The right of entry outlined herein shall expire upon completion of the Work, which includes final inspection by the City to ensure strict adherence to this Agreement.
- (c) In consideration for such right of entry, the City agrees to use the Property only for the purposes described herein and will do no unnecessary damage to the land.

**8. Indemnification; Waiver of Claims.** The Owner agrees to indemnify, hold harmless, and defend the City, its officials, employees, contractors, and agents from and against any and all liability, loss, costs, damages, expenses, claims, actions, or judgments, including reasonable attorneys' fees which they, or their agents or contractors may hereinafter sustain, incur, or be required to pay, arising out of or by reason of this Agreement. Nothing in this Agreement shall be construed as a waiver by the City of any immunities, defenses, or other limitations on liability to which the City is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes Chapter 466 or otherwise.

Should the City complete any or all of the Work in accordance with this Agreement, the Owner waives any and all claims against the City for the removal and disposal of personal property. As part of this waiver, the Owner knowingly acknowledges and agrees that none of the personal property that will remain on the Property on or after August 30, 2024 has value, nor is it salvageable and, accordingly, the City may dispose of said personal property and need not make any attempt to salvage or sell any items.

**9. Cost Exceeds Estimate.** Notwithstanding section 6, in the event that the City is permitted hereunder to complete any of the Work and determines that the actual cost will exceed 150 percent of the Estimated Cost contained in section 5, it will notify the Owner of such determination in writing. The Owner will then have 10 calendar days to determine whether to consent to an increase in the amount of the assessment to include such increased costs. If the Owner notifies the City in writing within such period that he will accept the increase, then the City will proceed with the Work and assess the full amount. If such notice is not given by the Owner, the City may

nevertheless proceed with undertaking the Work knowing that it will be limited to specially assessing the Property for no more than 150 percent of the Estimated Cost contained in section 5.

**10. General Provisions.** This Agreement represents the entire agreement between the Parties and supersedes in all respects all prior agreements of the Parties, whether written or otherwise, with respect to the Property and the Structure. No change, modification or waiver of any provisions of this Agreement will be binding unless it is in writing and signed by both Parties or their respective heirs, successors, and assigns. This Agreement shall be construed according to the laws of the state of Minnesota.

**11. Execution in Counterparts.** This Agreement may be executed and delivered in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute but one and the same instrument and agreement.

**12. Run with the Land; Enforcement.** The provisions of this Agreement shall run with the land and be binding upon the Parties and their respective heirs, successors, and assigns. Furthermore, the Owner agrees to pay the City's costs and expenses, including reasonable attorneys' fees, in the event a suit or action is brought by the City against the Owner to enforce the terms of this Agreement.

**13. Recording.** The City may record this Agreement against the Property in the land records of Ramsey County. It is the intent of the Parties that this Agreement is in a form which is recordable among the land records and the Parties agree to make any changes to this Agreement as may be necessary to effectuate the recording and filing of this Agreement against the Property.

**14. No Occupancy; Nonconforming Rights.** The Structure is presently unoccupied and the Owner agrees not to occupy the Structure or otherwise allow occupancy until this Agreement is terminated.

Because the Property and the Structure do not adhere to the City's existing land use controls, both are considered nonconformities pursuant to Minnesota Statutes, section 462.357, subd. 1e. Under state law, nonconformities may be replaced, but not expanded, unless they are discontinued for a period of more than one year. Accordingly, and to the extent authorized under state law, the Owner is entitled to replace the Structure with another residential structure only if a completed building permit application for a code-compliant replacement structure is submitted to the City on or before the earlier of (i) one year following completion of all Work required under this Agreement; or (ii) August 30, 2025 (the "Nonconformity Deadline"). Pursuant to law, any such replacement structure must be wholly contained within the Structure's existing footprint, may not exceed the size and dimensions of the existing Structure, and shall otherwise adhere to all applicable state and local regulations, including, but certainly not limited to, accommodations for lawful wastewater and water services. The Owner agrees that any failure to make proper application for a building permit for a code-compliant replacement structure on or before the Nonconformity Deadline and thereafter pursue the construction of a replacement structure diligently and in good faith and to the extent authorized thereunder will result in the permanent loss of any and all nonconforming rights associated with the Property and the Structure.

**15. Severability.** If any term, provision, or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, provision, or condition to persons or circumstances other than those in respect to which it is invalid or unenforceable) shall not be affected, and each term, provision, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**16. Compliance with Laws and Regulations.** In performing all obligations contained herein, the Parties must abide by all applicable federal, state, and local laws, statutes, ordinances, rules, and regulations. The Owner shall apply for and duly acquire all necessary permits, to the extent required, for any of the Work. This Agreement is neither a substitute for, nor a waiver of, any permitting and inspection requirements associated with the Work.

**17. Termination of Agreement.** This Agreement shall terminate upon the Owner's satisfactory completion of the Work, in the City's sole discretion, or, if the City undertakes any of the Work, upon final payment of any special assessment levied against the Property regarding said Work in accordance with this Agreement. Upon termination of this Agreement, the City will thereafter execute and deliver such documents, in recordable form, that are necessary to extinguish the rights hereunder.

**18. Attorney Representation.** The Parties acknowledge that they have been represented by counsel in connection with the execution of this Agreement and intend that no rules construing provisions of this Agreement against the position of the drafter shall be applied. The Parties further represent and declare that in executing this document they have relied solely upon their own judgment, belief and knowledge, or the advice and recommendation of their own independently selected counsel, and that they have not been influenced to any extent whatsoever in executing this document by any representations or statements except those expressly contained or referred to in this Agreement.

*[SIGNATURE PAGES FOLLOW]*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed in their names and on their behalf on or as of the dates indicated herein.

**THE CITY:**

By: \_\_\_\_\_  
Marylee Abrams, Mayor

By: \_\_\_\_\_  
Michael Sable, City Manager

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF RAMSEY            )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2024, by Marylee Abrams and Michael Sable, the mayor and city manager, respectively, of the city of Maplewood, a Minnesota municipal corporation, on behalf of the city.

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



**THE OWNER:**

By: \_\_\_\_\_  
Jose Vega

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Jose Vega, a single person.

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

**THIS INSTRUMENT DRAFTED BY:**

Kennedy & Graven, Chartered  
700 Fifth Street Towers  
150 South Fifth Street  
Minneapolis, MN 55402  
(612) 337-9300

**EXHIBIT A**

Legal Description of the Property

The North 100 feet of the South 767.56 feet, except the West 158 feet of the Southwest Quarter of Section 15, Township 29, Range 22, lying West of the Northern Pacific Railway Right of Way, Ramsey County, Minnesota

**CITY COUNCIL STAFF REPORT**

Meeting Date February 13, 2023

**REPORT TO:** Melinda Coleman, City Manager

**REPORT FROM:** Dave Anderson, Assistant City Attorney

**PRESENTER:** Steve Love, Public Works Director

**AGENDA ITEM:** Resolution Ordering the Abatement of Conditions Creating a Hazardous Property and Public Nuisance at 1742 ½ English Street

**Action Requested:**  Motion  Discussion  Public Hearing

**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

The subject property (the "Property"), depicted on Location Map attached hereto, is located at 1742 ½ English Street and contains a legally nonconforming residential dwelling, which is presently unoccupied. In late 2021, an inspection revealed that the Property contains a noncompliant individual subsurface sewage treatment system (SSTS). Specifically, any wastewater generated from the dwelling located on the Property is being deposited into an on-site cesspool that was likely installed when the dwelling was constructed in approximately 1940. Cesspools are expressly prohibited under state and local law because they do not effectively treat wastewater or protect groundwater. More details are provided in the background section below.

To restore the Property to a safe, sanitary, and code-compliant condition, staff recommends that the City Council approve the attached resolution and order the abatement of the hazardous and nuisance conditions on the Property. The resolution will authorize City staff and the City attorney to initiate legal proceedings against the Property's owner in an effort to make the Property safe and bring it into compliance with state and local laws.

**Recommended Action:**

Motion to approve the Resolution Ordering the Abatement of Conditions Creating a Hazardous Property and Public Nuisance at 1742 ½ English Street.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is indeterminable and depends on how legal proceedings play out. It is worth noting, however, that the statutory and City Code provisions authorizing these proceedings allow for the City to recover enforcement costs via special assessments against the Property. This will be discussed in more detail during the meeting.

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: n/a

**Strategic Plan Relevance:**

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Community Inclusiveness  | <input type="checkbox"/> Financial & Asset Mgmt               | <input checked="" type="checkbox"/> Environmental Stewardship |
| <input type="checkbox"/> Integrated Communication | <input checked="" type="checkbox"/> Operational Effectiveness | <input type="checkbox"/> Targeted Redevelopment               |

**Background:**

The Property is extremely small in size (approximately 0.08 acres) and landlocked, i.e. it lacks any direct access to public streets and utilities. It appears that the Property has historically been accessed via a shared driveway that is located on the parcel to the south. However, there are no easements of record that would indicate that the Property has any ability to access nearby public utility mains, meaning that the only options for utilities on the Property are a well and an SSTS.

In December of 2021, a City contractor performed an on-site inspection at the Property to determine SSTS compliance. During said inspection, it was observed that the SSTS on the Property was installed in approximately 1940 and consists only of a cesspool. Wastewater that flows into a cesspool is captured and then drains, or percolates, directly into the soil. Due to this, cesspools do not protect the local groundwater. Attached is the respective inspection report from Brian Humpal, an MPCA-licensed SSTS inspector.

Pursuant to Minnesota Rules, section 7080.1500, subp. 4.B, cesspools are considered noncompliant sewage treatment systems because they do not adequately protect local groundwater. Accordingly, on January 7, 2022, a letter was sent to the Property owner informing him that the cesspool was noncompliant and that, pursuant to section 40-234(c) of the Maplewood city code, it must be upgraded, repaired, replaced, or abandoned. The owner did not respond to said letter. On August 30, 2022, another letter was sent to the owner, again informing him that the cesspool must be upgraded, repaired, replaced, or abandoned.

Following the August letter, City staff was contacted by a contractor hired by the owner who indicated that the Property is too small to accommodate a new SSTS. The contractor inquired with staff about whether a holding tank could be permanently installed on the Property to collect sewage, and staff informed said contractor that permanent holding tanks are expressly prohibited under the city code for public health and safety reasons. To date, the cesspool still exists and there is no legally compliant method for collecting wastewater from occupants of the Property or the dwelling located thereon. It is also believed that the only source of water in the dwelling is well water, and if that is indeed the case, the safety of that water is a concern due to the nearby cesspool.

Based on these conditions, staff has determined that the Property is hazardous, unsafe, and a public nuisance under state law and the city code. The applicable statutory and city code references are specified in the recommended resolution. Allowing the Property to remain in its current state presents significant health and safety concerns not only to any occupants of the Property but also to others in the community due to the negative impacts of cesspools on groundwater. The City has made multiple attempts to gain compliance, and staff has now determined that the only way to effectively abate the unlawful conditions at the Property is to initiate abatement proceedings pursuant to state law and the city code.

A resolution has been prepared by the City attorney that (i) finds that the Property is both hazardous and a public nuisance pursuant to state law and the city code; and (ii) authorizes staff and

consultants to serve an order on the owner that requires abatement of the unlawful conditions within 45 days by performing one of the following:

1. Replace the cesspool with a compliant individual subsurface sewage treatment system that serves the dwelling on the subject property and meets all state and local requirements;
2. Acquire permanent easement rights from neighboring landowners to accommodate a private sewer service line and thereafter connect the dwelling on the subject property to City sewer; or
3. Demolish the dwelling on the subject property to prevent the ability to deposit wastewater generated on the property into the noncompliant cesspool.

Should the owner fail to comply with said order, the City will initiate formal proceedings to request a court order authorizing the City to demolish the dwelling on the Property pursuant to its legal authority to do so. The statutory and city code provisions authorizing abatement proceedings allow for the City to recover enforcement costs related to this action via a special assessment against the Property.

Depending on the level of cooperation from the owner after the order is served, the City may also benefit from entering into an abatement agreement that will provide the owner an opportunity to perform abatement on his own, without formal legal proceedings, and such agreement would also authorize the City to demolish the dwelling and assess the costs should the owner fail to comply. Such an agreement, if negotiated, would be presented to the City Council for final approval before taking effect.

If the recommended resolution is adopted, the City attorney's office will work with staff to initiate abatement proceedings, with the ultimate goal of abating the conditions that make the Property both hazardous and a public nuisance, including bringing a civil action pursuant to Minnesota Statutes, chapter 463 and Maplewood City Code, chapter 18. City Attorney Ron Batty will be present during the meeting to answer any questions that the City Council may have related to this matter.

**Attachments:**

1. Location Map
2. Abatement Order Resolution
3. SSTS Inspection Report

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Maplewood, Minnesota, was duly called and held in the Council Chambers of said City on the **13<sup>th</sup> day of February, 2023** at 7:00 p.m.

The following members were present:

Marylee Abrams, Mayor	Present
Rebecca Cave, Councilmember	Present
Kathleen Juenemann, Councilmember	Present
Chonburi Lee, Councilmember	Present
Nikki Villavicencio, Councilmember	Present

**Resolution Ordering the Abatement of Conditions Creating a Hazardous Property and Public Nuisance at 1742 ½ English Street**

Councilmember Juenemann moved to approve the Resolution Ordering the Abatement of Conditions Creating a Hazardous Property and Public Nuisance at 1742 ½ English Street,

Resolution 23-02-2176

**RESOLUTION ORDERING THE ABATEMENT OF CONDITIONS CREATING A HAZARDOUS PROPERTY AND PUBLIC NUISANCE AT 1742 ½ ENGLISH STREET**

RECITALS

WHEREAS, the property located at 1742 ½ English Street, legally described on Exhibit A attached hereto (the "Subject Property"), contains a single-family dwelling (the "Dwelling") and is located in the city of Maplewood (the "City"); and

WHEREAS, the Subject Property is owned by Jose Vega (the "Owner") and to the best of the City's knowledge is currently unoccupied; and

WHEREAS, the Subject Property is approximately 0.08 acres in size and does not have street frontage; and

WHEREAS, because the Subject Property does not have street frontage or private easement rights to install utility service lines, connecting to nearby public sewer and water mains is not presently viable; and

WHEREAS, to the best of the City's knowledge, there is a well on the Subject Property that provides the Dwelling with groundwater; and

WHEREAS, in lieu of connecting to City sewer, the Dwelling has long been served by a

privately owned individual subsurface sewage treatment system ("SSTS"); and

WHEREAS, on December 15, 2021, an inspection of the SSTS on the Subject Property was performed by Brian Humpal, an MPCA-licensed SSTS inspector, pursuant to City requirements; and

WHEREAS, during said inspection, it was observed that the SSTS was installed in approximately 1940 and consists only of a cesspool (the "Cesspool"); and

WHEREAS, pursuant to Minnesota Rules, section 7080.1500, subp. 4.B, cesspools are noncompliant sewage treatment systems because they do not adequately protect local groundwater; and

WHEREAS, on January 7, 2022, a letter was sent to the Owner informing him that the Cesspool was noncompliant and that, pursuant to section 40-234(c) of the Maplewood City Code (the "City Code"), the Cesspool must be upgraded, repaired, replaced, or abandoned, in accordance with state and local requirements, within three months; and

WHEREAS, the Owner did not respond to the aforementioned letter, and so on August 30, 2022, another letter was sent to the Owner, again informing him that the Cesspool is noncompliant under state law and constitutes a hazard and a public nuisance; and

WHEREAS, following the City's most recent letter, City staff was contacted by the Owner's contractor who indicated that the Subject Property is too small to accommodate a new SSTS. The contractor inquired about whether a holding tank could be permanently installed on the Subject Property to collect sewage from the Dwelling, and City staff informed said contractor that permanent holding tanks are expressly prohibited under section 40-271(c) of the City Code; and

WHEREAS, to date, the Cesspool still exists on the Subject Property and there is no legally compliant method for collecting wastewater generated inside of the Dwelling; and

WHEREAS, Minnesota Statutes, section 463.15, subdivision 3 defines a "hazardous property" as "any property..., which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health;" and

WHEREAS, Minnesota Rules, section 1300.0180 provides that equipment regulated by the Minnesota State Building Code, including private plumbing and utilities, is unsafe if it is a "health hazard; an unsanitary condition; or [is] otherwise dangerous to human life" and further deems the "[u]se of a building, structure, or building service equipment constituting a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment is, for the purposes of this part, an unsafe use"; and

WHEREAS, Minnesota Rules, section 1300.0180 also provides that all unsafe buildings, structures, or appendages are public nuisances that "must be abated by repair, rehabilitation, demolition, or removal according to Minnesota Statutes, sections 463.15 to 463.26"; and

WHEREAS, section 713.2 of the Minnesota State Plumbing Code, which is part of the

building code and adopted by reference in section 12-36 of the City Code, expressly requires buildings that are not connected to public sewer to be served by an approved private sewage disposal system; and

WHEREAS, section 18-28(b) of the City Code deems it a public nuisance for any cesspool in the City to become offensive, nauseous or injurious to health; and

WHEREAS, section 18-31(14) of the city code deems it a public nuisance to use property in any manner deemed by the city council to be a menace to the health of the inhabitants of the City; and

WHEREAS, both Minnesota Statutes, section 609.74 and section 18-30 of the City Code also deem it a public nuisance to maintain or permit a condition which unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of the public; and

WHEREAS, based on the foregoing, City staff, including the City's building official and its public works director, are of the opinion that the Subject Property and the Dwelling located thereon are hazardous, unsafe, and a public nuisance; and

WHEREAS, Minnesota Statutes, section 463.161 and section 18-37 of the City Code authorize the City council to order the owner of any hazardous property or nuisance property within the City to correct or remove said conditions; and

WHEREAS, by letters dated and mailed on January 7, 2022 and August 30, 2022, the City notified the Owner of the hazardous and nuisance conditions summarized herein, as well as the steps needed to correct said conditions; and

WHEREAS, the Owner has not corrected any of the unlawful conditions of the Subject Property and said conditions still exist today; and

WHEREAS, Minnesota Statutes, section 463.161 et seq. authorizes a City to correct or remove a hazardous condition of any hazardous building or property if the owner of record fails to do so after a reasonable time and the district court enters a judgment sustaining the City's order; and

WHEREAS, also pursuant to section 18-37 of the City Code, the city council may order the abatement of a nuisance on any premises; and

WHEREAS, based on the information presented, the City council has determined that the condition of the Subject Property constitutes a hazard, is unsafe, and is a nuisance, all in violation of state and local law, and therefore should be abated.

#### RESOLUTION

NOW, THEREFORE, BE IT RESOLVED by the City council of the City of Maplewood as follows:

1. The City council adopts, as factual findings, all of the recitals listed above.
2. The City council finds that the condition of the Subject Property is hazardous, as



defined by Minnesota Statutes, section 463.15, and unsafe, as defined in Minnesota Rules, section 1300.0180.

3. The City council also finds that the condition of the Subject Property constitutes a public nuisance, as defined by both state and local law, violates the aforementioned sections of the City Code, and is a menace to the health of the inhabitants of the City.
4. The City attorney shall prepare an abatement order substantially similar to that attached as Exhibit B attached hereto.
5. The City attorney is authorized to take all necessary legal steps to effectuate service of this resolution and the corresponding abatement order in the manner required by state and/or local law.
6. The City attorney and City staff are authorized to take all necessary legal steps to secure compliance with the abatement order and to obtain authority to remove and abate the hazardous conditions on the Subject Property by court order and collect and/or assess the costs thereof against the Subject Property, as otherwise permitted by state and/or local law.

EXHIBIT A TO RESOLUTION

Abatement Order

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil

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In the Matter of the Hazardous and Nuisance  
 Property Located at 1742 ½ English Street,  
 Maplewood, Minnesota

---

ORDER FOR ABATEMENT OF  
HAZARDOUS PROPERTY  
AND PUBLIC NUISANCE

TO: All owners, occupants, and all lienholders of record.

The city council of the city of Maplewood, Minnesota hereby orders that within 45 days of service of this Order that you abate the hazardous conditions which exist on the property located at: 1742 ½ English Street, in the city of Maplewood, Ramsey County, which property is legally described as follows:

*The North 100 feet of the South 767.56 feet, except the West 158 feet of the Southwest Quarter of Section 15, Township 29, Range 22, lying West of the Northern Pacific Railway Right of Way, Ramsey County, Minnesota*

The city of Maplewood, pursuant to Minnesota Statutes, chapter 463 and the Minnesota State Building Code, has determined that the condition of the property located at the above-referenced address is hazardous and unsafe because wastewater produced by or disposed of within the dwelling located thereon is being deposited into a cesspool. The dwelling's plumbing fixtures are not otherwise connected to public sewer, nor are they serviced by a compliant individual subsurface sewage treatment system. For those reasons, the city of Maplewood, pursuant to chapter 18 of the Maplewood City Code and Minnesota Statutes, section 609.74, also has determined that the property located at the above-referenced address constitutes a public nuisance.

Pursuant to the above-referenced statutes and ordinances, it is hereby ORDERED that you abate the hazardous conditions within 45 days of the date of service of this Order by performing one of the following:

1. Replace the cesspool with a compliant individual subsurface sewage treatment system that serves the dwelling on the subject property and meets all state and local requirements;
2. Acquire permanent easement rights from neighboring landowners to accommodate a private sewer service line and thereafter connect the dwelling on the subject property to city sewer; or
3. Demolish the dwelling on the subject property to prevent the ability to deposit wastewater generated on the property into the noncompliant cesspool.

All work completed is subject to permitting and required inspections by staff members of the city to ensure compliance with applicable rules and law. You are further advised that unless such corrective action is taken or an answer is served on the city and filed with the Ramsey County District Court Administrator within 21 days of the date of service of this Order upon you, a motion for summary enforcement of this Order may be made to the Ramsey County District Court.

You are further advised that if you do not comply with this Order and the city is compelled to take corrective action, it will pursue the dwelling's demolition and all necessary costs incurred by the city in taking such corrective action will be collected and assessed against the property pursuant to Minnesota Statutes, section 463.21 and section 18-37 of the Maplewood City Code. In connection thereto, the city intends to recover all of its expenses incurred in carrying out this Order, including specifically but not exclusively, filing fees, service fees, publication fees, attorneys' fees, appraisers' fees, witness fees, including expert witness fees and traveling expenses incurred by the city from the time this Order was originally made pursuant to Minnesota Statutes, section 463.22.

Dated \_\_\_\_\_, 2023

KENNEDY & GRAVEN, CHARTERED

By: \_\_\_\_\_  
David T. Anderson (#0393517)  
700 Fifth Street Towers

150 South Fifth Street  
Minneapolis, MN 55402  
(612) 337-9300  
*Attorney for City of Maplewood*

ACKNOWLEDGMENT

The undersigned acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

\_\_\_\_\_  
David T. Anderson

Seconded by Councilmember Lee

Ayes – All

The motion passed.

STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) SS  
CITY OF MAPLEWOOD )

I, the undersigned, being the duly qualified and appointed City Clerk of the City of Maplewood, Minnesota, DO HEREBY CERTIFY that I have compared the attached and foregoing extract of minutes of a regular meeting of the City Council of the City of Maplewood, held on the **13<sup>th</sup> day of February, 2023** with the original on file in my office, and the same is a full, true and complete transcript therefrom insofar as the same relates to the Resolution Ordering the Abatement of Conditions Creating a Hazardous Property and Public Nuisance at 1742 ½ English Street.

WITNESS my hand and sealed this **16<sup>th</sup> Day of February, 2023.**

\_\_\_\_\_  
Christine Evans, Deputy City Clerk  
City of Maplewood, Minnesota



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## Midwest Sewer Services

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P.O. Box 10853 White Bear Lake, MN 55110  
651-492-7550/Brian@Midwestsoiltesting.com

Brian Humpal  
MPCA Licensed Advanced Inspector

---

### SUBSURFACE SEWAGE TREATMENT SYSTEM (SSTS) COMPLIANCE REPORT

---

**Date:** December 15, 2021

**Time:** 1:30 PM

**Owner:** Jose Vega

**Inspection Address:** 1742 ½ English St, Maplewood, MN 55109

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### REPORT SUMMARY

I have performed an “MPCA Compliance Inspection” on this system. I have contacted the City of Maplewood and was advised that there are no records for this system. This very old system (installed in approximately 1940) consists of a cesspool. It should be noted that the average life expectancy of a septic system is approximately 30 years. This system was not pumped at the time of inspection.

My inspection indicates that this system is presently “non-compliant” in accordance with MPCA rules 7080.1500 Subp.4(B) because of the cesspool(s).

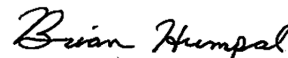
In accordance with MPCA rules, I am sending a copy of this complete report to the City of Maplewood. It is my understanding that the City of Maplewood will require this system to be replaced; however, I cannot officially speak on behalf of the City. Please contact City of Maplewood, Mr. John DuCharme (651-249-2411), to verify their position.

Please advise buyer, agents, lender, etc. to contact me should they have any questions regarding this system.




---

Christopher Uebe




---

Brian Humpal

**NOTE:** This report is not complete without the inclusion/attachment of the additional pages which consist of up to three (3) MPCA drafted Compliance Inspection Documents, one (1) Homeowner/Occupant Information Sheet (when obtainable), one (1) site diagram, one (1) log of soil boring(s), one (1) Brian L Humpal, Inc. Disclaimer Sheet, and one (1) MPCA License.



520 Lafayette Road North  
St. Paul, MN 55155-4194

# Compliance inspection report form

## Existing Subsurface Sewage Treatment System (SSTS)

Doc Type: Compliance and Enforcement

**Instructions: Inspector must submit completed form to Local Governmental Unit (LGU) and system owner within 15 days of final determination of compliance or noncompliance.** Instructions for filling out this form are located on the Minnesota Pollution Control Agency (MPCA) website at <https://www.pca.state.mn.us/sites/default/files/wq-wwists4-31a.pdf>.

### Property information

Local tracking number: \_\_\_\_\_

Parcel ID# or Sec/Twp/Range: \_\_\_\_\_ Reason for Inspection \_\_\_\_\_ Property Transfer \_\_\_\_\_  
 Local regulatory authority info: City of Maplewood  
 Property address: 1742 1/2 English St, Maplewood, MN 55109  
 Owner/representative: Jose Vega Owner's phone: 612-286-9635  
 Brief system description: A cesspool

### System status

System status on date (mm/dd/yyyy): 12/15/2021

**Compliant – Certificate of compliance\***

*(Valid for 3 years from report date unless evidence of an imminent threat to public health or safety requiring removal and abatement under section 145A.04, subdivision 8 is discovered or a shorter time frame exists in Local Ordinance.)*

**\*Note: Compliance indicates conformance with Minn. R. 7080.1500 as of system status date above and does not guarantee future performance.**

**Noncompliant – Notice of noncompliance**

*Systems failing to protect ground water must be upgraded, replaced, or use discontinued within the time required by local ordinance.*

*An imminent threat to public health and safety (ITPHS) must be upgraded, replaced, or its use discontinued within ten months of receipt of this notice or within a shorter period if required by local ordinance or under section 145A.04 subdivision 8.*

#### Reason(s) for noncompliance (check all applicable)

- Impact on public health (Compliance component #1) – *Imminent threat to public health and safety*  
 Tank integrity (Compliance component #2) – *Failing to protect groundwater*  
 Other Compliance Conditions (Compliance component #3) – *Imminent threat to public health and safety*  
 Other Compliance Conditions (Compliance component #3) – *Failing to protect groundwater*  
 System not abandoned according to Minn. R. 7080.2500 (Compliance component #3) – *Failing to protect groundwater*  
 Soil separation (Compliance component #5) – *Failing to protect groundwater*  
 Operating permit/monitoring plan requirements (Compliance component #4) – *Noncompliant - local ordinance applies*

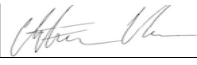
#### Comments or recommendations

### Certification

*I hereby certify that all the necessary information has been gathered to determine the compliance status of this system. No determination of future system performance has been nor can be made due to unknown conditions during system construction, possible abuse of the system, inadequate maintenance, or future water usage.*

**By typing my name below, I certify the above statements to be true and correct, to the best of my knowledge, and that this information can be used for the purpose of processing this form.**

Business name: Midwest Sewer Services Certification number: 5342/9852

Inspector signature: Brian Humpal   
 (This document has been electronically signed) License number: L2896  
 Phone: 651-492-7550

### Necessary or locally required supporting documentation (must be attached)

- Soil observation logs  System/As-Built  Locally required forms  Tank Integrity Assessment  Operating Permit  
 Other information (list): Report Summary, Property Information, Disclaimer, License

Property Address: 1742 1/2 English St, Maplewood, MN 55109

Business Name: Midwest Sewer Services

Date: 12/15/2021

**1. Impact on public health – Compliance component #1 of 5**

**Compliance criteria:**

System discharges sewage to the ground surface	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No
System discharges sewage to drain tile or surface waters.	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No
System causes sewage backup into dwelling or establishment.	<input type="checkbox"/> Yes* <input checked="" type="checkbox"/> No

**Any "yes" answer above indicates the system is an imminent threat to public health and safety.**

**Describe verification methods and results:**

None of the above found.

**Attached supporting documentation:**

- Other: \_\_\_\_\_
- Not applicable

**2. Tank integrity – Compliance component #2 of 5**

**Compliance criteria:**

System consists of a seepage pit, cesspool, drywell, leaching pit, or other pit?	<input checked="" type="checkbox"/> Yes* <input type="checkbox"/> No
Sewage tank(s) leak below their designed operating depth?	<input type="checkbox"/> Yes* <input type="checkbox"/> No
If yes, which sewage tank(s) leaks:	All Tanks

**Any "yes" answer above indicates the system is failing to protect groundwater.**

**Describe verification methods and results:**

**Attached supporting documentation:**

- Empty tank(s) viewed by inspector
  - Name of maintenance business: \_\_\_\_\_
  - License number of maintenance business: \_\_\_\_\_
  - Date of maintenance: \_\_\_\_\_
- Existing tank integrity assessment (Attach)
  - Date of maintenance (mm/dd/yyyy): \_\_\_\_\_ (must be within three years)

*(See form instructions to ensure assessment complies with Minn. R. 7082.0700 subp. 4 B (1))*
- Tank is Noncompliant (pumping not necessary – explain below)
- Other: \_\_\_\_\_

Property Address: 1742 1/2 English St, Maplewood, MN 55109

Business Name: Midwest Sewer Services

Date: 12/15/2021

**3. Other compliance conditions – Compliance component #3 of 5**

3a. Maintenance hole covers appear to be structurally unsound (damaged, cracked, etc.), or unsecured?

Yes\*  No  Unknown

3b. Other issues (electrical hazards, etc.) to immediately and adversely impact public health or safety?  Yes\*  No  Unknown

**\*Yes to 3a or 3b - System is an imminent threat to public health and safety.**

3c. System is non-protective of ground water for other conditions as determined by inspector?  Yes\*  No

3d. System not abandoned in accordance with Minn. R. 7080.2500?  Yes\*  No

**\*Yes to 3c or 3d - System is failing to protect groundwater.**

**Describe verification methods and results:**

Attached supporting documentation:  Not applicable

**4. Operating permit and nitrogen BMP\* – Compliance component #4 of 5  Not applicable**

Is the system operated under an Operating Permit?  Yes  No **If “yes”, A below is required**

Is the system required to employ a Nitrogen BMP specified in the system design?  Yes  No **If “yes”, B below is required**

*BMP = Best Management Practice(s) specified in the system design*

**If the answer to both questions is “no”, this section does not need to be completed.**

**Compliance criteria:**

a. Have the operating permit requirements been met?  Yes  No

b. Is the required nitrogen BMP in place and properly functioning?  Yes  No

**Any “no” answer indicates noncompliance.**

**Describe verification methods and results:**

Attached supporting documentation:  Operating permit (Attach)

Property Address: 1742 1/2 English St, Maplewood, MN 55109

Business Name: Midwest Sewer Services

Date: 12/15/2021

**5. Soil separation – Compliance component #5 of 5**

Date of installation \_\_\_\_\_  Unknown  
 (mm/dd/yyyy)

Shoreland/Wellhead protection/Food beverage lodging?  Yes  No

**Compliance criteria (select one):**

5a. For systems built prior to April 1, 1996, and not located in Shoreland or Wellhead Protection Area or not serving a food, beverage or lodging establishment:  Yes  No\*  
 Drainfield has at least a two-foot vertical separation distance from periodically saturated soil or bedrock.

5b. Non-performance systems built April 1, 1996, or later or for non-performance systems located in Shoreland or Wellhead Protection Areas or serving a food, beverage, or lodging establishment:  Yes  No\*  
 Drainfield has a three-foot vertical separation distance from periodically saturated soil or bedrock.\*

5c. "Experimental", "Other", or "Performance" systems built under pre-2008 Rules; Type IV or V systems built under 2008 Rules 7080.2350 or 7080.2400 (Intermediate Inspector License required ≤ 2,500 gallons per day; Advanced Inspector License required > 2,500 gallons per day)  Yes  No\*  
 Drainfield meets the designed vertical separation distance from periodically saturated soil or bedrock.

**Attached supporting documentation:**

- Soil observation logs completed for the report
- Two previous verifications of required vertical separation
- Not applicable (No soil treatment area)
- \_\_\_\_\_

**Indicate depths or elevations**

A. Bottom of distribution media	
B. Periodically saturated soil/bedrock	
C. System separation	
D. Required compliance separation*	

\*May be reduced up to 15 percent if allowed by Local Ordinance.

**\*Any "no" answer above indicates the system is failing to protect groundwater.**

**Describe verification methods and results:**

**Upgrade requirements:** (Minn. Stat. § 115.55) An imminent threat to public health and safety (ITPHS) must be upgraded, replaced, or its use discontinued within ten months of receipt of this notice or within a shorter period if required by local ordinance. If the system is failing to protect ground water, the system must be upgraded, replaced, or its use discontinued within the time required by local ordinance. If an existing system is not failing as defined in law, and has at least two feet of design soil separation, then the system need not be upgraded, repaired, replaced, or its use discontinued, notwithstanding any local ordinance that is more strict. This provision does not apply to systems in shoreland areas, Wellhead Protection Areas, or those used in connection with food, beverage, and lodging establishments as defined in law.



**Midwest Sewer Testing**

**Subsurface Sewage Treatment System Owner/Property Information**

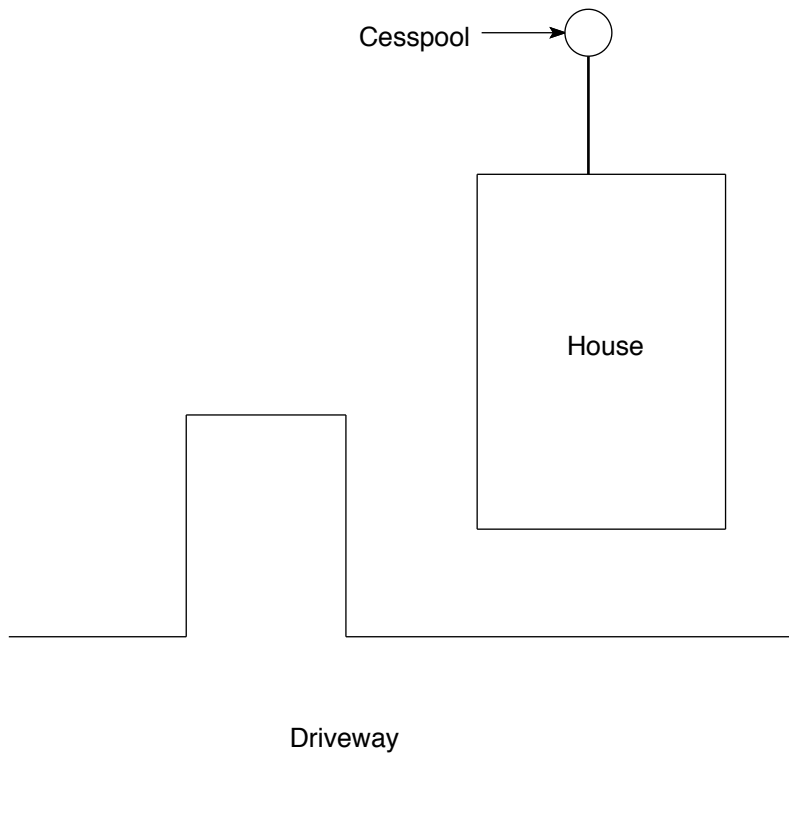
This information will be used for the purpose of conducting an MPCA Compliance Inspection.

Date of Inspection: December 15, 2021		Time: 1:30 PM	
Property Address: 1742 1/2 English St, Maplewood, MN		Zip: 55109	
Property Owner: Jose Vega		Phone: 612-286-9635	
Tank(s) <input type="checkbox"/> Septic <input type="checkbox"/> Aerobic <input type="checkbox"/> Lift <input type="checkbox"/> Holding <input type="checkbox"/> Other:	Tank(s)Material <input type="checkbox"/> Fiberglass <input type="checkbox"/> Plastic <input type="checkbox"/> Metal <input type="checkbox"/> Concrete <input type="checkbox"/> Block <input type="checkbox"/> Other _____	Soil Treatment System <input type="checkbox"/> Rock trench <input type="checkbox"/> Gravelless trench <input type="checkbox"/> Chamber trench <input type="checkbox"/> Seepage bed <input type="checkbox"/> Mound <input type="checkbox"/> At-grade	Other <input type="checkbox"/> Alternative system _____ <input type="checkbox"/> Experimental system _____ <input checked="" type="checkbox"/> Cesspool system 1 <input type="checkbox"/> Other system _____
Are the tank maintenance covers accessible? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No *If no, proper maintenance must be performed through the maintenance holes. Maintenance hole covers should be made accessible to the ground surface to facilitate access and proper maintenance of the system.			
Year house built: 1940	Year septic installed: 1940?	Tank size (gals.):	
How long has seller owned the property?		Number of residents in home?	
Number of bedrooms? 1	Are all floors drained by gravity?		
Garbage disposal?	Whirlpool bath?		
More than one system (laundry, etc.)?			
Does this property have any footing drain tiles connected to the septic system?			
Are any buildings on this property such as garages or out-buildings connected to this system?			
Are there any additional systems on this property serving other buildings?			
Location of septic system on lot? North Side			
Location of water well on lot?		Is the well a deep well? Y?	
Have you ever experienced any problems with the system such as: tree roots, sewage back-ups, surfacing of sewage onto the ground, septic tank overflowing, etc.; or have any repairs been made to the system? If yes, explain:			
When was the system last pumped? Unknown		Name of pumper: Unknown	
How often pumped in previous years?		Is system on a monitoring plan?	
Have you received notices from any government agency concerning this system?			
Is your property located in a shoreland management area? N			
Do you have any additional information that should be given to the new owner?			

I hereby certify that the above information is correct to the best of my knowledge. I also understand that if the system is considered "non-compliant/failing" per MPCA rules, that the inspector must by law submit a copy of this report to the local government unit within 15 days of the date of inspection completion. I also agree that unless otherwise noted in this report, that I/we are ultimately responsible for payment of all fees for all work performed relative to this inspection by Inspect Minnesota and Midwest Soil Testing

Owner/Occupant: \_\_\_\_\_

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



**NO SCALE**

**1742 1/2 English St, Maplewood, MN 55109**

## **DISCLAIMER**

### Brian L. Humpal, Inc. dba. Midwest Sewer Services, Inspect Minnesota, Midwest Soil Testing Relative to Subsurface Sewage Treatment System (SSTS) Compliance Inspections

1. This inspection/report is being performed for only the seller/owner of the property on which the SSTS is located. In such case that another party is paying for the inspection, the contract is between only said party and Brian L. Humpal, Inc.; there is no contract between Brian L. Humpal, Inc. and any other party unless otherwise noted.
3. Brian L. Humpal, Inc. has not been retained to warranty, guarantee, or certify the proper functioning of the SSTS for any period of time beyond the date of inspection or into the future. Because of the numerous factors (usage, maintenance, soil characteristics, previous failures, etc.) which may affect the proper operation of an SSTS, as well as the inability of Brian L. Humpal, Inc. to supervise or monitor the use or maintenance of the SSTS, the report shall not be construed as a warranty by Brian L. Humpal, Inc. that the SSTS will function properly for any particular party for any period of time.
4. Brian L. Humpal, Inc. is unable to verify the frequency and/or, quality of prior or future maintenance of the SSTS. Maintenance of the tank(s) must be performed through the tanks maintenance hole. The removal of solids from any location other than the maintenance hole is not a compliant method of maintenance. It is strongly recommended that maintenance covers be made accessible to the ground surface to facilitate proper maintenance.
5. Minimum Compliance Inspection requirements relative to this inspection and this report include only verification that the SSTS has tank(s) (septic tanks, lift tanks, dosing tanks, stilling tanks, etc.) which are watertight below the designed operating depth, the required separation between the bottom of the subsurface soil distribution medium and seasonally saturated soils, no back-ups of sewage into the dwelling, no discharge of sewage/effluent to the ground surface or surface waters, and no imminent safety hazards. Brian L. Humpal, Inc. does not inspect plumbing or pumps prior to the first SSTS component as these are plumbing components. The performance of exterior pumps and associated components are not inspected as they are considered to be maintenance items. Additionally, no indications relative to compliance with electrical code requirements have been made. It is recommended that any other applicable plumbing, electrical, housing, etc. inspections be performed by a qualified inspection business. Sewage back-up verification is limited to observing the floor drain area and/or the information supplied by the last occupants of the building prior to inspection. Brian L. Humpal, Inc. cannot guarantee that the information given to them by the last occupants of the building prior to inspection relative to back-ups is accurate.
4. Certification of this SSTS does not warranty future use beyond the date of the inspection. Any SSTS, old or new, can become hydraulically overloaded or discharge sewage/effluent to the ground surface as a result of more people moving into the house than were previously occupying the house, improper maintenance, heavy usage, leaking plumbing fixtures, groundwater infiltration, tree roots, freezing conditions, surface drainage problems, poor initial design, poor construction practices, or unsuitable materials used in constructing the system; the system can also simply stop working because of its age. An SSTS that has been properly designed and installed, properly maintained, and used in the manner for which the system was designed can be expected to provide service for twenty to twenty-five years on average. Some parts of the SSTS such as alarms, switches, pumps, filters, etc. will most likely have to be repaired or replaced over the lifetime of the system.
5. A Compliance Inspection is not meant to be a test or inspection for longevity of the system; a Compliance Inspection is strictly for the purpose of determining if the SSTS is protective of public health and safety, as well as the groundwater at the date and time the inspection was performed. This inspection is not intended to determine if the SSTS was originally designed or installed to past or present MPCA or other Local Government Unit code requirements. This inspection is not intended to determine if the SSTS was designed and/or installed to support the anticipated flow from the building as the use of the building may have changed since the design and construction of the SSTS due to the addition of bedrooms, occupants, etc. In addition, this inspection is not intended to determine the quality of the original SSTS design, the quality of the construction practices used while installing the SSTS, or the quality of the materials used in constructing the SSTS.
6. Brian L. Humpal, Inc. cannot guarantee the performance of SSTS products/components such as: gravelless pipe, chamber trenches, effluent filters, tanks, sewage pre-treatment components, piping, etc. Products such as gravelless pipe are no longer approved for installation in the State of Minnesota and may have a significantly reduced performance and/or life expectancy.
7. WINTER WORK: By accepting this report, it is understood that inspections conducted during winter months (approximately November 1<sup>st</sup> through April 1<sup>st</sup>) are more difficult to perform because of possible snow cover and/or ground frost. SSTS components such as tanks, maintenance covers, tank inspection pipes, subsurface distribution medium inspection pipes, and soil treatment areas are more difficult or impossible to locate due to snow cover and/or ground frost. In addition, soil borings are more difficult to perform due to snow cover and/or ground frost. Brian L. Humpal, Inc. will attempt to use the same level of standards when performing work during winter periods as when performing work during non-winter periods. However, the recipient of this report understands that because of the aforementioned considerations, the same level of standards may not be possible.
8. By accepting this report, the client understands that Brian L. Humpal, Inc. will not be responsible for any monetary damages exceeding the fee for the services provided.

# Subsurface Sewage Treatment Systems

Non-transferable

# Business License

## Midwest Sewer Services

License # L2896

License Expires: 12/22/2021

Issued: 11/06/2020

### Specialty Area(s):

Installer

Maintainer

Service Provider

Advanced Designer

Advanced Inspector

### Designated Certified Individual(s):

Cert #	Name	Certification Expires:
C5342	Brian L Humpal Installer, Maintainer, Serv Prov, Adv Designer, Adv Inspector	10/15/2023
C9852	Christopher R Uebe Designer, Inspector	3/4/2024



520 Lafayette Road North  
St. Paul, Minnesota 55155-4194

Nick Haig, Supervisor  
Certification and Training Unit

**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Michael Martin, AICP, Assistant Community Development Director

**PRESENTER:** Danette Parr, Community Development Director

**AGENDA ITEM:** Metropolitan Livable Communities Act Grant and Loan Agreements, Gladstone Village, 1310 Frost Avenue East

**Action Requested:**  Motion  Discussion  Public Hearing

**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

The City of Maplewood has been awarded two grants from the Metropolitan Council's Livable Communities Demonstration Account to support JB Vang's proposed Gladstone Village multifamily development at 1310 Frost Avenue East. On May 8, 2023, the city council approved the land use applications for the 65-unit multifamily building and, on August 28, 2023, adopted a resolution of support to apply for the grants.

Cities that receive Metropolitan Council-issued grants for projects that have received tax credit awards from Minnesota Housing can convert the grants into deferred loans. The city council is being asked to approve two grant agreements between the city and the Metropolitan Council, as well as loan agreements between the city and JB Vang, the project developer.

**Recommended Action:**

Motion to approve grant and loan agreements between the city, Metropolitan Council, and JB Vang and authorize the mayor, city manager, and city attorney to complete and execute all required documents.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is \$0

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other:

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

The city's 2040 Comprehensive Plan establishes the goal to *"Improve the availability of affordable housing for both homeowners and renters"* and identified an action item to *"Partner with Metropolitan Council and other agencies and programs to provide funding assistance (to*

*developers, and also to those in need of housing) to provide for affordable housing units in the community.”*

### **Background:**

JB Vang is working to construct 65 affordable housing units in a four-story building at 1310 Frost Avenue. The city’s 2040 Comprehensive Plan guides the property as a Mixed-Use Neighborhood High Density, encouraging multifamily residential uses. The developer intends to start construction on this project this summer.

In 2023, JB Vang identified a funding gap in their proposed projects – a common occurrence for affordable housing developments – and worked with the city to secure funding via the Metropolitan Council’s Livable Communities Demonstration Account grant programs.

It should be noted that the developer originally intended to request tax-increment financing from the city, but the developer-city partnership was so successful in being awarded grant dollars from the Metropolitan Council, the State of Minnesota, and Ramsey County that the developer has withdrawn its request for direct city assistance.

### **Livable Communities Demonstration Account**

A \$1,150,000 grant was awarded to the city on December 13, 2023, for this project. The Metropolitan Council states that the Livable Communities Demonstration Account provides funding for projects that increase access to housing, jobs, services, and transit to support more equitable, livable communities in the region

### **Tax Base Revitalization Account**

On January 10, 2024, the city received a \$100,000 grant for this project. The Metropolitan Council states that the Tax Base Revitalization Account provides funding to investigate and clean up brownfields—contaminated land, groundwater, or buildings—for redevelopment.

### **Revolving Loans**

As stated at the beginning of the report, the Metropolitan Council allows grant recipients, in this case, the city, to convert the grants into deferred loans for projects that have also been awarded tax credits. JB Vang, the developer of this project, requests that the city consider this as there is a tax advantage to the developer, which allows for the maximum amount of grant dollars to be directed into the project. These loans defer any interest or periodic payments and would have a 50-year timeframe. This timeframe is requested to align with other financing the developer has received for this project – namely from Minnesota Housing. At the end of the loan agreement, the developer must repay the loan to the city, which can then work with the Metropolitan Council to direct the funds towards another project.

While the request to convert grants into deferred loans has not occurred in Maplewood in the past, other communities in the Twin Cities have approved similar conversions. The alternative to not approving the loan conversion is to grant the money directly to the project as awarded by the Metropolitan Council with no prospect of any repayment.

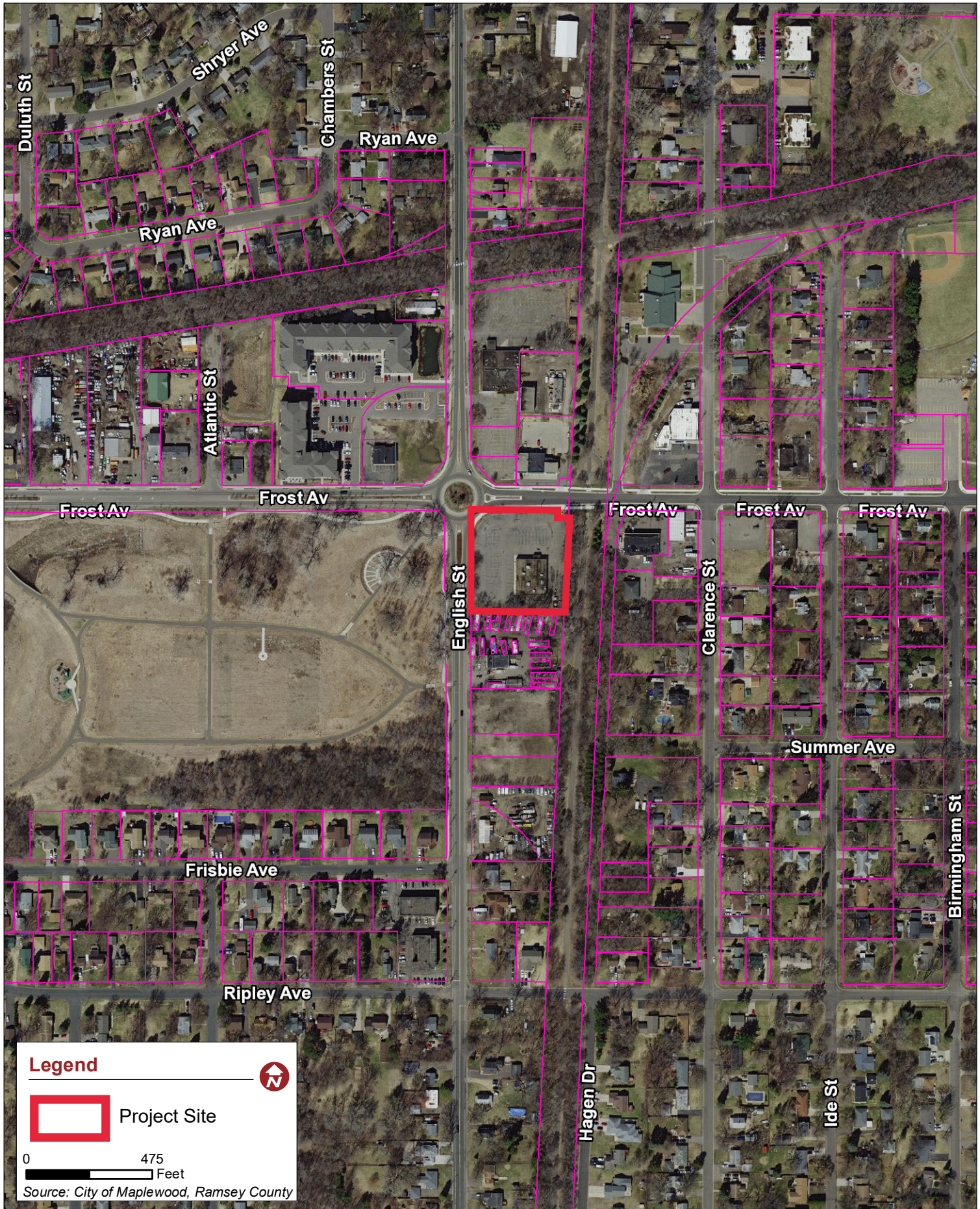
**Summary**

The city council is requested to approve grant agreements for both grants awarded by the Metropolitan Council and loan agreements and associated documents between the city and JB Vang to convert the grants into deferred loans.

The city attorney has reviewed all agreements and documents and is comfortable with the city council granting approval.

**Attachments:**

1. Location Map
2. LCDA – Metropolitan Livable Communities Act Grant agreement
3. TBRA – Metropolitan Livable Communities Act Grant agreement
4. Master Disbursement Agreement
5. Master Subordination Agreement and Estoppel Certificate
6. LCDA – Loan Agreement
7. LCDA – Note
8. LCDA – Combination Mortgage and Security Agreement
9. TBRA – Loan Agreement
10. TBRA – Note
11. TBRA – Combination Mortgage and Security Agreement





<b>GRANTEE: City of Maplewood</b>	<b>GRANT NO. SG-19791</b>
<b>PROJECT: Maplewood – Gladstone Village 1</b>	
<b>GRANT AMOUNT: \$1,150,000.00</b>	<b>CYCLE: 2023</b>
<b>COUNCIL ACTION: December 13, 2023</b>	<b>EXPIRATION DATE: December 31, 2026</b>

**METROPOLITAN LIVABLE COMMUNITIES ACT  
GRANT AGREEMENT**

**THIS GRANT AGREEMENT** (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the Municipality, County, or Development Authority identified above as “Grantee.”

**WHEREAS**, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act (“LCA”) and the policies of the Council’s Metropolitan Development Guide; and

**WHEREAS**, Minnesota Statutes sections 473.251 and 473.253 establish within the Metropolitan Livable Communities Fund a Livable Communities Demonstration Account and require the Council to use the funds in the account to make grants or loans to municipalities participating in the Local Housing Incentives Account Program under Minnesota Statutes section 473.254 or to Counties or Development Authorities to fund the initiatives specified in Minnesota Statutes section 473.25(b) in Participating Municipalities; and

**WHEREAS**, the Grantee is a Municipality participating in the Local Housing Incentives Account program under Minnesota Statutes section 473.254, a County, or a Development Authority; and

**WHEREAS**, the Grantee seeks funding in connection with an application for Livable Communities Demonstration Account grant program funds submitted in response to the Council’s notice of availability of grant funds for the “Funding Cycle” identified above and will use the grant funds made available under this Agreement to help fund the “Project” identified in the application; and

**WHEREAS**, the Council awarded Livable Communities Demonstration Account grant program funds to the Grantee subject to any terms, conditions, and clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner, all grant funds will be expended prior to the “Expiration Date” identified above and Project construction will have “commenced” before the Expiration Date.

**NOW THEREFORE**, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

## I. DEFINITIONS

**1.01. Definition of Terms.** The terms defined in this Section have the meanings given them in this Section unless otherwise provided or indicated by the context.

- (a) **Commenced.** For the purposes of Sections 2.08 and 5.03, “commenced” means significant physical improvements have occurred in furtherance of the Project (*e.g.*, a foundation is being constructed or other tangible work on a structure has been initiated). In the absence of significant physical improvements, visible staking, engineering, land surveying, soil testing, cleanup site investigation, or pollution cleanup activities are not evidence of Project commencement for the purposes of this Agreement.
- (b) **Council Action.** “Council Action” means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Livable Communities Demonstration Account funds.
- (c) **County.** “County” means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties.
- (d) **Development Authority.** “Development Authority” means a statutory or home rule charter city, a housing and redevelopment authority, an economic development authority, or a port authority in the Metropolitan Area.
- (e) **Metropolitan Area.** “Metropolitan Area” means the seven-county metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.
- (f) **Municipality.** “Municipality” means a statutory or home rule charter city or town participating in the Local Housing Incentives Account Program under Minnesota Statutes section 473.254.
- (g) **Participating Municipality.** “Participating Municipality” means a statutory or home rule charter city or town which has elected to participate in the Local Housing Incentive Account program and negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254.
- (h) **Project.** Unless clearly indicated otherwise by the context of a specific provision in this Agreement, “Project” means the development or redevelopment project identified in the application for Demonstration Account funds for which grant funds were requested that through its design and execution will deliver benefits such as housing, connections, and jobs to the region. Grant-funded activities typically are components of the Project.

## II. GRANT FUNDS

**2.01. Source of Funds.** The grant funds made available to the Grantee under this Agreement are from the Livable Communities Demonstration Account of the Metropolitan Livable Communities Fund. The grant funds are derived from the property tax authorized by Minnesota Statutes section 473.253, subdivision 1 and are not from State or federal sources.

**2.02 Grant Amount.** The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement. The Council’s obligation to reimburse the Grantee for eligible grant-funded

expenditures shall not exceed the Grant Amount. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Livable Communities Demonstration Account grant funds made available to the Council may result in a like reduction in the Grant Amount made available to the Grantee.

**2.03. Authorized Use of Grant Funds.** The Grant Amount made available to the Grantee under this Agreement shall be used only for the purposes and activities described in the application for Livable Communities Demonstration Account grant funds. The grant funds may be used for reimbursement of real estate acquisition costs if: (a) the property was purchased within the twelve-month period preceding the date by which the LCDA Development grant program applications for the Funding Cycle were due; (b) the real estate was purchased by the Grantee or by a not-for-profit or a socially responsible developer; and (c) the Project will lead to the development of affordable housing or will result in jobs retained, created, or made more accessible to low-income and underserved populations, including opportunities for entrepreneurship. Property holding costs are an eligible use of grant funds but may not exceed five percent (5%) of the amount of the grant funds awarded for property acquisition or \$100,000, whichever is less. A Project summary that describes eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Aerial photography or drawings that identify the specific location(s) within the Project boundaries for which grant funds must be used is attached to and incorporated into this Agreement as Attachment B. Grant funds must be used to fund the initiatives specified in Minnesota Statutes section 473.25(b), in a Participating Municipality.

**2.04. Ineligible Uses.** Grant funds must be used for costs directly associated with the Project activities for which the Council awarded grant funds and shall not be used for “soft costs” such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses, or authorization fees; costs associated with preparing grant proposals; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Except as provided in Section 2.03, grant funds may not be used for costs of Project activities that occurred prior to the Council Action, unless specifically included in the Project Summary or otherwise approved by Council Action. A detailed list of ineligible and eligible costs is available from the Council’s Livable Communities program office. Except for reimbursement for real estate acquisition and holding costs as provided in Section 2.03, grant funds also shall not be used by the Grantee or others to supplant or replace: (a) grant or loan funds obtained for the Project from other sources; or (b) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (c) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any “business subsidy” requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee’s expenditures or uses of the grant funds.

**2.05. Loans for Low-Income Housing Tax Credit Projects.** If consistent with the application and the Project activities described or identified in Attachments A and B or if requested in writing by the Grantee, the Grantee may structure the grant assistance to the Project as a loan so the Project Owner can take advantage of federal and state low-income housing tax credit programs. The Grantee may use the grant funds as a loan for a low-income housing tax credit project, subject to the terms and conditions stated in Sections 2.03 and 2.04 and the following additional terms and conditions:

- (a) The Grantee covenants and represents to the Council that the Project is a rental housing project that received or will receive an award of low-income housing tax credits under Section 42 of

the Internal Revenue Code of 1986, as amended, and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the Metropolitan Area.

- (b) The Grantee will execute a loan agreement with the Project Owner. Prior to disbursing any grant funds for the Project, the Grantee will provide to the Council a copy of the loan agreement between the Grantee and the Project Owner.
- (c) The Grantee will submit annual written reports to the Council that certify: (1) the grant funds continue to be used for the Project for which the grant funds were awarded; and (2) the Project is a “qualified low-income housing project” under Section 42 of the Internal Revenue Code of 1986, as amended. This annual reporting requirement is in addition to the reporting requirements stated in Section 4.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual certification reports during the initial “compliance period” and any “extended use period,” or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee.
- (d) The grant funds made available to the Grantee and disbursed to the Project Owner by the Grantee in the form of a loan may be used only for the grant-eligible activities and Project components for which the Grantee was awarded the grant funds. For the purposes of this Agreement, the term “Project Owner” means the current Project Owner and any Project Owner successor(s).
- (e) Pursuant to Section 2.04, the grant funds made available to the Grantee and disbursed to the Project Owner in the form of a loan shall not be used by the Grantee, the Project Owner, or others to supplant or replace: (1) grant or loan funds obtained for the Project from other sources; or (2) Grantee contributions to the Project, including financial assistance, real property, or other resources of the Grantee; or (3) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council will not make the grant funds available to the Grantee in a lump sum payment, but will disburse the grant funds to the Grantee on a reimbursement basis pursuant to Section 2.11.
- (f) By executing this Agreement, the Grantee: (1) acknowledges that the Council expects the loan will be repaid so the grant funds may be used to help fund other activities consistent with the requirements of the Metropolitan Livable Communities Act; (2) covenants, represents, and warrants to the Council that the Grantee’s loan to the Project Owner will meet all applicable low-income housing tax credit program requirements under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”), and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the Metropolitan Area; and (3) agrees to administer its loan to the Project Owner consistent with federal and state low-income housing tax credit program requirements.
- (g) The Grantee will, at its own expense, use diligent efforts to recover loan proceeds: (1) when the Project Owner becomes obligated to repay the Grantee’s loan or defaults on the Grantee’s loan; (2) when the initial thirty-year “compliance period” expires, unless the Council agrees in writing

that the Grantee may make the grant funds available as a loan to the Project Owner for an “extended use period”; and (3) if noncompliance with low-income housing tax credit program requirements or some other event triggers the Project Owner’s repayment obligations under its loan agreement with the Grantee. The Grantee must repay to the Council all loan repayment amounts the Grantee receives from the Project Owner. The Grantee shall not be obligated to repay the grant funds to the Council except to the extent the Project Owner repays its loan to the Grantee, provided the Grantee has exercised the reasonable degree of diligence and used administrative and legal remedies a reasonable and prudent housing finance agency would use to obtain payment on a loan, taking into consideration (if applicable) the subordinated nature of the loan. At its discretion, the Council may: (1) permit the Grantee to use the loan repayment from the Project Owner to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.

- (h) If the Grantee earns any interest or other income from its loan agreement with the Project Owner, the Grantee will: (1) use the interest earnings or income only for the purposes of implementing the Project activities for which the grant was awarded; or (2) remit the interest earnings or income to the Council. The Grantee is not obligated to earn any interest or other income from its loan agreement with the Project Owner, except to the extent required by any applicable law.

**2.06. Revolving Loans.** If consistent with the application and the Project summary or if requested in writing by the Grantee, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments), revolving loans (loans made with interest and periodic payments), or otherwise make the grant funds available on a “revolving” basis for the purposes of implementing the Project activities described or identified in Attachments A and B. The Grantee will submit annual written reports to the Council that report on the uses of the grant funds. The form and content of the report will be determined by the Council. This annual reporting requirement is in addition to the reporting requirements stated in Section 4.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual reports until the deferred or revolving loan programs terminate, or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee. At its discretion, the Council may: (a) permit the Grantee to use loan repayments to continue supporting affordable housing components of the Project; or (b) require the Grantee to remit the grant funds to the Council.

**2.07. Restrictions on Loans or Grants to Subrecipients.** The Grantee shall not permit any subgrantee, subrecipient, or contractor to use the grant funds for loans or grants to any subrecipient at any tier unless the Grantee obtains the prior written consent of the Council. The requirements of this Section 2.07 shall be included in all subgrants, subrecipient agreements, and contracts.

**2.08. Project Commencement and Changes.** The Project for which grant funds were requested must be “commenced” prior to the Expiration Date. If the grant funds will be used only for land acquisition and holding costs as authorized by Section 2.03 and will not be used for any other grant-eligible activities, the property acquired for the Project must be purchased prior to the Expiration Date. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to the grant-funded activities described or identified in Attachments A and B. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee’s eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of

significant changes to either the Project or to grant-funded activities described or identified in Attachments A and B.

**2.09. Budget Variance.** The Grantee may reallocate up to twenty percent (20%) of the Grant Amount among the grant-funded activities, provided: (a) the grant funds may be used only for Project activities for which the Council awarded the grant funds; (b) the reallocation does not significantly change the Project deliverables; and (c) the Grantee receives written permission from Council staff prior to reallocating any grant funds. Council staff may administratively approve budget reallocation requests that exceed twenty percent (20%) of the Grant Amount only if the reallocation does not significantly change the Project deliverables. Notwithstanding the aggregate or net effect of any variances, the Council's obligation to provide grant funds under this Agreement shall not exceed the Grant Amount identified at Page 1 of this Agreement.

**2.10. Loss of Grant Funds.** The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; and any interest earnings described in Section 2.12 that are not used for the purposes of implementing the grant-funded Project activities described or identified in Attachments A and B. For the purposes of this Agreement, grant funds are "expended" prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible grant-funded Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council's Livable Communities Demonstration Account for distribution through application processes in future Funding Cycles or as otherwise permitted by law.

**2.11. Payment Request Forms, Documentation, and Disbursements.** The Council will disburse grant funds in response to payment requests submitted by the Grantee through the Council's online grant management system and reviewed and approved by the Council's authorized agent. Payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms will be provided to the Grantee by the Council. The Council will disburse grant funds on a reimbursement basis or a "cost incurred" basis. To obtain reimbursement under this Agreement, the Grantee shall provide the Council with evidence that the eligible grant-funded Project activities (or a portion thereof) for which reimbursement has been requested have been satisfactorily completed. The Grantee shall describe the grant-eligible activities for which reimbursement is requested and shall provide sufficient documentation of grant-eligible expenditures, invoices and payment documents, and such other information as the Council reasonably requests. The Council will make the final determination whether the expenditures are eligible for reimbursement under this Agreement, and verify the total amount requested from the Council. Reimbursement of any costs does not constitute a waiver by the Council of any Grantee noncompliance with this Agreement. Payment requests must include the following documentation:

Consultant/contractor invoices showing the time period covered by the invoice; the specific grant-funded Project activities conducted or completed during the authorized time period within which eligible costs may be incurred; and documentation supporting expenses including subcontractor and consultant invoices showing unit rates, quantities, and a description of the goods or services provided. Subcontractor markups shall not exceed ten percent (10%).

The Council shall disburse grant funds for all grant-eligible expenditures within thirty-five (35) days of the receipt of satisfactory documentation from the Grantee. **NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 2.11, THE COUNCIL WILL NOT DISBURSE ANY GRANT FUNDS TO THE GRANTEE UNLESS THE GRANTEE (OR PARTICIPATING MUNICIPALITY) HAS ADOPTED A FAIR HOUSING POLICY AS REQUIRED BY SECTION 3.04.**

**2.12. Interest Earnings.** If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described or identified in Attachments A and B.

**2.13. Effect of Grant.** Issuance of this Grant neither implies any Council responsibility for contamination, if any, at the Project site nor imposes any obligation on the Council to participate in any pollution cleanup of the Project site if such cleanup is undertaken or required.

### **III. AFFORDABILITY; AFFIRMATIVE FAIR HOUSING**

**3.01. Affordability Term.** If the Project for which the grant funds were awarded includes affordable housing units, the Grantee shall, through written instruments or otherwise, ensure the affordable units will remain affordable for a minimum period of fifteen (15) years. The Grantee's obligation under this Section may be satisfied if other Project funding sources (*e.g.*, the Minnesota Housing Finance Agency or the U.S. Department of Housing and Urban Development ("HUD")) or state or federal laws (*e.g.*, low-income housing tax credit programs) require an affordability term of at least fifteen (15) years. For the purposes of this Section, "affordable housing unit" means a unit that is affordable to households at sixty percent (60%) or less of the Area Median Income ("AMI"), as established by HUD, unless the Grantee's application stated an affordability standard lower than sixty percent (60%) of AMI, in which case the Grantee's lower affordability standard shall apply. The affordability requirements of this Section shall survive the expiration or termination of this Agreement.

**3.02. Affirmative Fair Housing Marketing Plans.** If the Project for which the grant funds were awarded is a housing project or includes housing units (whether market rate or affordable), the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements an affirmative fair housing marketing plan for Project housing units. For the purposes of this section, "affirmative fair housing marketing plan" means an affirmative fair housing marketing plan that substantially conforms to affirmative fair housing marketing plans published by the U.S. Department of Housing and Urban Development ("HUD"), or sample affirmative fair housing marketing plans published by the Minnesota Housing Finance Agency. The affirmative fair housing marketing plan requirement under this section shall continue for the minimum affordability term specified in Section 3.01 and shall survive the expiration or termination of this Agreement.

**3.03. Section 8 Housing Choice Vouchers.** If the Project is a housing project, or includes housing units (whether market rate or affordable), and the Grantee stated in its application that the Project housing units would be made available to households participating in the federal Housing Choice Voucher program, the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements a policy under which the Project owner will not refuse to lease Project units to households or individuals participating in the Housing Choice

Voucher program because those households or individuals are Housing Choice Voucher program participants. The Housing Choice Voucher requirement under this section shall continue for the minimum affordability term specified in Section 3.01 and shall survive the expiration or termination of this Agreement.

**3.04. Fair Housing Policy.** If the Project will include a housing component, the Grantee (or participating Municipality) must have adopted a Fair Housing Policy. For the purposes of this section, the term “Fair Housing Policy” means a written statement regarding the Grantee’s (or participating Municipality’s) commitment to fair housing that substantively includes at least the following elements: a purpose statement; procedures for responding to fair housing concerns and complaints; and a designated individual or staff position responsible for fair housing issues. A best practices guide, as well as a copy of a model local fair housing policy is available at: <https://metro council.org/Handbook/Files/Resources/Best-Practices/Fair-Housing-Policy-Guide.aspx>.

#### IV. ACCOUNTING, AUDIT, AND REPORT REQUIREMENTS

**4.01. Accounting and Records.** The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Sections 5.01 and 5.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described or identified in Attachments A and B or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Accounting methods shall be in accordance with generally accepted accounting principles.

**4.02. Audits.** The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee’s premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

**4.03. Report Requirements.** The Grantee will report to the Council on a semi-annual basis by January 31 (for the period of July 1 through December 31) and July 31 (for the period January 1 through June 30) of each calendar year during the term of this Agreement. The Grantee reports shall describe the status of the Project activities described or identified in Attachments A and B. The report shall also describe the Project spending for the current reporting period and projected spending for the future reporting periods. The Grantee also must complete and submit to the Council a Final Report before the final disbursement of grant funds will be approved. The form and content of the semi-annual status reports and the Final Report will be determined by the Council. These reporting requirements and the reporting requirements of Sections 2.05 and 2.06 shall survive the expiration or termination of this Agreement.

**4.04. Environmental Site Assessment.** The Grantee represents that a Phase I Environmental Site Assessment or other environmental review has been or will be carried out, if such environmental



assessment or review is appropriate for the scope and nature of the Project activities funded by this Grant, and that any environmental issues have been or will be adequately addressed.

## V. AGREEMENT TERM

**5.01 Term and Close Out.** This Agreement is effective upon execution of this Agreement by the Council. Unless terminated pursuant to Section 5.02, this Agreement expires on the Expiration Date identified at Page 1 of this Agreement. Failure of the Grantee to timely execute this Agreement does not extend the Expiration Date. The Grantee has 120 calendar days after the Expiration Date to provide documentation and information necessary to close out this Agreement and receive disbursements for eligible grant-funded Project activities as prescribed in Section 2.03. If the Grantee fails to provide necessary documentation and information during this 120-day close out period, the Grantee shall not be eligible to receive any unpaid grant funds and the Council will not disburse any unpaid grant funds to the Grantee. This 120-day close out period does not extend any Grantee reporting deadlines established in this Agreement or authorize the Grantee to expend or commit any grant funds after the Expiration Date.

**5.02. Termination.** This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days' written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described or identified in Attachments A and B that have been completed prior to the termination. Termination of this Agreement does not alter the Council's authority to recover grant funds on the basis of a later audit or other review, and does not alter the Grantee's obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council's interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

**5.03. Amendments and Extension.** The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or an extension of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. If the Grantee needs a change to the Project, additional time within which to complete the grant-funded activities and commence the Project, a change in the budget, or a change in grant-funded activities the Grantee must submit to the Council **AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, a complete, written amendment request. All requirements must be met for a request to be considered complete. **THE EXPIRATION DATE MAY BE EXTENDED, BUT THE PERIOD OF ANY EXTENSION(S) SHALL NOT EXCEED TWO (2) YEARS BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.**

## VI. GENERAL PROVISIONS

**6.01. Equal Opportunity.** The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, gender identity, marital status, status with regard to public assistance, familial status, membership or activity in a local civil rights commission, disability, sexual orientation, or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

**6.02. Conflict of Interest.** The members, officers, and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

**6.03. Liability.** Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify, and hold harmless the Council and its members, employees, and agents from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this grant, except to the extent the claims, damages, losses, and expenses arise from the Council's own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, Title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this Section shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466, or other applicable state or federal law.

**6.04. Acknowledgments and Signage.** The Grantee will acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports, and publications relating to the Project. The acknowledgment will contain the following or comparable language:

*Financing for this project was provided by the Metropolitan Council  
Metropolitan Livable Communities Fund*

Until the Project is completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved by the Council's authorized agent, is included on all signs (if any) located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project. The acknowledgment and signage should refer to the "Metropolitan Council" (not "Met Council" or "Metro Council").

**6.05. Permits, Bonds, and Approvals.** The Council assumes no responsibility for obtaining any applicable local, state, or federal licenses, permits, bonds, authorizations, or approvals necessary to perform or complete the Project activities described or identified in Attachments A and B. The Grantee and its developer(s), if any, must comply with all applicable licensing, permitting, bonding, authorization, and approval requirements of federal, state, local governmental, and regulatory agencies, including conservation districts.

**6.06. Subgrantees, Contractors, and Subcontractors.** The Grantee shall include in any subgrant, contract, or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor, and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this Grant obtain all required permits, licenses and certifications, and comply with all applicable state and federal Occupational Safety and Health Act regulations. If the Project for which the grant funds were awarded includes affordable units, the Grantee's subgrant agreement(s) shall expressly include the affordability and affirmative fair housing marketing plan requirements of Sections 3.01 and 3.02.

**6.07 Stormwater Discharge and Water Management Plan Requirements.** If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (b) The Council's *2040 Water Resources Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

**6.08. Authorized Agent.** Payment request forms, written reports, and correspondence submitted to the Council pursuant to this Agreement shall be directed to the Authorized Agent named below or their successor through the Council's online grants administration portal or to the below contact information:

Attn: Samuel F. Johnson  
 Metropolitan Council  
 CD & MTS Finance and Administration  
 390 Robert Street North  
 Saint Paul, Minnesota 55101-1805  
[samuel.johnson@metc.state.mn.us](mailto:samuel.johnson@metc.state.mn.us)

**6.09. Non-Assignment.** Minnesota Statutes section 473.253, subdivision 2 requires the Council to distribute grant funds to eligible "municipalities," metropolitan-area counties, or "development authorities" for projects in municipalities participating in the Local Housing Incentives Account program. Accordingly, this Agreement is not assignable and shall not be assigned by the Grantee.

**6.10. Authorization to Reproduce Images.** The Grantee certifies that the Grantee: (a) is the owner of any renderings, images, perspectives, sections, diagrams, photographs, or other copyrightable materials (collectively, "copyrightable materials") that are in the Grantee's application or are submitted to the Council as part of the grant application review process or after grant award, or that the Grantee is fully authorized to grant permissions regarding the copyrightable materials; and (b) the copyrightable materials do not infringe upon the copyrights of others. The Grantee agrees the Council has a nonexclusive royalty-free license and all necessary permissions to reproduce and publish the copyrightable materials for noncommercial purposes, including but not limited to press releases, presentations, reports, and on the internet. The Grantee also agrees the Grantee will not hold the Council responsible for the unauthorized use of the copyrightable materials by third parties.

**6.11. Warranty of Legal Capacity.** The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee's and the Council's behalf respectively and that this Agreement constitutes the Grantee's and the Council's valid, binding, and enforceable agreements.

**6.12. Counterparts.** This Agreement may be executed in counterpart, each of which counterpart constitutes an original, but both of which together constitute one instrument.

**6.13. Electronic Signatures.** The electronic signatures of the Council's and the Grantee's authorized representatives shall be valid as an original signature of the authorized representatives and

shall be effective to bind the Council and the Grantee under this Agreement. This Agreement containing, or to which there is affixed, an electronic signature shall be deemed to: (a) be “written” or “in writing”; (b) have been signed; and (c) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. “Electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. The Council’s or the Grantee’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

**IN WITNESS WHEREOF**, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

**CITY OF MAPLEWOOD**

**METROPOLITAN COUNCIL**

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

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

Title: \_\_\_\_\_

LisaBeth Barajas, Executive Director  
Community Development Division

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

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

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

Title: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

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

**Approved as to form:**

By: \_\_\_\_\_  
City Attorney’s Office

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

**ATTACHMENT A**  
**PROJECT SUMMARY**

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Livable Communities Demonstration Account grant funds submitted in response to the Council's notice of availability of Demonstration Account grant funds for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision of the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project summary contained in this Attachment A, the terms, descriptions and dollar amounts reflected in the Council Action or contained in this Agreement and the Project summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project summary; and (4) the grant application.

**Livable Communities Project Summary**

**Grant #** SG-19791  
**Type:** LCDA Development  
**Applicant:** City of Maplewood  
**Project Name:** Maplewood – Gladstone Village 1  
**Project Location:** 1310 Frost Avenue  
**Council District:** 13 – Lee

<b>Project Detail</b>	
Project Overview	65-unit new construction mixed-income affordable rental housing development focused on family-friendly design and a mix of one-, two-, three-, and four-bedroom units. Amenities will include a large and flexible community gathering space which includes areas for co-working and maker spaces for children, outdoor gathering spaces for adults (grilling and seating) and children (fenced in playground spaces), fitness, and other breakout flex spaces. Seven units are set aside for people with disabilities and another seven units for individuals experiencing homelessness.
Total Jobs	5
Job Type	1 full time   4 part time
Living Wage Jobs	1
Total housing units	65
Affordable units	65   47 at 31-50% AMI   18 at 51-60% AMI
Anticipated # bedrooms	15 One BR   23 Two BR   18 Three BR   9 Four BR
Support for Award	<ul style="list-style-type: none"> <li>Easier access to transit with project being located along BRT.</li> <li>Site design includes greenspace and amenities for residents as well as improves connections.</li> </ul>
<b>Funding</b>	
Other LCA Funding	TBRA: \$394,300
<b>Use of Funds</b>	
<b>\$1,150,000.00</b>	<b>Total</b>
\$750,000.00	<b>Activity: General Construction</b> Deliverable: Final construction of affordable housing building.
\$400,000.00	<b>Activity: Affordable housing site</b> Deliverable: Resident Only Use outdoor courtyard, seating & grilling areas, & playground. Landscaping plan exceeding city requirements.

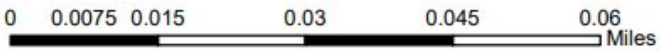
**ATTACHMENT B**  
**PROJECT LOCATION(S)**

This attachment comprises this page and the succeeding page(s) which contain aerial photography or drawings that identify the specific location(s) within the Project boundaries for which the Grantee must use the grant funds. The attached photography or drawings also may identify the types of eligible activities for which the grant funds must be used at specific locations within the Project boundaries.

LCA Aerial LCDA Project: Gladstone Village | Map ID: 1691777109118



- TOD Area
- Project
- Transit Routes (All)
- Active Transit Stops
- Parcels
- Dedicated Bus Rapid Transit
- Dedicated Bus Rapid Transit



Created: 8/11/2023  
LandscapeLCA4



For complete disclaimer of accuracy, please visit  
<https://giswebsite.metro.state.mn.us/gis/notice.aspx>





<b>GRANTEE:</b> City of Maplewood	<b>GRANT NO.</b> SG-20142
<b>PROJECT:</b> Gladstone Village	
<b>GRANT AMOUNT:</b> \$100,000.00	<b>FUNDING CYCLE:</b> 2023 – Round 2
<b>COUNCIL ACTION:</b> January 10, 2024	<b>EXPIRATION DATE:</b> December 31, 2026

**METROPOLITAN LIVABLE COMMUNITIES ACT  
GRANT AGREEMENT**

**THIS GRANT AGREEMENT** (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the Municipality or Development Authority identified above as “Grantee.”

**WHEREAS**, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act (“LCA”) and the policies of the Council’s Metropolitan Development Guide; and

**WHEREAS**, Minnesota Statutes sections 473.251 and 473.252 establish within the Metropolitan Livable Communities Fund a Tax Base Revitalization Account and require the Council to use the funds in the account to make grants to Municipalities or Development Authorities for the cleanup of polluted land in the seven-county metropolitan area; and

**WHEREAS**, the Grantee is a Municipality or a Development Authority as defined in Minnesota Statutes section 473.252, subdivisions 1 and 1a; and

**WHEREAS**, the Grantee seeks funding in connection with an application for Tax Base Revitalization Account funds submitted in response to the Council’s notice of availability of grant funds for the “Funding Cycle” identified above and will use the grant funds made available under this Agreement to help fund the “Project” identified in the application; and

**WHEREAS**, the Council awarded Tax Base Revitalization Account grant funds to the Grantee subject to any terms, conditions or clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner, all grant funds will be expended prior to the “Expiration Date” identified above, and Project development or redevelopment construction will have “commenced” before the Expiration Date.

**NOW THEREFORE**, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

## I. DEFINITIONS

**1.01. Definition of Terms.** The terms defined in this section have the meanings given them in this section unless otherwise provided or indicated by the context.

- (a) **Cleanup Costs or Costs.** “Cleanup Costs” or “Costs” means:
- (1) For hazardous waste or substance contamination, the cost of implementing a voluntary response action plan approved by the Minnesota Pollution Control Agency under Minnesota Statutes section 115B.175, subdivision 3.
  - (2) For asbestos contamination, the cost of implementing a project-specific asbestos project plan for the Site and performing asbestos-related work which is carried out by contractors or subcontractors licensed or certified by the Commissioner of Health under the Minnesota Asbestos Abatement Act, Minnesota Statutes sections 326.70 to 326.81, in accordance with rules prescribed by the Commissioner of Health related to asbestos abatement and asbestos management activity, and meeting the federal Asbestos Hazard Emergency Response Act (“AHERA”) standards for asbestos.
  - (3) For petroleum contamination, the cost of implementing a corrective action plan for the Site approved by the Minnesota Pollution Control Agency under Minnesota Statutes chapter 115C.
  - (4) For lead abatement, the cost of lead abatement work performed by certified contractors consistent with all applicable federal and state laws, rules and standards governing lead abatement or regulated lead work on residential or commercial properties.
- (b) **Commenced.** For the purposes of Sections 2.08 and 5.03, “commenced” means significant physical improvements have occurred in furtherance of the Project (*e.g.*, a foundation is being constructed or other tangible work on a structure has been initiated). In the absence of significant physical improvements, visible staking, engineering, land surveying, soil testing, cleanup site investigation, or pollution cleanup activities are not evidence of Project commencement for the purposes of this Agreement.
- (c) **Council Action.** “Council Action” means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Tax Base Revitalization Account grant funds.
- (d) **Development Authority.** “Development Authority” means a statutory or home rule charter city, housing and redevelopment authority, an economic development authority, or a port authority in the “metropolitan area” as defined by Minnesota Statutes section 473.121, subdivision 2.
- (e) **Municipality.** “Municipality” means a statutory or home rule charter city or town participating in the Local Housing Incentives Program under Minnesota Statutes section 473.254, or a county in the metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.
- (f) **Participating Municipality.** “Participating Municipality” means a statutory or home rule charter city or town that has elected to participate in the Local Housing Incentive Account program and

negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254.

- (g) **Project.** Unless clearly indicated otherwise by the context of a specific provision of this Agreement, “Project” means the development or redevelopment project identified in the application for Tax Base Revitalization Account funds for which grant funds were requested. Grant-funded activities typically are components of the Project.
- (h) **Project Costs.** “Project Costs” means all costs as defined in Minnesota Statutes section 116J.552, subdivision 7.
- (i) **Site.** “Site” means the polluted land proposed by the Grantee to be cleaned up and located both within the metropolitan area and within a Participating Municipality.

## II. GRANT FUNDS

**2.01. Source of Funds.** The grant funds made available to the Grantee under this Agreement are from the Tax Base Revitalization Account of the Metropolitan Livable Communities Fund. The grant funds are derived from the area-wide tax imposed under Minnesota Statutes chapter 473F and are not from State or federal sources.

**2.02. Grant Amount.** The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement. The Council’s obligation to reimburse the Grantee for eligible grant-funded expenditures shall not exceed the Grant Amount. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Tax Base Revitalization Account funds made available to the Council may result in a like reduction in the Grant Amount made available to the Grantee.

**2.03. Authorized Use of Grant Funds.** The Grant Amount made available to the Grantee under this Agreement shall be used only for Cleanup Costs for the cleanup of the Site described in the application for Tax Base Revitalization Account funds. A Project Summary that identifies eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Aerial photography or drawings that identify the specific location(s) within the Project boundaries or the Site(s) for which cleanup grant funds must be used is attached to and incorporated into this Agreement as Attachment B. Grant funds must be used for cleanup of the Site which must be located in a Participating Municipality. If consistent with the application and subject to the limitations in Minnesota Statutes section 116J.556, the Grantee may use the grant funds to provide a portion of the local match requirement for Project Costs that qualify for a grant under Minnesota Statutes sections 116J.551 to 116J.557.

**2.04. Ineligible Uses.** Grant funds must be used for costs directly associated with the specific proposed Project activities for which the grant funds were awarded and shall not be used for “soft costs” such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses or authorization fees; costs associated with preparing grant proposals or applications; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Grant funds may not be used for costs of Project activities that occurred prior to the Council Action, unless the pre-award costs were for:

- (a) Site investigation work that occurred within 180 days of the Funding Cycle application due date and is identified as a grant-funded activity in Attachment A; or
- (b) Project cleanup activities that occurred within 180 days of the Funding Cycle application due date that were expressly approved by the Council Action and are described or identified in Attachments A and B.

A detailed list of ineligible and eligible costs is available from the Council's Livable Communities program office. Grant funds also shall not be used by the Grantee or others to supplant or replace: (a) grant or loan funds obtained for the Project from other sources; or (b) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (c) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any "business subsidy" requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee's expenditures or uses of the grant funds.

**2.05. Loans for Low-Income Housing Tax Credit Projects.** If consistent with the application and the Project activities described in Attachment A or if requested in writing by the Grantee, the Grantee may structure the grant assistance to the Project as a loan so the Project Owner can take advantage of federal and state low-income housing tax credit programs. The Grantee may use the grant funds as a loan for a low-income housing tax credit Project, subject to the terms and conditions stated in Sections 2.03 and 2.04 and the following additional terms and conditions:

- (a) The Grantee covenants and represents to the Council that the Project is a rental housing project that received or will receive an award of low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, as amended, and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the metropolitan area.
- (b) The Grantee will execute a loan agreement with the Project Owner. Prior to disbursing any grant funds for the Project, the Grantee will provide to the Council a copy of the loan agreement between the Grantee and the Project Owner.
- (c) The Grantee will submit annual written reports to the Council that certify: (1) the grant funds continue to be used for the Project for which the grant funds were awarded; and (2) the Project is a "qualified low-income housing project" under section 42 of the Internal Revenue Code of 1986, as amended. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual certification reports during the initial "compliance period" and any "extended use period," or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee.
- (d) The grant funds made available to the Grantee and disbursed to the Project Owner by the Grantee in the form of a loan may be used only for the grant-eligible activities and Project

components for which the Grantee was awarded the grant funds. For the purposes of this Agreement, the term “Project Owner” means the current Project Owner and any Project Owner successor(s).

- (e) Pursuant to Section 2.04, the grant funds made available to the Grantee and disbursed to the Project Owner in the form of a loan shall not be used by the Grantee, the Project Owner or others to supplant or replace: (1) grant or loan funds obtained for the Project from other sources; or (2) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (3) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council will not make the grant funds available to the Grantee in a lump sum payment, but will disburse the grant funds to the Grantee on a reimbursement basis pursuant to Section 2.10.
- (f) By executing this Agreement, the Grantee: (1) acknowledges that the Council expects the loan will be repaid so the grant funds may be used to help fund other activities consistent with the requirements of the Metropolitan Livable Communities Act; (2) covenants, represents and warrants to the Council that the Grantee’s loan to the Project Owner will meet all applicable low-income housing tax credit program requirements under section 42 of the Internal Revenue Code of 1986, as amended (the “Code”), and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the metropolitan area; and (3) agrees to administer its loan to the Project Owner consistent with federal and state low-income housing tax credit program requirements.
- (g) The Grantee will, at its own expense, use diligent efforts to recover loan proceeds: (1) when the Project Owner becomes obligated to repay the Grantee’s loan or defaults on the Grantee’s loan; (2) when the initial thirty-year “compliance period” expires, unless the Council agrees in writing that the Grantee may make the grant funds available as a loan to the Project Owner for an “extended use period”; and (3) if noncompliance with low-income housing tax credit program requirements or some other event triggers the Project Owner’s repayment obligations under its loan agreement with the Grantee. The Grantee must repay to the Council all loan repayment amounts the Grantee receives from the Project Owner. The Grantee shall not be obligated to repay the grant funds to the Council except to the extent the Project Owner repays its loan to the Grantee, provided the Grantee has exercised the reasonable degree of diligence and used administrative and legal remedies a reasonable and prudent housing finance agency would use to obtain payment on a loan, taking into consideration (if applicable) the subordinated nature of the loan. At its discretion, the Council may: (1) permit the Grantee to use the loan repayment from the Project Owner to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.
- (h) If the Grantee earns any interest or other income from its loan agreement with the Project Owner, the Grantee will: (1) use the interest earnings or income only for the purposes of implementing the Project activities for which the grant was awarded; or (2) remit the interest earnings or income to the Council. The Grantee is not obligated to earn any interest or other income from its loan agreement with the Project Owner, except to the extent required by any applicable law.

**2.06. Deferred Loans.** If consistent with the application and the Project Summary, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments) for the purposes of implementing the Project activities described or identified in Attachments A and B. The Grantee will submit annual written reports to the Council that report on the uses of the grant funds. The form and content of the report will be determined by the Council. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual reports until the deferred loan is repaid, or until such time as the Council terminates this annual reporting requirement by written notice from the Council. At its discretion, the Council may: (a) permit the Grantee to use loan repayments to continue supporting affordable housing components of the Project; or (b) require the Grantee to remit the grant funds to the Council.

**2.07. Restrictions on Loans or Grants by Subgrantees.** The Grantee shall not permit any subgrantee, subrecipient, or contractor to use the grant funds for loans or grants to any subrecipient at any tier unless the Grantee obtains the prior written consent of the Council. The requirements of this Section 2.07 shall be included in all subgrants, subrecipient agreements, and contracts.

**2.08. Project Commencement and Changes.** The Project for which grant funds were requested must be “commenced” prior to the Expiration Date. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to grant-funded activities described or identified in Attachments A and B. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee’s eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described or identified in Attachments A and B.

**2.09. Loss of Grant Funds.** The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; and any interest earnings described in Section 2.11 that are not used for the purposes of implementing the grant-funded Project activities described or identified in Attachments A and B. For the purposes of this Agreement, grant funds are “expended” prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible grant-funded Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council’s Tax Base Revitalization Account for distribution through application processes in future Funding Cycles or as otherwise permitted by law.

**2.10. Payment Request Forms, Documentation, and Disbursements.** The Council will disburse grant funds in response to payment requests submitted by the Grantee through the Council’s online grant management system and reviewed and approved by the Council’s Authorized Agent. Payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms will be provided to the Grantee by the Council. The Council will disburse grant funds on a reimbursement basis or a “cost incurred” basis. To obtain reimbursement under this Agreement, the Grantee shall provide the Council with evidence

that eligible grant-funded activities, (or a portion thereof) for which reimbursement is requested, have been satisfactorily completed. The Grantee shall describe the grant-eligible activities for which reimbursement is requested and shall provide sufficient documentation of grant-eligible expenditures, invoices and payment documents, and such other information as the Council reasonably requests. The Council will make the final determination whether the expenditures are eligible for reimbursement under this Agreement, and verify the total amount requested from the Council. Reimbursement of any cost does not constitute a waiver by the Council of any Grantee noncompliance with this Agreement. Payment requests must also include the following documentation:

- (a) Contaminated fill disposal documentation (showing unit rates, one manifest per truck per load, and weight/load tickets); and
- (b) A spreadsheet matching manifest, load tickets and final weights.
- (c) Consultant/contractor invoices showing the time period covered by the invoice; the specific grant-funded Project activities conducted or completed during the authorized time period within which eligible costs may be incurred; and documentation supporting expenses including subcontractor and consultant invoices showing unit rates and quantities. Subcontractor markups shall not exceed ten percent (10%).

The Council shall disburse grant funds for all grant-eligible expenditures within thirty-five (35) days of the receipt of satisfactory documentation from the Grantee. **NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 2.10, THE COUNCIL WILL NOT DISBURSE ANY GRANT FUNDS TO THE GRANTEE UNLESS THE PARTICIPATING MUNICIPALITY HAS ADOPTED A FAIR HOUSING POLICY AS REQUIRED BY SECTION 6.04.**

**2.11. Interest Earnings.** If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described or identified in Attachments A and B.

**2.12. Effect of Grant.** Issuance of this grant neither implies any Council responsibility for the contamination at the Site nor imposes any obligation on the Council to participate in the cleanup of the Site contamination or in the Cleanup Costs beyond the Grant Amount of this Agreement. By awarding grant funds to the Grantee for the Project and executing this Agreement, the Council assumes no responsibility for: (a) any damage to persons, property, or the environment caused by Site cleanup activities or implementation of the Project; or (b) determining whether intended uses of the Site identified in the grant application or potential future uses of the Site, including any residential uses, are suitable for the Site.

### **III. ACCOUNTING, AUDIT AND REPORT REQUIREMENTS**

**3.01. Accounting and Records.** The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Sections 5.01 and 5.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described or identified in Attachments A and B or

six (6) years following the expenditure of the grant funds, whichever occurs earlier. Accounting methods shall be in accordance with generally accepted accounting principles.

**3.02. Audits.** The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee's premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

**3.03. Report Requirements.** The Grantee will report to the Council written progress reports on a semi-annual basis by January 31 (for the period July 1 through December 31) and July 31 (for the period January 1 through June 30) of each calendar year during the term of this Agreement. The Grantee reports shall describe the status of the Project activities described or identified in Attachments A and B. The report shall also describe the projected spending for the current reporting period and projected spending for future reporting periods. The Grantee must complete and submit to the Council a Final Report before the final disbursement of grant funds will be approved. The form and content of the progress reports and the Final Report will be determined by the Council. In addition to the required status reports and the Final Report, the Grantee must submit to the Council by April 15 of the year following the expiration of this Agreement and by April 15 of each of the succeeding three (3) years, an annual written report that includes information about redevelopment activities, net tax capacity of the Site, and jobs resulting from Site cleanup. The form and content of the annual written report will be determined by the Council. The reporting requirements of Sections 3.03 and 3.04 shall survive the expiration or termination of this Agreement.

**3.04. Certificate of Completion.** Upon completion of the Site cleanup, the Grantee will provide to the Council:

- (a) For hazardous waste or substance contamination, a copy of a certificate of completion for the Site issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes section 115B.175, or a letter from the Agency indicating that the approved voluntary response action plan for the Site has been implemented to the satisfaction of the Agency and that the Agency is issuing a determination that no further action is required under Minnesota Statutes sections 115B.01 to 115B.08 to address the identified release; or
- (b) For asbestos contamination, either: (1) a copy of a statement from the Grantee's licensed asbestos abatement contractor that the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health; or (2) a final asbestos abatement implementation report that shows the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health; or
- (c) For petroleum contamination, a copy of a site closure letter issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes chapter 115C; or



- (d) For lead abatement or regulated lead work: (1) a copy of the contractor firm certification to conduct lead-based paint activities in residential or child-occupied facilities per Code of Federal Regulations, title 40, section 745.89 and Minnesota Statutes section 144.9505; and (2) a statement or other documentation from the certified contractor that the lead abatement or regulated work at the Site has been completed in accordance with applicable provisions of Code of Federal Regulations, title 40, part 745 and state laws, rules and standards governing lead abatement according to the Lead Poisoning Prevention Act, Minnesota Statutes sections 144.9501 to 144.9512 and Minnesota Rules parts 4761.2000 to 4761.2700.

#### IV. RECOVERY AND REPAYMENT

**4.01. Recovery of Funds.** If the Grantee recovers funds pursuant to an action under Minnesota Statutes section 115B.04, or other law, to recover the reasonable and necessary Project Costs incurred to clean up the Site, the Grantee shall repay to the Council that portion of the grant as provided in Section 4.04.

**4.02. Assignment of Rights.** Upon request of the Council, the Grantee shall assign to the Council the Grantee's right to recover the funds described in Section 4.01, shall prepare and submit a certification of the Project Costs incurred, and shall cooperate in any cost recovery action brought by the Council.

**4.03. Expenses of Recovery.** The reasonable litigation expenses or other costs of legal or technical assistance incurred by the Grantee, the Council, or both, may be deducted from recovery obtained in accordance with Sections 4.01 or 4.02 and reimbursed to the entity incurring such costs before proceeds of the recovery are distributed in accordance with Section 4.04.

**4.04. Reimbursement.** Subject to the deduction provided in Section 4.03, amounts recovered either by the Grantee or the Council from responsible persons and all other amounts otherwise received by the Grantee or the Council for cleanup of the Site shall be used to reimburse the Grantee, the Council, or any other nonresponsible party who contributed funds for cleanup of the Site in proportion to their respective payments for response costs.

**4.05. Survival of Recovery and Repayment Provisions.** The provisions of Sections 4.01 through 4.04 shall survive the expiration or termination of this Agreement.

#### V. AGREEMENT TERM

**5.01. Term and Close Out.** This Agreement is effective upon execution of this Agreement by the Council. Unless terminated pursuant to Section 5.02, this Agreement expires on the Expiration Date identified at Page 1 of this Agreement. Failure of the Grantee to timely execute this Agreement does not extend the Expiration Date. The Grantee has 120 calendar days after the Expiration Date to provide documentation and information necessary to close out this Agreement and receive disbursements for eligible grant-funded Project activities as prescribed in Section 2.03. If the Grantee fails to provide necessary documentation and information during this 120-day close out period, the Grantee shall not be eligible to receive any unpaid grant funds and the Council will not disburse any unpaid grant funds to the Grantee. This 120-day close out period does not extend any Grantee reporting deadlines established in this Agreement or authorize the Grantee to expend or commit any grant funds after the Expiration Date.

**5.02. Termination.** This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days' written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described or identified in Attachments A and B that have been completed prior to the termination. Termination of this Agreement does not alter the Council's authority to recover grant funds on the basis of a later audit or other review, and does not alter the Grantee's obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council's interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

**5.03. Amendments and Extension.** The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or an extension of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. If the Grantee needs a change to the Project, additional time within which to complete the grant-funded activities and commence the Project, a change in the budget, or a change in grant-funded activities the Grantee must submit to the Council **AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, a complete, written amendment request. All requirements must be met for a request to be considered complete. **THE EXPIRATION DATE MAY BE EXTENDED, BUT THE PERIOD OF ANY EXTENSION(S) SHALL NOT EXCEED TWO (2) YEARS BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.**

## **VI. AFFORDABILITY; AFFIRMATIVE FAIR HOUSING**

**6.01. Affordability Term.** If the Project for which the grant funds were awarded includes affordable housing units, the Grantee shall, through written instruments or otherwise, ensure the affordable units will remain affordable for a minimum period of fifteen (15) years. The Grantee's obligation under this section may be satisfied if other Project funding sources (*e.g.*, the Minnesota Housing Finance Agency or HUD) or state or federal laws (*e.g.*, low-income housing tax credit programs) require an affordability term of at least fifteen (15) years. For the purposes of this section, "affordable housing unit" means a unit that is affordable to households at 60 percent or less of the Area Median Income ("AMI"), as established by HUD, unless the Grantee's application stated an affordability standard lower than 60 percent of AMI, in which case the Grantee's lower affordability standard shall apply. The affordability requirements of this section shall survive the expiration or termination of this Agreement.

**6.02. Affirmative Fair Housing Marketing Plans.** If the Project for which the grant funds were awarded is a housing project, or includes housing units (whether market rate or affordable), the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements an affirmative fair housing marketing plan for Project housing units. For the purposes of this section, "affirmative fair housing marketing plan" means an affirmative fair housing marketing plan that substantially conforms to affirmative fair housing marketing plans published by the U.S. Department of Housing and Urban Development ("HUD") or sample affirmative fair housing marketing plans published by the Minnesota Housing Finance Agency. The affirmative fair housing marketing plan requirement under this section shall continue for the

minimum affordability term specified in Section 6.01 and shall survive the expiration or termination of this Agreement.

**6.03. Section 8 Housing Choice Vouchers.** If the Project is a housing project, or includes housing units (whether market rate or affordable) and the Grantee stated in its application that the Project housing units would be made available to households participating in the federal Housing Choice Voucher program, the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements a policy under which the Project owner will not refuse to lease Project units to households or individuals participating in the Housing Choice Voucher program because those households or individuals are Housing Choice Voucher program participants. The Housing Choice Voucher requirement under this section shall continue for the minimum affordability term specified in Section 6.01 and shall survive the expiration or termination of this Agreement.

**6.04. Fair Housing Policy.** If the Project will include a housing component, the Grantee (or Participating Municipality) must adopt a Fair Housing Policy. For the purposes of this section, the term “Fair Housing Policy” means a written statement regarding the Grantee’s (or Participating Municipality’s) commitment to fair housing that contains at least the following elements: a purpose statement; procedures for complaint identification and referral; a designated fair housing officer; and an outline of the internal and external actions the Grantee will undertake to advance fair housing. A best practices guide, as well as a copy of a model local fair housing policy is available at: <https://metro council.org/Handbook/Files/Resources/Best-Practices/Fair-Housing-Policy-Guide.aspx>

## VII. GENERAL PROVISIONS

**7.01. Equal Opportunity.** The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, gender identity marital status, status with regard to public assistance, familial status, membership or activity in a local civil rights commission, disability, sexual orientation or age and will take affirmative action to ensure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

**7.02. Conflict of Interest.** The members, officers and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

**7.03. Liability.** Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Council and its members, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this grant, except to the extent the claims, damages, losses and expenses arise from the Council’s own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which

otherwise would exist between the Council and the Grantee. The provisions of this section shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466 or other applicable state or federal law.

**7.04. Acknowledgments and Signage.** The Grantee will acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports and publications relating to the Project. The acknowledgment will contain the following or comparable language:

*Financing for this project was provided by the Metropolitan Council  
Metropolitan Livable Communities Fund.*

Until the Project is completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved by the Council's Authorized Agent, is included on all signs (if any) located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project. The acknowledgments and signage should refer to the "Metropolitan Council" (not "Met Council" or "Metro Council").

**7.05. Permits, Bonds, and Approvals.** The Council assumes no responsibility for obtaining any applicable local, state or federal licenses, permits, bonds, authorizations or approvals necessary to perform or complete the Project activities described or identified in Attachments A and B. The Grantee and its developer(s), if any, must comply with all applicable licensing, permitting, bonding, authorization, and approval requirements of federal, state and local governmental and regulatory agencies, including conservation districts.

**7.06. Subgrantees, Contractors, and Subcontractors.** The Grantee shall include in any subgrant, contract, or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor, and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this grant obtain all required permits, licenses and certifications, and comply with all applicable state and federal Occupational Safety and Health Act regulations, especially the federal Hazardous Waste Operations and Emergency Response standards under Code of Federal Regulations, title 29, sections 1910.120 and 1926.65. If the Project for which the grants were awarded includes affordable units, the Grantee's subgrant agreement(s) shall expressly include the applicable affordability and affirmative fair housing requirements of Sections 6.01, 6.02, and 6.03.

**7.07. Stormwater Discharge and Water Management Plan Requirements.** If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (b) The Council's *2040 Water Resources Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

**7.08. Authorized Agent.** Payment request forms, written reports and correspondence submitted to the Council pursuant to this Agreement shall be directed to the Authorized Agent named below

or their successor through the Council's online grants administration portal or to the below contact information:

Attn: Samuel F. Johnson  
Metropolitan Council  
CD & MTS Finance and Administration  
390 Robert Street North  
Saint Paul, Minnesota 55101-1805  
[samuel.johnson@metc.state.mn.us](mailto:samuel.johnson@metc.state.mn.us)

**7.09. Non-Assignment.** Minnesota Statutes section 473.252, subdivision 3, requires the Council to distribute grant funds to eligible "municipalities," metropolitan-area counties or "development authorities" for projects in municipalities participating in the Local Housing Incentives Account program. Accordingly, this Agreement is not assignable and shall not be assigned by the Grantee.

**7.10. Authorization to Reproduce Images.** The Grantee certifies that the Grantee: (a) is the owner of any renderings, images, perspectives, sections, diagrams, photographs or other copyrightable materials (collectively, "copyrightable materials") that are in the Grantee's application, or are submitted to the Council as part of the grant application renew process or after grand award, or that the Grantee is fully authorized to grant permissions regarding the copyrightable materials; and (b) the copyrightable materials do not infringe upon the copyrights of others. The Grantee agrees the Council has a nonexclusive royalty-free license and all necessary permissions to reproduce and publish the copyrightable materials for noncommercial purposes, including but not limited to press releases, presentations, reports, and on the internet. The Grantee also agrees the Grantee will not hold the Council responsible for the unauthorized use of the copyrightable materials by third parties.

**7.11. Warranty of Legal Capacity.** The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee's and the Council's behalf respectively and that this Agreement constitutes the Grantee's and the Council's valid, binding, and enforceable agreements.

**7.12. Counterparts.** This Agreement may be executed in counterpart, each of which counterpart constitutes an original, but both of which together constitute one instrument.

**7.13. Electronic Signatures.** The electronic signatures of the Council's and the Grantee's authorized representatives shall be valid as an original signature of the authorized representatives and shall be effective to bind the Council and the Grantee under this Agreement. This Agreement containing, or to which there is affixed, an electronic signature shall be deemed to: (a) be "written" or "in writing"; (b) have been signed; and (c) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. "Electronic signature" also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (*e.g.*, via PDF) of an original signature. The Council's or the Grantee's failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

**IN WITNESS WHEREOF**, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

**CITY OF MAPLEWOOD**

**METROPOLITAN COUNCIL**

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

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

Title: \_\_\_\_\_

LisaBeth Barajas, Executive Director,  
Community Development

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

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

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

Title: \_\_\_\_\_

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

Approved as to form:

\_\_\_\_\_

**ATTACHMENT A**  
**PROJECT SUMMARY**

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Tax Base Revitalization Account grant funds submitted in response to the Council's notice of availability of Tax Base Revitalization Account grant funds for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision in the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project Summary contained in this Attachment A, the terms, descriptions and dollar amounts reflected in the Council Action or contained in this Agreement and the Project Summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project Summary and Cleanup Site Locations; and (4) the grant application.

**Grant #** SG-20142  
**Grant Type** Contamination Cleanup  
**Applicant** City of Maplewood  
**Project Name** Gladstone Village  
**Project Location** 1310 Frost Avenue East  
**Council District** 13 – Chai Lee

### Project Detail

Contaminant history	The 1.6-acre site currently includes a funeral home. Historically, the site included a gas station and a power equipment business. Contaminants of concern include asbestos in the existing building; metal (Arsenic), benzene, and diesel-range organics (DRO) in the soil.
Redevelopment project to start construction by the end of the grant term	Expected benefits include the construction of 65 affordable apartments with underground parking.
Jobs (FTEs)	5.5
Net tax capacity increase	\$19,340
Acres cleaned	1.6
Total housing units	65
Affordable units	65 (47 at 31%-50% AMI; 18 at 51%-60% AMI)
<b>Funding</b>	
Awarded amount	\$100,000
Funding partner requests	\$382,603 DEED, \$100,058 Ramsey County
Previous LCA funding	\$1,150,000 2023 LCDA
<b>Use of Funds</b>	
Amount	Uses to be completed by the end of the grant term
\$100,000.00	For asbestos abatement, soil remediation, and related environmental oversight.
Comments	Soil vapor mitigation is not eligible for grant reimbursement.



**ATTACHMENT B**

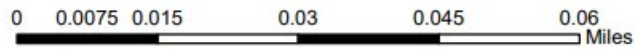
**CLEANUP SITE LOCATION(S)**

This attachment comprises this page and the succeeding page(s) which contain aerial photography or drawings that identify the specific location(s) within the Project boundaries or the Site(s) for which the Grantee must use the grant funds. The attached photography or drawings also may identify the types of eligible cleanup activities for which the grant funds must be used at specific locations within the Project boundaries or within the Site(s).

LCA Aerial LCDA Project: Gladstone Village | Map ID: 1698496539437



- TOD Area
- Project
- Transit Routes (All)
- Active Transit Stops
- Parcels
- Dedicated Bus Rapid Transit
- Dedicated Bus Rapid Transit



Created: 10/28/2023  
LandscapeLCA4



For complete disclaimer of accuracy, please visit  
<https://giswebsite.metc.state.mn.us/gis/notice.aspx>



NCompass Technologies

**MASTER DISBURSEMENT AGREEMENT**

**THIS MASTER DISBURSEMENT AGREEMENT** (this “Agreement”) has an effective date of the \_\_\_ day of \_\_\_\_\_, 2024, and is entered into among Gladstone Village Limited Partnership, a Minnesota limited partnership, with its offices located at 1310 Frost Avenue, Maplewood, MN 55109 (“Borrower”), the Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, with its offices located at 400 Wabasha Street North, Suite 400, St. Paul, MN 55102-1109 (“MHFA”), City of Maplewood, a municipal corporation under the laws of Minnesota (the “City”), [Ramsey County], a \_\_\_\_\_ (the “[County]”), and Land Title, Inc., a Minnesota corporation, with its offices located at 2200 W County Road C., Suite 2205, Roseville, MN 55113 (“Title Company”).

**RECITALS**

A. Borrower has applied to and obtained loans from certain other parties to this Agreement and will use the proceeds of such loans and additional equity to fund the acquisition, construction and/or rehabilitation of a multifamily housing development identified as MHFA Development No. 8209 (the “Development”), which will be situated on real property located in the City of Maplewood, County of Ramsey, State of Minnesota, and legally described in **Exhibit A** attached to this Agreement.

B. The following is a listing and description of the loans that Borrower has obtained (collectively, the “Loans”) and the Equity (as defined in this Agreement) that Borrower will use to fund the acquisition, construction and/or rehabilitation of the Development (collectively, the “Project Funds”):

<b>Description of Project Funds</b>	<b>Amount</b>
A loan from MHFA through its HUD Risk-Sharing (Federal Financing Bank) Program, none of which has been disbursed as of the effective date of this Agreement.	\$6,506,000.00
A loan from MHFA through its Bridge Program, none of which has been disbursed as of the effective date of this Agreement.	\$9,735,000.00
A loan from MHFA through its Economic Development and Housing Challenge Program, none of which has been disbursed as of the effective date of this Agreement.	\$2,830,000.00
A loan from the [County] through the American Rescue Plan Act, none of which has been disbursed as of the effective date of this Agreement.	\$1,973,001.00

A loan from the [County,] through the HOME Program, none of which has been disbursed as of the effective date of this Agreement.	\$1,213,337.00
A loan from the [County] through the Critical Corridors Program, none of which has been disbursed as of the effective date of this Agreement.	\$500,000.00
A loan from the [County] through the Environmental Response Fund, none of which has been disbursed as of the effective date of this Agreement.	\$80,058.00
A loan from the City through a Livable Communities Demonstrations Account Grant, none of which has been disbursed as of the effective date of this Agreement.	\$1,150,000.00
A loan from the City through a Tax Base Revitalization Account Grant, none of which has been disbursed as of the effective date of this Agreement.	\$100,000.00
Funds to be supplied by Borrower, as further described in Section 1(i) of this Agreement, none of which has been disbursed as of the effective date of this Agreement.	\$2,882,075.00

C. MHFA, the City and the County have entered into agreements with Borrower and/or Title Company regarding the disbursement of the Project Funds.

D. The parties have agreed that the Project Funds are to be disbursed in a certain order of priority.

E. The parties wish to establish how the Project Funds are to be disbursed and the order of priority for the disbursement.

**NOW, THEREFORE,** the parties agree as follows:

1. **Definitions.** The definitions set forth above are incorporated into this Section 1 by reference. The following terms have the meanings set out respectively after each such term, and such meaning are equally applicable to both the singular and plural forms of the term defined:

(a) “City Disbursement Agreement” - An agreement, whether verbal or written, between the City, Borrower, and, if applicable, Title Company, which provides for the disbursement of the City LCDA Loan and the City TBRA Loan.

(b) “City LCDA Loan” – A loan from the City through the Livable Communities Demonstrations Account Grant Program to Borrower in an original principal amount of \$1,150,000.00.

(c) “City TBRA Loan” – A loan from the City through the Tax Base Revitalization Account Grant Program to Borrower in an original principal amount of \$100,000.00.

(d) “County ARPA Loan” - A loan from the County through the American Rescue Plan Act Program to Borrower in an original principal amount of \$1,973,001.00.

(e) “County Critical Corridors Loan” - A loan from the County through the Critical Corridors Program to Borrower in an original principal amount of \$500,000.00.

(f) “County Disbursement Agreement” – An agreement, whether verbal or written, between the County, Borrower, and, if applicable, Title Company, which provides for the disbursement of the County APRA Loan, the County HOME Loan, the County Critical Corridors Loan and the County ERF Loan.

(g) “County ERF Loan” - A loan from the County through the Environmental Response Fund to Borrower in an original principal amount of \$80,058.00.

(h) “County HOME Loan” - A loan from the County through the HOME Program to Borrower in an original principal amount of \$1,213,337.00.

(i) “Equity” – Cash monies in an amount of \$2,882,075.00 to be supplied to Title Company by Borrower.

(j) “MHFA Disbursement Agreement” - The Disbursement Agreement between MHFA and Title Company of even date with this Agreement, which provides for the disbursement of the Equity and the proceeds of the MHFA HRS FFB Loan, the MHFA Bridge Loan and the MHFA EDHC Loan.

(k) “MHFA Bridge Loan” - A loan from MHFA through its Bridge Program to Borrower in an original principal amount of \$9,735,000.00.

(l) “MHFA EDHC Loan” - A loan from MHFA through its Economic Development and Housing Challenge Program to Borrower in an original principal amount of \$2,830,000.00.

(m) “MHFA HRS FFB Loan” - A loan from MHFA through its HUD Risk-Sharing (Federal Financing Bank) Program to Borrower in an original principal amount of \$6,506,000.00.

2. **Order of Priority for Disbursement of Project Funds.** Each party agrees that the Title Company has already been, or will be from time to time, supplied with the Project Funds and must disburse the Project Funds in the following order:

<b>Source of Project Funds</b>	<b>Order of Disbursement</b>
Equity	First
County HOME Loan	Second
County ARPA Loan	Third
City LCDA Loan	Fourth
City TBRA Loan	Fifth
County ERF Loan	Sixth
MHFA EDHC Loan	Seventh
MHFA HRS FFB Loan	Eighth
MHFA Bridge Loan	Nineth
County Critical Corridors Loan	Tenth

The parties agree that the Project Funds must be disbursed in the order indicated and that none of the proceeds of a source of funds will be disbursed until all of the proceeds of funds that are to be disbursed prior to such source have been disbursed. The parties further direct Title Company to disburse the Project Funds in the order indicated, and Title Company agrees to comply with such direction.

Notwithstanding the above order of disbursement, the parties agree that if funds from one funding source (the “Original Funding Source”) are unavailable due to (a) the requirements of the documents governing the eligible uses of such funding source and/or (b) certain conditions for disbursement of such funds that have not yet been met, subject to the terms of such funding party’s documents, funds from the next funding source in the order above will be made available for disbursement, but only to the extent the Original Funding Source is unavailable.

Title Company will not disburse any monies without first receiving a draw request approved by both the entity whose monies are to be disbursed and MHFA, and upon receipt of an approved draw request, Title Company will disburse the applicable monies in accordance with the provisions contained in the following documents:

<b>Source of Project Funds to be Disbursed</b>	<b>Entity Supplying the Source of Project Funds</b>	<b>Disbursement Document</b>
Equity	Borrower	MHFA Disbursement Agreement
City LCDA Loan	City	City Disbursement Agreement
City TBRA Loan	City	City Disbursement Agreement
County ARPA Loan	County	County Disbursement Agreement
County HOME Loan	County	County Disbursement Agreement
County Critical Corridors Loan	County	County Disbursement Agreement
County ERF Loan	County	County Disbursement Agreement
MHFA HRS FFB Loan	MHFA	MHFA Disbursement Agreement
MHFA Bridge Loan	MHFA	MHFA Disbursement Agreement

MHFA EDHC Loan

MHFA

MHFA Disbursement Agreement

4. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the parties to this Agreement and their respective successors and assigns.

5. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which is an original but all of which will constitute one instrument.

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

DRAFT

**IN WITNESS WHEREOF**, the parties have executed this Master Disbursement Agreement as of the date first written above.

**BORROWER:**

**GLADSTONE VILLAGE LIMITED PARTNERSHIP**

a Minnesota limited partnership

By: 1310 Frost Partners LLC  
a Minnesota limited liability company  
General Partner

By: \_\_\_\_\_  
[insert authorized signer name], [insert title]

THIS DOCUMENT WAS DRAFTED BY:  
Minnesota Housing Finance Agency  
400 Wabasha Street North, Suite 400  
St. Paul, MN 55102-1109



**MHFA:**

**MINNESOTA HOUSING FINANCE AGENCY**

By: \_\_\_\_\_  
James Lehnhoff  
Assistant Commissioner, Multifamily

DRAFT

**CITY:**

**CITY OF MAPLEWOOD**

a municipal corporation under the laws of  
Minnesota

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

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

DRAFT

**[COUNTY]:**

**[RAMSEY COUNTY]**

a [insert lender designation]

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

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

DRAFT

**TITLE COMPANY:**

**LAND TITLE, INC.**  
a Minnesota corporation

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

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

DRAFT

**Exhibit A  
LEGAL DESCRIPTION**

Lots 2, 3, 4, 5, 6 and 7, except the South 7 feet Block 3, Gladstone, according to the recorded plat thereof, together with the vacated Ridge Street adjacent, Ramsey County, Minnesota.

DRAFT

FOR USE BY FILING OFFICER ONLY

**MASTER SUBORDINATION AGREEMENT  
AND  
ESTOPPEL CERTIFICATE**

**THIS MASTER SUBORDINATION AGREEMENT AND ESTOPPEL CERTIFICATE** (this “Agreement”) is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024, and entered into among Gladstone Village Limited Partnership, a Minnesota limited partnership (“Borrower”), the Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota (“MHFA”), City of Maplewood, a municipal corporation under the laws of Minnesota (the “City”), [Ramsey County], a \_\_\_\_\_ (the “[County]”).

**RECITALS**

A. Borrower has applied to and obtained certain loans from the other parties to this Agreement and will use the proceeds of the loans and additional equity to fund the acquisition, construction and/or rehabilitation of a multifamily housing development identified as MHFA Development No. 8209 (the “Development”), which will be situated on real property located in the City of Maplewood, County of Ramsey, State of Minnesota, and legally described in **Exhibit A** attached to this Agreement (the “Property”).

B. The following is a listing and description of the loans that Borrower has obtained from the other parties to this Agreement (collectively, the “Loans”), and the repayment of the Loans will be secured by liens on the Property, and a listing of the documents that evidence and secure the repayment of the Loans (collectively, the “Loan Documents”):

Description of Loan	Amount of Loan	Loan Documents Evidencing and Securing Repayment
A loan from MHFA through its HUD Risk-Sharing (Federal Financing Bank) Program.	\$6,506,000.00	Those documents set forth in <b>Exhibit B</b> attached to this Agreement.
A loan from MHFA through its Bridge Program.	\$9,735,000.00	Those documents set forth in <b>Exhibit C</b> attached to this Agreement.

A loan from MHFA through its Economic Development and Housing Challenge Program.	\$2,830,000.00	Those documents set forth in <b>Exhibit D</b> attached to this Agreement.
A loan from the [County] through the American Rescue Plan Act.	\$1,973,001.00	Those documents set forth in <b>Exhibit E</b> attached to this Agreement.
A loan from the [County] through its HOME Program.	\$1,213,000.00	Those documents set forth in <b>Exhibit F</b> attached to this Agreement.
A loan from the City through the Livable Communities Demonstrations Account Grant Program.	\$1,150,000.00	Those documents set forth in <b>Exhibit G</b> attached to this Agreement.
A loan from the City through the Tax Base revitalization Account Grant Program.	\$100,000.00	Those documents set forth in <b>Exhibit H</b> attached to this Agreement.
A loan from the County through the Critical Corridors Program.	\$500,000.00	Those documents set forth in <b>Exhibit I</b> attached to this Agreement.
A loan from the [County] through the Environmental Response Fund.	\$80,058.00	Those documents set forth in <b>Exhibit J</b> attached to this Agreement.

C. The parties intend that the Loans, the corresponding Loan Documents, and other documents referred to in this Agreement and the liens created by the Loan Documents and other documents referred to in this Agreement have a certain order of priority.

D. The parties wish to specify how the terms and conditions contained in the Loan Documents will be interpreted in the event of a conflict or inconsistency.

**NOW, THEREFORE**, in consideration of good and valuable consideration, and in further consideration of the parties making and entering into the Loans, the parties to this Agreement agree as follows:

1. **Definitions.** For the purposes of this Agreement, the definitions set forth above are incorporated into this Section 1 by reference. The following terms have the meanings set out respectively after each term, and its meaning is equally applicable to both the singular and plural forms of the term defined:

(a) “Bankruptcy Proceeding” means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Loan Documents, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(b) “City LCDA Loan” means a loan from the City through the Livable Communities Demonstrations Account Grant Program to Borrower in an original principal amount of \$1,150,000.00.

(c) “City LCDA Loan Documents” means those documents listed in **Exhibit G** attached to this Agreement which evidence and secure the repayment of the City LCDA Loan.

(d) “City TBRA Loan” means a loan from the City through the Tax Base Revitalization Account Grant Program to Borrower in an original principal amount of \$100,000.00.

(e) “City TBRA Loan Documents” means those documents listed in **Exhibit H** attached to this Agreement which evidence and secure the repayment of the City TBRA Loan.

(f) “County ARPA Loan” means a loan from the County through the American Rescue Plan Act Program to Borrower in an original principal amount of \$100,000.00.

(g) “County ARPA Loan Documents” means those documents listed in **Exhibit H** attached to this Agreement which evidence and secure the repayment of the City TBRA Loan.

(h) “County Critical Corridors Loan” means a loan from the County through the Critical Corridors Program to Borrower in an original principal amount of \$500,000.00.

(i) “County Critical Corridors Loan Documents” means those documents listed in **Exhibit I** attached to this Agreement which evidence and secure the repayment of the City Critical Corridors Loan.

(j) “County ERF Loan” means a loan from the County through the Environmental Response Fund to Borrower in an original principal amount of \$80,058.00.

(k) “County ERF Loan Documents” means those documents listed in **Exhibit J** attached to this Agreement which evidence and secure the repayment of the County ERF Loan.



(l) “County HOME Loan” means a loan from the County through the HOME Program to Borrower in an original principal amount of \$1,213,000.00.

(m) “County HOME Loan Documents” means those documents listed in **Exhibit F** attached to this Agreement which evidence and secure the repayment of the County HOME Loan.

(n) “MHFA Bridge Loan” means a loan from MHFA through its Bridge Program to Borrower in an original principal amount of \$9,735,000.00.

(o) “MHFA Bridge Loan Documents” means those documents listed in **Exhibit C** attached to this Agreement which evidence and secure the repayment of the MHFA Bridge Loan.

(p) “MHFA EDHC Loan” means a loan from MHFA through its Economic Development and Housing Challenge Program to Borrower in an original principal amount of \$2,830,000.00.

(q) “MHFA EDHC Loan Documents” means those documents listed in **Exhibit D** attached to this Agreement which evidence and secure the repayment of the MHFA EDHC Loan.

(r) “MHFA HRS FFB Loan” means a loan from MHFA through its HUD Risk-Sharing (Federal Financing Bank) Program to Borrower in an original principal amount of \$6,506,000.00.

(s) “MHFA HRS FFB Loan Documents” means those documents listed in **Exhibit B** attached to this Agreement which evidence and secure the repayment of the MHFA HRS FFB Loan.

2. **Consent to Loans, Liens and Encumbrances.** The parties agree and consent to all of the Loans and agree that all of the liens and encumbrances created by the Loan Documents are deemed to be permitted encumbrances under their respective Loan Documents. The parties further agree to execute any and all documents that any party to this Agreement may reasonably request in order to document that the liens and encumbrances are permitted encumbrances under their respective Loan Documents.

3. **Use of Loan Documents.** The parties agree and consent to the use of the Loan Documents set forth in the attached exhibits in conjunction with the Loan referenced in each exhibit. In addition, each party, as to the Loan Documents that correspond to one of its Loans, does hereby covenant, warrant, consent and agree that (i) the described Loan Documents are all of the documents that the party has entered into regarding the corresponding Loan, (ii) there are no documents relating to its Loan other than the described Loan Documents for its Loan, (iii) it will not enter into any other document for its Loan that would adversely impact any other party or parties to this Agreement without the prior written consent of the party or parties (excluding

documentation of amounts having been advanced by a party for the protection of its security interest or lien priority pursuant to the Loan Documents), (iv) any existing document or documents that may come into existence in the future to which a party is or becomes a party or from which a party obtains a benefit that is different from the benefits that the other parties have received or will receive, and that is not listed in the Loan Documents set forth in this Agreement for the Loan, will be of no force or effect until approved and consented to in writing by all of the parties to this Agreement upon which the document has, or will have, an adverse effect (excluding documentation of amounts having been advanced by a party for the protection of its security interest or lien priority pursuant to the Loan Documents), and upon written approval, the documents will automatically be considered to be included in the exhibit to this Agreement setting forth the Loan Documents for the Loan. The other parties to this Agreement will execute any document that may reasonably be requested in order to include the document in the exhibit.

**4. Subordination of Loans and Loan Documents.**

(a) Loan Priority. Except as specifically provided below, each party agrees to the following priority of the Loan Documents and any and all the liens and encumbrances created by the Loan Documents and subordinates its respective Loan Documents and the liens and encumbrances created by its respective Loan Documents to those Loan Documents and liens and encumbrances created by the Loan Documents that are listed as having a priority over its Loan Documents and the liens and encumbrances created by its respective Loan Documents:

<b>Loan Documents and Liens and Encumbrances Created by the Loan Documents</b>	<b>Party to the Loan Documents and Holder of Liens and Encumbrances Created by the Loan Documents</b>	<b>Order of Priority</b>
MHFA HRS FFB Loan Documents	MHFA	First
MHFA Bridge Loan Documents	MHFA	Second
MHFA EDHC Loan Documents	MHFA	Third
County ARPA Loan Documents	County	Fourth
County HOME Loan Documents	County	Fifth
City LCDA Loan Documents	City	Sixth
County Critical Corridors Loan Documents	County	Seventh
City TBRA Loan Documents	City	Eighth
County ERF Loan Documents	County	Ninth

(b) Tax Credit Declaration. The parties acknowledge that the Development is intended to receive the benefits of Low Income Housing Tax Credits (the “Credits”) pursuant to Section 42 of the Internal Revenue Code (“Section 42”) and that it is a condition of the receipt of the Credits that Borrower file a Declaration of Land Use Restrictive Covenants for Low-Income Housing Credits (the “Tax Credit Declaration”) substantially in the form attached to this Agreement as **Exhibit K**. The parties consent to

the terms of the Tax Credit Declaration as required by Section 2(c) of the Tax Credit Declaration and agree that the Tax Credit Declaration is subordinate to each of their Loans and the related Loan Documents, except to the extent required by Section 9(d) of the Tax Credit Declaration (relating to the three-year vacancy control during the extended use period).

c. **Interpretation.** The parties are entering into and executing this Agreement in order to establish the subordination and priority of the Loan Documents and any liens and encumbrances created by the Loan Documents, and, accordingly, the parties agree, understand, and acknowledge that the enforceability of this Agreement is not, and will not be, restricted, limited, or impaired by the fact that not all of the parties to this Agreement are signatories to each or any of the Loan Documents.

d. **Most Restrictive Requirements.** Notwithstanding the order of priority and subordinations granted in this Agreement, the Borrower will comply not only with the Loan Documents having first priority but with all Loan Documents. For example, if a party's Loan Documents contain rent, income or occupancy requirements that are more restrictive than Loan Documents that are more senior in priority, then the Borrower will comply with the more restrictive Loan Documents for as long as they remain in effect.

e. **Absence of Events of Default and Compliance with Closing Requirements.** Each party states, represents, and warrants that as to each of its individual Loans, (i) its Loans have been duly closed, (ii) there are no events of default, or events that with the passage of time could constitute an event of default, currently existing with respect to any of its Loans, and (iii) all of its Loans are in good standing.

f. **Notice of Default and Cure Rights.** Each party will deliver to the other parties a default notice within five business days in each case where a party has given a default notice to Borrower (provided that each party will have no liability to any party for failure to timely give notice). Failure of the notifying party to send a default notice to the other parties will not prevent the exercise of the notifying party's rights and remedies under the Loan Documents, subject to the provisions of this Agreement. The other parties will have the opportunity, but not the obligation, to cure any default within 60 days following the date of the notice; provided, however that the notifying party will be entitled, during the 60-day period, to continue to pursue its rights and remedies under the Loan Documents.

g. **Use of Insurance and Condemnation Proceeds.** Notwithstanding any provisions to the contrary contained in this Agreement or in any of the Loan Documents, the parties agree that any and all insurance and/or condemnation proceeds will be used first to repair or reinstate the Development. If there are any remaining proceeds, or if the amounts are insufficient to repair or reinstate the Development, or if the Development cannot be repaired or reinstated, then the proceeds will be used to pay off the Loans in order of the priority of the Loan Documents specified in this Agreement.

h. **Agreement Not to Commence Bankruptcy Proceeding.** The parties agree that during the term of this Agreement they will not commence, or join with any other creditor in

commencing, any Bankruptcy Proceeding with respect to Borrower, without the other parties' prior written consents.

i. **Survival of Termination.** The terms of this Agreement will continue, and will survive the termination of this Agreement, if any payment under the Loan Documents (whether by or on behalf of Borrower, as proceeds of security or enforcement of any right of set-off or otherwise) is for any reason repaid or returned to Borrower or its insolvent estate, or avoided, set aside or required to be paid to Borrower, a trustee, receiver or other similar party under any bankruptcy, insolvency, receivership or similar law. In the event, any or all of the Loans originally intended to be satisfied will be deemed to be reinstated and outstanding to the extent of any repayment, return, or other action, as if the payment had not been made.

j. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one instrument.

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

**IN WITNESS WHEREOF**, the parties have executed this Master Subordination Agreement and Estoppel Certificate as of the date first written above.

**BORROWER:**

**GLADSTONE VILLAGE LIMITED PARTNERSHIP**

a Minnesota limited partnership

By: 1310 Frost Partners LLC  
a Minnesota limited liability company  
General Partner

By: \_\_\_\_\_  
[insert authorized signer name], [insert title]

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, the \_\_\_\_\_ of 1310 Frost Partners LLC, a Minnesota limited liability company, General Partner of Gladstone Village Limited Partnership, a Minnesota limited partnership, on behalf of the limited liability company and the limited partnership.

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

**THIS DOCUMENT WAS DRAFTED BY:**  
Minnesota Housing Finance Agency  
400 Wabasha Street North, Suite 400  
St. Paul, MN 55102-1109

**MHFA:**

**MINNESOTA HOUSING FINANCE AGENCY**

By: \_\_\_\_\_  
James Lehnhoff  
Assistant Commissioner, Multifamily

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by James Lehnhoff, Assistant Commissioner, Multifamily of the Minnesota Housing Finance Agency, on behalf of the agency.

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



**COUNTY:**

**[RAMSEY COUNTY]**

a \_\_\_\_\_

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_ the \_\_\_\_\_ of [Ramsey County], a \_\_\_\_\_ on behalf of the \_\_\_\_\_.

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



**Exhibit A**  
**LEGAL DESCRIPTION**

Lots 2, 3, 4, 5, 6 and 7, except the South 7 feet Block 3, Gladstone, according to the recorded plat thereof, together with the vacated Ridge Street adjacent, Ramsey County, Minnesota.

DRAFT

**Exhibit B**  
**MHFA HRS FFB LOAN DOCUMENTS**

1. HUD Risk-Sharing (Federal Financing Bank) Program Combination Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement executed by Borrower to MHFA, of even date with the document to which this exhibit is attached, securing the repayment of a loan from in an original principal amount of \$6,506,000.00, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
2. HUD Risk-Sharing (Federal Financing Bank) Program Regulatory Agreement, of even date with the document to which this exhibit is attached, between Borrower and MHFA, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
3. HUD Risk-Sharing (Federal Financing Bank) Program Declaration of Covenants, Conditions and Restrictions, of even date with the document to which this exhibit is attached, executed by Borrower in favor of MHFA, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
4. The following additional HUD Risk-Sharing (Federal Finance Bank) Program Loan Documents:
  - (a) Assignment of Architect's Contract;
  - (b) Assignment of Construction Contract;
  - (c) Certification Regarding Identity of Interest or Family Relationship;
  - (d) Certification Regarding Liens;
  - (e) Certification Regarding Payment of Obligations; Construction Loan Agreement;
  - (g) Disbursement Agreement;
  - (h) Disclosure of Lobbying Activities Form;
  - (i) Guaranty;
  - (j) Master Disbursement Agreement;
  - (k) Mortgage Note in an original principal amount of \$6,506,000.00;
  - (l) Mortgagor Certification Regarding Lobbying and Federal Debt;
  - (m) Operating Deficit Reserve and Escrow Account Agreement;
  - (n) Supplement to General Conditions of the Agreement Between Owner and Contractor; and
  - (o) UCC-1 Financing Statement.

**Exhibit C**  
**MHFA BRIDGE LOAN DOCUMENTS**

1. Bridge Program Combination Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement executed by Borrower to MHFA, of even date with the document to which this exhibit is attached, securing the repayment of a loan from in an original principal amount of \$9,735,000.00, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
2. Bridge Program Regulatory Agreement, of even date with the document to which this exhibit is attached, between Borrower and MHFA, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
3. The following additional Bridge Program Loan Documents:
  - (a) Assignment of Rights to Tax Credits and GP/Member Interests;
  - (b) Certification of Identity of Interest or Family Relationship;
  - (c) Guaranty; and
  - (d) Mortgage Note in an original principal amount of \$9,735,000.00.

**Exhibit D**  
**MHFA EDHC LOAN DOCUMENTS**

1. Economic Development and Housing Challenge Program Combination Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement executed by Borrower to MHFA, of even date with the document to which this exhibit is attached, securing the repayment of a loan from in an original principal amount of \$9,735,000.00, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
2. Economic Development and Housing Challenge Program Regulatory Agreement, of even date with the document to which this exhibit is attached, between Borrower and MHFA, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
3. Economic Development and Housing Challenge Program Declaration of Covenants, Conditions and Restrictions, of even date with the document to which this exhibit is attached, executed by Borrower in favor of MHFA, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
4. Declaration of Covenants, Conditions and Restrictions (Subsidy) of even date with the document to which this exhibit is attached, executed by Borrower in favor of MHFA, which will be recorded in the Office of the County Recorder for Ramsey County, Minnesota.
5. The following additional Economic Development and Housing Challenge Program Loan Documents:
  - (a) Mortgage Note in an original principal amount of \$2,830,000.00.

**Exhibit E**  
**COUNTY ARPA LOAN DOCUMENTS**

1.

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**Exhibit F**  
**COUNTY HOME LOAN DOCUMENTS**

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**Exhibit G**  
**CITY LCDA LOAN DOCUMENTS**

1.

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**Exhibit H**  
**CITY TBRA LOAN DOCUMENTS**

1.

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**Exhibit I**  
**COUNTY CRITICAL CORRIDORS LOAN DOCUMENTS**

1.

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**Exhibit J**  
**COUNTY ERF LOAN DOCUMENTS**

1.

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**Exhibit K**  
**TAX CREDIT DECLARATION**

DRAFT

## LOAN AGREEMENT

THIS LOAN AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), between the city of Maplewood, a municipal corporation under the laws of Minnesota (the “City”), and Gladstone Village Limited Partnership, a Minnesota limited partnership (the “Borrower”). The Effective Date is the date this Agreement is executed by the second party to sign.

### WITNESSETH:

WHEREAS, the Borrower has acquired and intends to redevelop the property located at 1310 Frost Avenue in the City and legally described in Exhibit A attached hereto (the “Redevelopment Property”) and construct thereon a multifamily residential rental development consisting of 65 units meeting certain affordability levels (the “Project”); and

WHEREAS, to assist with the costs of the Project, the City, on behalf of the Borrower, applied for and received a Livable Communities Demonstration Account (“LCDA”) grant in the total sum of \$1,150,000 (the “LCDA Grant”) from the Metropolitan Council (the “Council”); and

WHEREAS, on \_\_\_\_\_, the Council and the City entered into a Metropolitan Livable Communities Act Grant Agreement (the “Grant Agreement”), with an expiration date of December 31, 2026, as may be extended pursuant to Section 5.03 of the Grant Agreement, as more specifically described herein and which is attached hereto as Exhibit B; and

WHEREAS, the proceeds of the LCDA Grant may be used for eligible project activities of the Project to be constructed on the Redevelopment Property and as further described in the Grant Agreement (the “Grant-Eligible Activities”), which amounts may be reallocated pursuant to Section 2.09 of the Grant Agreement; and

WHEREAS, the City desires to loan the proceeds of the LCDA Grant in the principal amount of \$1,150,000 to the Borrower (the “Loan”) to provide financing for a portion of the Grant-Eligible Activities with respect to the construction of the Project on the Redevelopment Property; and

WHEREAS, the City believes that the development of the Project, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the City and the Borrower desire to enter into this Agreement for the purpose of setting forth their respective responsibilities with respect to the Loan.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## **ARTICLE I DEFINITIONS**

As used in this Agreement, the following terms shall have the following meaning:

Borrower Documents: any and all documents and instruments in connection with the Project as reasonably requested by the City.

Disbursement Request Form: the form, substantially in the form attached hereto as Exhibit C, to be submitted to the City when a disbursement of the Loan is requested and which is referred to in Article VI hereof, together with such other request forms as may be reasonably required from the Council and the City.

Grant Agreement: the Metropolitan Livable Communities Act Grant Agreement No. SG-19791 between the Council and the City for the Gladstone Village 1 Project, attached hereto as Exhibit B.

Grant-Eligible Activities: the activities on the Redevelopment Property funded in full or in part by the LCDA Grant, as set forth in Exhibit A of the Grant Agreement.

Loan: the sum of \$1,150,000 to be loaned by the City to the Borrower under this Agreement.

Loan Documents: collectively, this Agreement, the Mortgage, and the Note.

Mortgage: the Combination Mortgage and Security Agreement of even date herewith from the Borrower to the City securing repayment of the Note in the form approved by the City.

Note: the Note of even date herewith from the Borrower to the City in the amount of the Loan evidencing Borrower's obligation to repay the Loan in the form approved by the City.

Plans and Specifications: the final plans and specifications for the construction and installation of the Grant-Eligible Activities which have been approved by the City.

Project: the Gladstone Village 1 Project including 65 units of affordable multifamily residential housing.

Project Costs: the costs of the Grant-Eligible Activities eligible to be reimbursed with the proceeds of the LCDA Grant under the Grant Agreement and as authorized by law.

Redevelopment Property: the property legally described in Exhibit A attached hereto.

**ARTICLE II  
TERM OF AGREEMENT**

This Agreement shall take effect and be in force from and after the Effective Date, and shall remain in effect until the Borrower has performed all of its obligations under this Agreement, the Loan Documents, and the Grant Agreement, unless earlier terminated as provided in this Agreement or the Grant Agreement.

**ARTICLE III  
THE LOAN**

Subject to the terms and conditions of this Agreement, the City will make the Loan to the Borrower to be used for payment of Project Costs, which Loan shall be disbursed pursuant to this Agreement. In consideration for the Loan, the Borrower agrees to perform all of its obligations under this Agreement. The Loan shall be evidenced by the Note payable by the Borrower to the City which shall be dated as of the date of closing on the Loan (the "Loan Closing Date"). Proceeds of the Loan shall be disbursed in accordance with Articles V and VI hereof.

**ARTICLE IV  
STATEMENT OF WORK**

Proceeds of the Loan may be used to construct any of the improvements described as Grant-Eligible Activities in the Grant Agreement in accordance with the terms set forth herein. In accordance with the Grant Agreement, the Borrower will commence construction of the Grant-Eligible Activities and pay the Project Costs with respect to the Project Improvements prior to December 31, 2026. The grant expires on December 31, 2026. If the Borrower finds it necessary to request an extension of the Grant Agreement from the Metropolitan Council, the Borrower must provide written notice to the City at least 120 days prior to the expiration date of the grant in order for the City to have sufficient time to request an extension of the Grant Agreement under Section 5.03 of the Grant Agreement.

**ARTICLE V  
CONDITIONS OF DISBURSEMENT**

The obligation of the City to make or cause to be made disbursements of the proceeds of the Loan pursuant to Article VI hereof shall be subject to the conditions precedent that it shall have received on or before the date of the disbursement hereunder the following:

- a. the Borrower Documents, the Mortgage, and the Note, duly executed and delivered by the Borrower;
- b. evidence satisfactory to the City that the Grant-Eligible Activities and the construction and contemplated use thereof are permitted by and comply in all material respects with all applicable restrictions and requirements in prior conveyances, zoning ordinances, subdivision and platting requirements and other laws and regulations;

c. all other conditions specified in the authorizing City approvals and entitlements and the Grant Agreement shall have been duly satisfied by the Borrower or waived in writing by the City or the Council, as applicable;

d. no uncured Event of Default (as defined in Article VIII hereof), and no event which with the giving of notice or the lapse of time or both would constitute an Event of Default, shall have occurred and be continuing and all representations and warranties made by the Borrower in Article VII hereof shall continue to be true and correct as of the date of such disbursement;

e. if required by the City, the City shall have been furnished with a statement of the Borrower and of any contractor, in form and substance acceptable to the City, setting forth the names, addresses and amounts due or to become due as well as the amounts previously paid to every contractor, subcontractor, person, firm or corporation furnishing materials or performing labor in connection with the construction of any part of the Grant-Eligible Activities; and

f. the Borrower shall have provided to the City such documentation and information reasonably necessary to evidence its compliance with all of the provisions of this Agreement, including without limitation the provisions of the Grant Agreement applicable to the Borrower, as the City may reasonably request.

## **ARTICLE VI REQUESTS FOR DISBURSEMENT**

6.01. Disbursement. The City and the Borrower agree that, on the terms and subject to the conditions hereinafter set forth and the conditions set forth in the Grant Agreement, including the reallocation of Project Costs among the Grant-Eligible Activities pursuant to Section 2.09 of the Grant Agreement, the Loan shall be disbursed from the City to the Borrower, or the Borrower's agent or designee, in disbursements, with the last disbursement being made upon one hundred percent (100%) completion of the Grant-Eligible Activities. Disbursements of the Loan shall not be made more often than monthly. Notwithstanding anything to the contrary contained herein, the City shall only be obligated to make the disbursements hereunder to pay Project Costs in an amount up to or equal to the lesser of the amount of the Loan or the amount actually disbursed by the Council to the City under the Grant Agreement and such obligation is further subject to the conditions of Article V hereof.

### 6.02. Disbursement Request.

a. When the Borrower desires to obtain a disbursement of the Loan, the Borrower shall submit to the City the Disbursement Request Form, together with any additional documents required by the City or the Council, duly signed by the Borrower.

The Disbursement Request Form shall be submitted by the Borrower at least 45 days prior to the date of the requested disbursement. The Disbursement Request Form shall constitute a representation and warranty by the Borrower to the City that all

representations and warranties of the Borrower set forth in the Borrower Documents are true and correct as of the date of such Disbursement Request Form, except for such representations and warranties which, by their nature, would not be applicable as of the date of such Disbursement Request.

b. At the time of submission of the Disbursement Request Form, the Borrower shall also submit the following to the City:

1. a written lien waiver from the general contractor for work done and materials supplied by it which were paid or a conditional lien waiver from the general contractor for work done and materials supplied by it which are to be paid pursuant to the current Disbursement Request Form and from each subcontractor for work done and materials supplied by it which were paid or are to be paid for pursuant to the prior Disbursement Request Form;

2. evidence satisfactory to the City that the Grant-Eligible Activities completed as of the date of the Disbursement Request Form have been constructed in accordance with the Plans and Specifications in all material respects;

3. an executed Sworn Construction Statement, in form and substance acceptable to such parties, signed by the Borrower showing all costs and expenses of any kind theretofore actually paid or incurred in constructing the Grant-Eligible Activities; and

4. a certified statement of the Borrower reflecting the use to which the proceeds of the Loan have been applied in addition to those uses reflected in the Sworn Construction Statement referred to in clause (b)(3) above.

c. Upon receipt of the Disbursement Request Form, if the City has determined that all the conditions set forth in Articles V and VI hereof have been satisfied, a request for disbursement shall be submitted to the Council. The adequacy of the request for disbursement shall be determined by the City and the Council in their sole discretion. After submission of the Disbursement Request Form, if the Borrower has performed all of its agreements and complied with all requirements to be performed or complied with under this Agreement and the Grant Agreement, including satisfaction of all applicable conditions precedent contained in Article V hereof, the City shall make a disbursement to the Borrower, or the Borrower's agent or designee, in the amount of the requested disbursement or such lesser amount as shall be approved, within 45 days after the date of the City's receipt of the Disbursement Request Form, or, if later, upon receipt of grant proceeds from the Council. Each disbursement shall be paid from the proceeds of the LCDA Grant, subject to the City's and the Council's determination that the relevant Project Cost is payable from the LCDA Grant under the Grant Agreement. The City is under no obligation to disburse any proceeds of the Loan until it receives a disbursement of the LCDA Grant from the Council. Notwithstanding anything to the contrary herein, if the Project Costs of the Grant-Eligible Activities exceeds the amount to be reimbursed under this Agreement, such excess shall be the sole responsibility of the Borrower.



**ARTICLE VII  
BORROWER’S COVENANTS, REPRESENTATIONS, WARRANTIES AND  
AGREEMENTS**

The Borrower covenants, represents, warrants and agrees that:

a. The Borrower is a limited partnership duly organized and validly existing under the laws of Minnesota, is duly authorized to operate in Minnesota, has the power to enter into and execute this Agreement and by appropriate action has authorized the execution and delivery of this Agreement.

b. The Borrower Documents will not result in any breach of or constitute a default under any other mortgage, lease, loan, grant or credit agreement, organizational documents, or other instrument to which the Borrower is a party or by which it may be bound or affected.

c. The Loan Documents will constitute valid, legal and binding obligations of the Borrower enforceable against the Borrower.

d. The Borrower has or will have all necessary approvals, licenses and permits required for construction and operation of the Project except those which cannot be obtained until completion of the Grant-Eligible Activities or the Project, as the case may be.

e. The Borrower shall permit the City, upon reasonable notice, to examine all books, records, contracts, plans, permits, bills and statements of account pertaining to the Grant-Eligible Activities and to make copies as the City may require.

f. The Borrower shall obey and comply with all federal, state and local laws, rules and regulations in connection with the Project.

g. The City’s actions in approving the Loan shall not be construed as an approval by the City of providing any additional funds for the Project or other improvements related to the Project.

h. The Borrower agrees to pay for all of the costs incurred to construct the Grant-Eligible Activities including any cost overruns. There are no public funds for the Grant-Eligible Activities except for the Loan.

**ARTICLE VIII  
DEFAULT**

Any one or more of the following shall constitute an event of default (an “Event of Default”) under this Agreement:

a. The Borrower shall herein default in the performance or observance of any agreement, covenant or condition required to be performed or observed by the Borrower under the terms of this Agreement or the Grant Agreement, to the extent such obligations exist, and such default shall not be remedied within 60 days after written notice to the Borrower from the City specifying such default.

b. The Borrower shall be in default of any term of any other agreement relating to the Grant-Eligible Activities which is not cured within 60 days after written notice from the City or if the default cannot be cured within 60 days within such reasonable time as is required to cure the default, provided that the Borrower is diligently pursuing a cure.

c. Any representation or warranty made by the Borrower herein or any document or certificate furnished to the City shall prove at any time to be incorrect or misleading as of the date made.

d. The Borrower engages in any illegal activities.

e. The Borrower uses any of the Loan funds contrary to this Agreement or the Grant Agreement which is not cured within 60 days after written notice from the City.

f. The Borrower shall fail to obtain and/or keep in force insurance only of the types and in the amounts as specified within this Agreement, or shall fail to indemnify and hold harmless the City as set forth herein which is not cured within ten (10) business days after written notice from the City.

g. The failure to repay any principal of the Loan when due.

## **ARTICLE IX REMEDIES**

Whenever any Event of Default shall have happened and is continuing beyond any applicable cure period, any one or more of the following remedial steps may be taken by the City:

a. The City may terminate this Agreement;

b. The City may suspend or terminate any further disbursements to be made under this Agreement;

c. The City may suspend its performance under this Agreement during the continuance of the Event of Default; and/or

d. The City may take whatever action at law or in equity may be necessary or appropriate to seek repayment or reimbursement of the Loan funds disbursed to the Borrower, to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower under this Agreement, or any related

instrument; or to otherwise compensate the City for any damages on account of such Event of Default.

No remedy conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or be required by law.

## ARTICLE X ADDITIONAL PROVISIONS

a. Indemnity, Hold Harmless. The Borrower shall and does hereby agree to indemnify against and to hold the City, and its officers, councilmembers, agents, and employees including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section, collectively the “Indemnified Parties”), harmless of and from any and all liability, loss, or damage that it or they may incur under or by reason of this Agreement and against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Grant-Eligible Activities or the Project, and of and from any and all claims and demands whatsoever that may be asserted against one or more of the Indemnified Parties by reason of any alleged obligations or undertakings on the Borrower’s part to perform or discharge any of the terms, covenants, or agreements contained herein.

Except for any willful misrepresentation or any willful, wanton, or grossly negligent misconduct of the Indemnified Parties, the Borrower agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever under this Agreement, the Grant Agreement or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project or the Grant-Eligible Activities.

This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the creation and repayment of any indebtedness to City under this Agreement.

b. Independent Contractor. For the purpose of this Agreement, the Borrower shall be deemed an independent contractor and not an employee or agent of the City. Any and all employees or agents of the Borrower shall not be considered employees or agents of the City.

c. Compliance With Minnesota Laws. All of the data created, collected, received, stored, used, maintained or disseminated by the Borrower with respect to the Grant-Eligible Activities are subject to the requirements of Minnesota Statutes, Chapter 13, (the “Minnesota Government Data Practices Act” or “MGDPA”) and, except as provided in Section 13.05, subdivision 11(b) of the MGDPA, the Borrower agrees to comply with those requirements under the MGDPA to the extent applicable. The remedies in Section 13.08 of the MGDPA may apply to the Borrower. If any provision of this Agreement is in conflict with the MGDPA or other Minnesota State laws, state law shall control. The Borrower shall comply with the conflict of interest provisions of Minnesota Statutes, Sections 471.87 through 471.88.

d. Contractor and Subcontractor Compliance. The Borrower shall comply with and shall cause all contractors and subcontractors to comply with all applicable state and federal laws, and to the extent applicable to the Borrower, the Grant Agreement. The Borrower shall require all contractors and subcontractors performing work covered by the Loan to obtain all required permits, licenses and certifications and comply with all applicable state and federal Occupational Safety and Health Act regulations.

e. Site Compliance. The Borrower shall meet or require to be met all applicable requirements of:

(1) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and

(2) The Council’s *2030 Water Resources Management Policy Plan* and the City’s local water management plan Property is located.

f. Fair Housing Compliance. The Borrower shall comply in all respects with the affordability and fair housing marketing plan requirements set forth in Article 3 of the Grant Agreement.

g. Environmental Site Assessment. The Borrower shall ensure that a Phase I Environmental Site Assessment or other environmental review of the Project will be carried out if appropriate for the scope and nature of the Project.

## **ARTICLE XI INSURANCE**

With respect to the Project, the Borrower shall maintain all insurance required by the Grant Agreement.

**ARTICLE XII  
RECORDS AND REPORTS**

Upon request, the Borrower shall submit to the City a full account of the status of the activities undertaken as part of this Agreement. The following records shall be maintained by the Borrower, copies of which shall be submitted in such form as City may prescribe:

- a. All receipts and invoices relating to expenditure of Loan funds.
- b. Records shall be sufficient to reflect all costs incurred in performance of the Loan. The books, records, documents, and accounting procedures, relevant to the Loan shall be subject to examination by the City, the Council and state agencies and the legislative auditor.

**ARTICLE XIII  
AMENDMENT**

This Agreement shall not be amended or modified without the prior written approval of the City and the Borrower.

**ARTICLE XIV  
INCORPORATION OF GRANT AGREEMENT**

The Borrower acknowledges and agrees that all terms, conditions and obligations contained in the Grant Agreement are incorporated herein, and made a part of this Agreement. In addition to the terms, conditions and obligations described herein, the Borrower further acknowledges, accepts and assumes all of the City's obligations described in the Grant Agreement, unless such obligations can only be reasonably performed by the City, including but not limited to, the obligation to repay the LCDA Grant if required by the Council. For purposes of enforcing this Agreement, the Borrower acknowledges, accepts and agrees that the City shall inure to, and possess the rights and authority of the Council as described in the Grant Agreement.

**ARTICLE XV  
MISCELLANEOUS**

- a. Notices. All notices provided for herein shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to the Borrower: Gladstone Village Limited Partnership  
1335 Pierce Butler Route  
Saint Paul, MN 55104  
Attn: James K. Vang

With a copy to: Hust Law  
5021 Vernon Ave. S., #298  
Minneapolis, MN55436  
Attn: Bridget A. Hust

If to the City: City of Maplewood  
1830 County Road B E  
Maplewood, MN 55109  
Attn: City Manager

With a copy to: Kennedy & Graven, Chartered  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402  
Attention: Ronald H. Batty

If to the limited Partner: NDC Corporate Equity Fund 20, L.P.  
c/o NDC Housing and Economic Development  
PO Box 845322  
Boston, MA 845322  
Attn: Daniel Marsh III, President

With a copy to: Barnes & Thornburg LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215  
Attn: Katrina Thompson

or addressed to either party at such other address as such party shall hereafter furnish by notice to the other party as above provided.

b. Binding Effect; Waiver. The provisions of this Agreement shall inure to the benefit of and be binding upon the Borrower and the City and their respective successors and assigns. No delay on the part of the City in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege constitute such waiver nor exhaust the same, which shall be continuing. The rights and remedies of the City specified in this Agreement shall be in addition to and not exclusive of any other right and remedies which the City, by operation of law, would otherwise have.

c. Survival of Agreements, Representations and Warranties. All agreements, representations and warranties made in this Agreement by the Borrower shall survive its termination.

d. Governing Law. This Agreement and the attachments are to be construed and enforced according to and governed by the laws of Minnesota.

e. Counterparts, Electronic Signatures. This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original. An electronic or facsimile signature is deemed to be the same as an original signature.

f. Time. Time is of the essence in the performance of this Agreement.

g. Entire Agreement. This Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement or promise made by either party or by any employee, officer or agent of either party hereto that is not in writing and signed by both parties to this Agreement shall be binding.

h. No Joint Venture. The relationship between the City and the Borrower is solely that of grantor and grantee and the relationship by and between the City and the Borrower is not, nor shall it be deemed to create, a partnership or joint venture in the Project.

i. Venue. All matters whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of Minnesota, and the Borrower agrees that all legal actions initiated by the Borrower with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in District Court in Ramsey County, Minnesota.

j. Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will on demand pay to the City the reasonable fee of such attorneys and such other expenses so incurred, but only in the event the City prevails in pursuing such claims.

k. Assignment. This Agreement may not be assigned by the Borrower without the prior written consent of City, which consent shall be in the sole discretion of the City.

(The remainder of this page is intentionally left blank.)

**IN WITNESS WHEREOF**, the parties have caused this Loan Agreement to be executed the day and year first above written.

**GLADSTONE VILLAGE LIMITED  
PARTNERSHIP**, a Minnesota limited partnership  
By: 1310 Frost Partners LLC, a Minnesota limited  
liability company  
Its: General Partner

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

Name: James K. Vang

Title: President

Dated: \_\_\_\_\_



**CITY OF MAPLEWOOD, MINNESOTA**

By \_\_\_\_\_  
Marylee Abrams, Mayor

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Michael Sable, City Manager

Dated: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY**

The Redevelopment Property is legally described as follows:

Lots 1, 2, 3, 4, 5, 6, and 7, except the South 7 feet of said Lot 7, Block 3, Gladstone, according to the recorded plat thereof, together with the vacated Ridge Street adjacent, Ramsey County, Minnesota.

Abstract Property

**EXHIBIT B**  
**GRANT AGREEMENT**

[to be completed]

**EXHIBIT C**

**DISBURSEMENT REQUEST FORM**

City of Maplewood  
 1830 County Road B E  
 Maplewood, MN 55109  
 Attn: City Manager

The undersigned, Gladstone Village Limited Partnership, a Minnesota limited partnership (the “Borrower”), pursuant to that certain Loan Agreement, dated as \_\_\_\_\_ (the “Loan Agreement”), between the City of Maplewood, Minnesota (the “City”), and the Borrower, hereby requests payment of the expenses listed on the attached Expense Listing.

The total amount to be disbursed for this draw is \$ \_\_\_\_\_.

In connection with this draw, the undersigned hereby represents as follows:

- a. each obligation listed in the attached Exhibit A has been incurred and is a Project Cost related to the Grant-Eligible Activities,
- b. no license or permit necessary for construction of the Grant-Eligible Activities previously issued has been revoked or the issuance thereof subjected to challenge before any court of other governmental authority having or asserting jurisdiction thereover;
- c. no event has occurred and is continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an event of default under the Loan Agreement or the Grant Agreement;
- d. all funds of the Borrower’s match, if any, have been fully disbursed for the payment of Project Costs; and
- e. \_\_\_\_\_% of the Grant-Eligible Activities have been completed.

<p><b>Gladstone Village Limited Partnership</b></p> <p>By: _____                  Name: _____                  Its: _____</p>	<p>Approved:</p> <p><b>CITY OF MAPLEWOOD, MINNESOTA</b></p> <p>By _____                  Its City Manager</p>
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Exhibit A

Expense Listing

Expense Description

Amount

**NOTE**

\$1,150,000

Maplewood, Minnesota  
\_\_\_\_\_, 2024

FOR VALUE RECEIVED, the undersigned (herein called the “Borrower”), promises to pay to the order of the city of Maplewood, a municipal corporation under the laws of Minnesota, or its assigns (the “Lender”), the sum of \$1,150,000 (the “Loan”). Said sum was made available to the Borrower pursuant to the terms of a Loan Agreement of even date herewith (the “Loan Agreement”) between the Lender and the Borrower to enable the Borrower to undertake the development of the Grant-Eligible Activities (as defined in the Loan Agreement) on Property (as defined in the Loan Agreement) located in the city of Maplewood, Minnesota.

1. This Note shall not bear interest.
2. The principal of the Loan shall be due and payable in one lump sum on the earliest of: (a) \_\_\_\_\_, 2074, (b) the sale of any portion of the Property by the Borrower without the Lender’s prior written consent, or (c) the Borrower’s default under the Loan Agreement or Combination Mortgage and Security Agreement of even date herewith (the “Mortgage”) from the Borrower to the Lender (the “Maturity Date”), at which time all unpaid principal and sums paid or advanced by the Lender is due and payable. This Note may also be required to be repaid in whole or in part in accordance with Article IX of the Loan Agreement. The Note may be prepaid at any time without penalty.
3. If suit is instituted by Lender, or its successors or assigns, to recover on this Note, the Borrower agrees to pay all costs of such collection actually incurred, including reasonable attorneys’ fees and court costs. If this Note be reduced to judgment, such judgment shall bear the lawful interest rate pertaining to judgments, but not to exceed six percent (6%) per annum.
4. The Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note.
5. This Note is given pursuant to the Loan Agreement and the Mortgage delivered by the Borrower. If either the Loan Agreement or the Mortgage is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder. This Note is secured by the Mortgage and such Mortgage describes the rights of the Lender as to the acceleration of the indebtedness evidenced by this Note.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, the Mortgage, or any other instrument securing this Note are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If an Event of Default occurs under the Loan Agreement, the Mortgage, or any other instrument securing this Note, then the Lender may at its right and option, without notice, declare immediately due and payable the principal balance of this Note and sums paid or advanced by the Lender, together with reasonable attorneys’ fees and expenses incurred by the Lender in collecting or enforcing payment hereof, whether by

lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note.

6. The remedies of the Lender as provided herein and in the Loan Agreement, the Mortgage, or any other instrument securing this Note shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Lender, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

7. If any term of this Note, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

8. This Note shall be governed by and construed in accordance with the laws of Minnesota.

9. Neither the Borrower nor any member shall have any personal liability for the Borrower's obligations hereunder, it being recognized by the Lender the obligations of the Borrower hereunder are non-recourse obligations and that the remedies of the Lender are limited to the collateral security provided in connection with the Loan.

10. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of the date and year first written above.

**GLADSTONE VILLAGE LIMITED  
PARTNERSHIP**, a Minnesota limited partnership  
By: 1310 Frost Partners LLC, a Minnesota limited  
liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: James K. Vang  
Title: President



## **COMBINATION MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE SECURES A LOAN MADE UNDER AN AFFORDABLE HOUSING PROGRAM BY A STATE OR LOCAL GOVERNMENT AGENCY, AND AS SUCH IS EXEMPT FROM MORTGAGE REGISTRATION TAX PURSUANT TO MINNESOTA STATUTES, SECTION 287.04(6).**

THIS COMBINATION MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the “Mortgage”) is made and given as of the \_\_\_ day of \_\_\_\_\_, 2024, by Gladstone Village Limited Partnership, a Minnesota limited partnership (the “Mortgagor”), in favor of the city of Maplewood, a municipal corporation under the laws of Minnesota (the “Mortgagee”).

### **RECITALS:**

WHEREAS, the Mortgagor hereby mortgages and conveys to the Mortgagee the real property and improvements situated in the County of Ramsey, State of Minnesota, and legally described on Exhibit A attached hereto and made a part hereof, the leases and rents with respect to the real property and improvements and all personal property and equipment, and all products and proceeds thereof owned by Mortgagor and used in the operation of the Project (as defined in the hereinafter-described Loan Agreement) (herein, collectively the “Property”); and

WHEREAS, this Mortgage, together with the Loan Agreement of even date herewith (the “Loan Agreement”) between the Mortgagor and the Mortgagee and all other documents securing the Loan as defined below (collectively, the “Loan Documents”) are given in consideration of and as security for the payment of \$1,150,000 (the “Loan”), receipt of which is hereby acknowledged and which is made to enable the Mortgagor to complete the Grant-Eligible Activities (as defined in the Loan Agreement). The Loan is evidenced by a Note (the “Note”) in the amount of \$1,150,000 executed by the Mortgagor, to the order of the Mortgagee, of even date herewith. The unpaid principal sum shall be due and payable by the Mortgagor in full on \_\_\_\_\_, 2024 unless forgiven in accordance with the Note (the “Maturity Date”).

### **AGREEMENTS:**

NOW, THEREFORE, to secure (a) the due and punctual payment of principal on the Note and the obligations of the Mortgagor under the Loan Agreement and all renewals, extensions and modifications thereof any agreements or obligations issued in substitution therefore (provided the

principal amount secured by this Mortgage shall not exceed \$1,150,000) and (b) the performance of all the covenants and agreements of the Mortgagor herein, in the Loan Agreement and in any other agreement now or hereafter entered into between the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein (the payment and other obligations evidenced by the Loan Agreement, this Mortgage and all such other agreements are hereinafter collectively referred to as the “Indebtedness”), the Mortgagor does hereby mortgage, grant, bargain, sell, assign, transfer and convey unto the Mortgagee forever, with power of sale the following:

### I.

All of the Mortgagor’s right, title and interest in and to the Property and the buildings, structures, other improvements, fixtures and personal property now standing or at any time hereafter constructed or placed upon the Property (the “Improvements”), including but not limited to (i) all building materials, supplies and equipment now or hereafter located on the Property and suitable or intended to be incorporated in any Improvements located or to be erected on the Property; (ii) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air-conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description which are now or may hereafter be placed or used upon the Property or in any of the Improvements now or hereinafter located thereon; (iii) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all of the foregoing; (iv) all hereditaments, easements, appurtenances; estates, and other rights and interests now or hereafter belonging to or in any way pertaining to the Property or to any of the Improvements now or hereafter located thereof; and (v) all tangible personal property owned by the Mortgagor and now or at any time hereafter located on or relating to the Property.

### II.

All rents, issues, profits, condemnation awards, revenues and income arising from the ownership, operation or sale of the Property and the Improvements and all proceeds and products thereof (herein collectively called “Revenues and Income”).

To Have and To Hold the Property and the Improvements (together, the “Mortgaged Property”), and the Revenues and Income unto the Mortgagee forever; provided, nevertheless, that this Mortgage is granted upon the express condition that if the Mortgagor shall cause to be paid to the Mortgagee as and when due and payable the Indebtedness, and shall also keep and perform each and every covenant and agreement of the Mortgagor herein contained, then this Mortgage and the estate hereby granted shall cease and be and become void and shall be released of record at the expense of the Mortgagor; otherwise this Mortgage shall be and remain in full force and effect.

The Mortgagor represents, warrants and covenants to and with the Mortgagee that Mortgagor is lawfully seized of the Property and has good right and full power and authority to execute this Mortgage and to mortgage the Mortgaged Property; that the Mortgagor owns the Mortgaged Property free from all liens; security interests and encumbrances except as agreed to by the Mortgagee; that the Mortgagor will warrant and defend the title to the Mortgaged Property

and the lien and priority of this Mortgage against all claims and demands of all persons whomsoever, whether now existing or hereafter arising, except (i) as agreed to by the Mortgagee, (ii) listed on Exhibit B attached hereto and made a part hereof, and (iii) the regulatory agreement or land use restriction agreement to be entered into relating to low-income housing tax credits (collectively, the “Permitted Encumbrances”). The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Property.

The Mortgagor further covenants and agrees as follows:

1. Payment of the Indebtedness and Compliance with Other Agreements.

(a) The Mortgagor will cause the principal on the Indebtedness to be duly and punctually paid in accordance with the terms of the Note, the Loan Agreement and this Mortgage, when and as due and payable. The provisions of the Note and Loan Agreement are hereby incorporated by reference into this Mortgage as fully as if set forth at length herein.

(b) Mortgagor will duly and punctually perform each and every obligation under the Loan Agreement and any other agreement on or hereafter entered into by the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein.

2. Payment of Taxes, Assessments and Other Charges; Escrow. Subject to paragraph 6 relating to contests, the Mortgagor shall pay before a penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against the Mortgaged Property, except that assessments may be paid in installments so long as no fine or penalty is added to any installment for the nonpayment thereof. The Mortgagor shall likewise pay all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by, this Mortgage, or the recordation hereof, or the Indebtedness secured hereby, provided that the Mortgagor shall not be obliged to pay such tax, assessment or charge if such payment would be contrary to law or would result in the payment of an unlawful rate of interest on the Indebtedness secured hereby; and provided further that nothing herein contained shall be construed as requiring the Mortgagor to pay any net income, profits or revenues taxes of the Mortgagee. The Mortgagor shall promptly furnish to the Mortgagee all notices received by the Mortgagor of amounts due under this paragraph and shall furnish receipts evidencing such payments within ten (10) days after such payments are made.

3. Payment of Utility Charges. Subject to paragraph 6 relating to contests, the Mortgagor shall pay all charges made by utility companies, whether public or private, for electricity, gas, heat, water, or sewer, furnished or used in connection with the Mortgaged Property or any part thereof, and will upon written request of the Mortgagee, furnish proper receipts evidencing such payment.

4. Liens. Subject to paragraph 6 hereof relating to contests, the Mortgagor shall not create, incur or suffer to exist any lien, encumbrance or charge on the Mortgaged Property or Revenues and Income or any part thereof which may have priority over the lien hereof, other than the lien of current real estate taxes and installments of special assessments with respect to which

no penalty is yet payable, and other than any lien granted in connection with the current financing secured by the Property including without limitation the Permitted Encumbrances. Subject to paragraph 6 relating to contests, the Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

5. Compliance with Laws. Subject to paragraph 6 relating to contests, the Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof. The Mortgagor shall not use or occupy nor permit the use and occupancy of the Property without a current Certificate of Occupancy issued by the city of Maplewood, Minnesota.

6. Permitted Contests. The Mortgagor shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 2 hereof, (ii) pay any charges referred to in paragraph 3 hereof, (iii) discharge or remove any lien, encumbrance or charge referred to in paragraph 4 hereof, or (iv) comply with any statute, law, rule, order, regulation or ordinance referred to in paragraph 5 hereof, so long as the Mortgagor shall (a) contest, in good faith, the existence, or the validity thereof, the amount of damages caused thereby or the extent of the Mortgagor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrance or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof, and (b) shall give such security to the Mortgagee as may be reasonably demanded by the Mortgagee to insure compliance with the foregoing provisions of this paragraph 6. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 6.

7. Insurance. The Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire and any other hazards for which the Mortgagee requires insurance for full replacement value of the improvements. This insurance shall be maintained only in the amounts and for the periods as required under the terms of the Loan Agreement. If the Mortgagor fails to maintain coverage described above, the Mortgagee may, at the Mortgagee's option, obtain coverage to protect the Mortgagee's rights in the Mortgaged Property in accordance with paragraph 6.

All insurance policies and renewals shall be reasonably acceptable to the Mortgagee and shall include a standard mortgage clause. If the Mortgagee requires, the Mortgagor shall promptly give to the Mortgagee all receipts of paid premiums and renewal notices. In the event of loss, the Mortgagor shall give prompt notice to the insurance carrier and the Mortgagee. The Mortgagee may make proof of loss if not made promptly by the Mortgagor.

If the Mortgaged Property is acquired by the Mortgagee, the Mortgagor's rights to any insurance policies and proceeds resulting from damage to the Mortgaged Property prior to the acquisition shall pass to the Mortgagee to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

8. Preservation and Maintenance of Mortgaged Property. The Mortgagor (i) shall keep the buildings and other Improvements hereafter erected as part of the Project on the Property

in safe and good repair and condition, ordinary wear and tear and damage by insured casualty excepted (provided that the Mortgagor may proceed to demolish the existing buildings when vacant), (ii) shall reasonably maintain the parking and landscaped areas of the Mortgaged Property, (iii) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, and (iv) shall not remove from the Property any of the fixtures and personal property included in the Mortgaged Property unless the same is immediately replaced with like property of at least equal value and utility (provided that Mortgagor may proceed to demolish and remove all existing personal property and fixtures located on the Property).

9. Inspection. The Mortgagee, or its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purposes of inspecting the Mortgaged Property or any part thereof. The Mortgagee shall, however, have no duty to make such inspection.

10. Protection of Mortgagee's Security. Subject to the rights of the Mortgagor under paragraph 6 hereof, if the Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then the Mortgagee, at the Mortgagee's option, upon advance written notice to the Mortgagor, may perform such covenants and agreements, defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. The Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective upon the occurrence of an Event of Default, to enter upon the Mortgaged Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreement to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph 10 shall become additional Indebtedness of the Mortgagor secured by this Mortgage. Unless the Mortgagor and the Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. The Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph 10 shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph 10.

11. Condemnation.

(a) The Mortgagor hereby irrevocably assigns to the Mortgagee any award or payment which becomes payable by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings (hereinafter called "Taking"). Forthwith upon receipt by Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, the Mortgagor shall give notice thereof to the Mortgagee. The Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel.

The Mortgagor, notwithstanding that the Mortgagee may not be a party to any such proceeding, will promptly give to the Mortgagee copies of all notices, pleadings, judgments, determinations, and other papers received by the Mortgagor therein. The Mortgagor will not enter into any agreement permitting or consenting to the Taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless the Mortgagee shall first have consented thereto in writing, which consent will not be unreasonably withheld. All Taking awards shall be adjusted jointly by the Mortgagor and the Mortgagee. All awards payable as a result of a Taking shall be paid to the Mortgagee, which may, at its option, apply them after first deducting the Mortgagee's expenses incurred in the collection thereof, to the payment of the Indebtedness, whether or not due and in such order of application as the Mortgagee may determine, or to the repair or restoration of the Mortgaged Property, in such manner as the Mortgagee may determine. Any application of Taking awards to principal of the Indebtedness shall not extend or postpone the due date of any installments payable under the Indebtedness or change the amount of such installments.

(b) If the Taking involves a taking of any building or other Improvements now or hereafter located on the Property, the Mortgagor shall proceed, with reasonable diligence, to demolish and remove any ruins and complete repair or restoration of the Mortgaged Property as nearly as possible to its size, type and character immediately prior to the Taking, but only to the extent that the condemnation awards are available or adequate to complete such repair or restoration.

(c) The Mortgagor shall promptly reimburse the Mortgagee upon demand for all of the Mortgagee's expense, including reasonable attorneys' fees, incurred in the collection of awards.

12. Information; Books and Records. The Mortgagor will prepare or cause to be prepared at the Mortgagor's expense and deliver to the Mortgagee immediately upon becoming aware of the existence of any condition or event which constitutes, or which after notice or lapse of time or both would constitute, an Event of Default, written notice specifying the nature and period of existence thereof and what action the Mortgagor has taken, is taking or proposes to take with respect thereto. The Mortgagor shall keep and maintain at all times at the Mortgagor's address stated below or at such other place as the Mortgagee may approve in writing, complete and accurate books of accounts and records in sufficient detail to correctly reflect the receipts and expenses in connection with the acquisition, construction, operation and/or sale of the Mortgaged Property and copies of all written contracts, leases and other instruments which affect the Mortgaged Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection by the Mortgagee or its representative during ordinary business hours.

13. Indemnification by the Mortgagor. The Mortgagor shall bear all loss, expense (including reasonable attorneys' fees) and damage in connection with, and agrees to indemnify and hold harmless the Mortgagee and its agents, servants and employees (the "Indemnified Parties") from, all claims, demands and judgments made or recovered against the Indemnified Parties because of bodily injuries, including death at any time resulting therefrom, and/or because

of damages to property of the Mortgagee or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the construction and/or operation of the Improvements prior to appointment of a receiver or foreclosure of this Mortgage or arising by reason of the presence of hazardous or toxic substances on the Property or in the Improvements or releases thereof from the Mortgaged Property, whether or not due to any act of omission or commission, including negligence of the Mortgagor or the Mortgagor's employee, servants or agents. The Mortgagor's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Mortgagor or subject to any exclusion from coverage in any insurance policy. The obligations of the Mortgagor under this paragraph shall survive the payment of the Note; provided, however, that Mortgagor shall not be required to indemnify, defend, and hold harmless the Indemnified Parties from and against any of the foregoing if such claims, demands, losses, expenses, and/or judgements made or recovered against or suffered by the Indemnified Parties are the result of the gross negligence of intentional misconduct of such Indemnified Parties.

14. Security Interest. This Mortgage shall constitute a security agreement with respect to (and the Mortgagor hereby grants the Mortgagee a security interest in) the tangible personal property and fixtures included in the Mortgaged Property, as more particularly described in Granting Clause I of this Mortgage, and the Revenues and Income, as more particularly described in Granting Clause II. The Mortgagor will from time to time, at the request of the Mortgagee, execute any and all financing statements covering such personal property and fixtures (in a form satisfactory to the Mortgagee) which the Mortgagee may reasonably consider necessary or appropriate to perfect its interest.

15. Events of Default. Each of the following occurrences shall constitute an event of default hereunder (herein called an "Event of Default"):

(a) The Mortgagor shall fail to duly and punctually pay any obligation payable under the Note or Loan Agreement which is not cured within ten (10) business days after written notice from the Mortgagee.

(b) The Mortgagor shall fail duly to perform or observe any of the covenants or agreements contained in this Mortgage (other than default in the performance, or breach, of any covenant of the Mortgagor in paragraph 1(a) hereof) and such failure shall continue for a period of 60 days after the Mortgagee has given written notice to the Mortgagor specifying such default or breach.

(c) The Mortgagor shall make assignment for the benefit of the Mortgagor's creditors, or shall admit in writing the Mortgagor's inability to pay the Mortgagor's debts as they become due, or shall file a petition in bankruptcy, or shall become or be adjudicated bankrupt or insolvent, however defined, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation or shall file an answer admitting to or not contesting the material allegations of petition filed against the Mortgagor in such proceedings, or shall not, within 90 days after the filing of such petition against the Mortgagor, have same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of the Mortgagor's properties or of the Mortgaged Property or shall not, within 90 days after the

appointment, without the Mortgagor's consent or acquiescence, of a trustee, receiver or liquidator of any material part of the Mortgagor's properties or of the Mortgaged Property, have such appointment vacated.

(d) An Event of Default under the Loan Agreement (as defined in the Loan Agreement) or Note shall have occurred and be continuing or the Mortgagor shall be in default under any other agreement now or hereafter entered into by the Mortgagor and the Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein after expiration of any applicable cure periods.

16. Remedies. Whenever any Event of Default shall have occurred and be continuing, the Mortgagee may, at its option, exercise one or more of the following rights and remedies (and/or any other rights and remedies available to it), subject to the rights of the Senior Lender (hereinafter defined) pursuant to the terms and conditions of the Subordination Agreement (hereinafter defined):

(a) The Mortgagee may, by written notice to the Mortgagor, declare immediately due and payable all Indebtedness secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

(b) The Mortgagee shall have and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property and with respect to the Revenues and Income all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in Minnesota. If notice to the Mortgagor of the intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to the Mortgagor in the manner specified in paragraph 20 at least ten (10) calendar days prior to the date of intended disposition. The Mortgagor shall pay on demand all costs and expenses incurred by the Mortgagee in exercising such rights and remedies, including without limitation, reasonable attorneys' fees and legal expenses.

(c) The Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage by action or advertisement, pursuant to the statutes of Minnesota in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the purchaser in fee simple the Mortgagor's interest in the Property at the time of such sale and, out of the proceeds arising from such sale, to pay all Indebtedness secured hereby, and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges and fees the Mortgagor agree to pay.

THE MORTGAGOR HEREBY CONSENTS TO AND ACKNOWLEDGES THE RIGHT OF THE MORTGAGEE, AT MORTGAGEE'S OPTION, TO ACT TO FORECLOSE THIS MORTGAGE BY ACTION OR ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES, CHAPTER 580 OR 581. A POWER OF SALE BEING HEREIN EXPRESSLY GRANTED WHICH SHALL ALLOW THE MORTGAGEE TO SELL AT PUBLIC AUCTION AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY, THE MORTGAGOR ACKNOWLEDGES THAT SUCH SERVICE NEED NOT



BE MADE ON THE MORTGAGOR PERSONALLY UNLESS THE MORTGAGOR IS AN OCCUPANT OF THE MORTGAGED PROPERTY AND THAT NO HEARING IS REQUIRED IN CONNECTION WITH THE SALE. MORTGAGOR EXPRESSLY WAIVES ANY AND ALL RIGHTS TO PRIOR NOTICE OF SALE AND ANY AND ALL RIGHTS TO PRIOR HEARING IN CONNECTION WITH THE SALE. OUT OF THE PROCEEDS OF SUCH SALE THE PRINCIPAL AMOUNT OF THE LOAN SHALL BE PAID TOGETHER WITH ALL LEGAL COSTS AND CHARGES OF FORECLOSURE WITH MAXIMUM ATTORNEYS' FEES PERMITTED BY LAW.

(d) The Mortgagee shall be entitled, without notice and without any showing of waste of the Mortgaged Property, inadequacy of the Mortgaged Property as security for the Indebtedness, or insolvency of the Mortgagor, to the appointment of a receiver of the rents and profits of the Mortgaged Property, including those past due.

(e) The Mortgagee may pursue one or more of the remedies provided for in the Loan Agreement or any other agreement now or hereafter entered into between the Mortgagor and the Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated herein.

17. Estoppel Certificate. The Mortgagor agrees at any time and from time to time, upon not less than 15 days' prior notice by the Mortgagee, to execute, acknowledge and deliver, without charge, to the Mortgagee or to any person designated by the Mortgagee, a statement in writing certifying, to the best of its knowledge, that this Mortgage is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), the principal amount then secured hereby, that the Mortgagor has not received any notice of default or notice of acceleration or foreclosure of this Mortgage (or if the Mortgagor has received such a notice, that it has been revoked, if such be the case), that to the knowledge of the Mortgagor no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), the Mortgagee to the Mortgagor's knowledge have no claims or offsets against the Mortgagee (or if the Mortgagor have any such claims, specifying the same), and the dates to which the principal and the other sums and charges payable by the Mortgagor pursuant to the Loan Agreement have been paid. In the event the Mortgagor fails to execute, acknowledge and deliver such statement within the time above required, the Mortgagor hereby appoint and constitute the Mortgagee as the Mortgagor's attorney-in-fact to do so (which power of attorney is coupled with an interest and is irrevocable), the Mortgagor shall be fully bound by any such statement executed by the Mortgagee on the Mortgagor's behalf to the same extent as if the Mortgagor had executed, acknowledged and delivered the same. The Mortgagee agrees to provide statements of the principal balance payable pursuant to the Note from time to time upon request of the Mortgagor.

18. Forbearance Not a Waiver, Rights and Remedies Cumulative. No delay by the Mortgagee in exercising any right shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by the Mortgagee of any particular provision of this Mortgage shall be deemed effective unless in writing signed by the Mortgagee. All such rights and remedies provided for herein or which the Mortgagee may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. The

Mortgagee's taking action pursuant to paragraph 10 or receiving proceeds, awards or damages pursuant to paragraph 7 or 11 shall not impair any right or remedy available to the Mortgagee under paragraph 16 hereof. Acceleration of maturity of the Indebtedness, once claimed hereunder by the Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by the Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity of the Indebtedness.

19. Successors and Assigns Bound; Number; Gender; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, legal representatives, successors and assignees of the Mortgagee and the Mortgagor. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall apply to all genders. In exercising any rights hereunder or taking any actions provided for herein, the Mortgagee may act through its employees, agents or independent contractor as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

20. Notice. Any notice from the Mortgagee to the Mortgagor under this Mortgage shall be deemed to have been given by the Mortgagee and received by the Mortgagor when mailed by certified mail by the Mortgagee or its agents to the Mortgagor at the address set forth in paragraph 26(a) below or at such other address as the Mortgagor may designate in writing to the Mortgagee.

21. Governing Law; Severability. This Mortgage shall be governed by the laws of Minnesota. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provisions and to this end the provisions of the Mortgage are declared to be severable.

22. Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

23. Waiver of Marshaling. The Mortgagor, any party who consents to this Mortgage and any party who now or hereafter acquires a lien on the Mortgaged Property and who has actual or constructive notice of this Mortgage hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein and waives any right to have the Mortgaged Property sold in separate tracts pursuant to Minnesota Statutes, Section 580.08.

24. Construction Mortgage. This Mortgage secures an obligation incurred for the construction of an improvement on land and is a construction mortgage.

25. Application of Rents. Notwithstanding anything to the contrary herein, all Rents collected by the Mortgagee or any receiver each month shall be applied as determined by Mortgagor, or as otherwise determined by applicable law.

26. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the

Mortgaged Property (as more particularly described in Granting Clause I of this Mortgage) which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of the Mortgagor:

Gladstone Village Limited Partnership  
1335 Pierce Butler Route  
St. Paul, MN 55140  
Attn: James K. Vang

With a copy to: Hust Law  
5021 Vernon Ave. S., #298  
Minneapolis, MN 55436  
Attn: Bridget A. Hust

(b) Name and Address of the Mortgagee:

City of Maplewood  
1830 County Road B E  
Maplewood, MN 55109  
Attn: City Manager

With a copy to: Kennedy & Graven, Chartered  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402  
Attention: Ronald H. Batty

(c) Name and Address of the Limited Partner:

NDC Corporate Equity Fund 20, L.P.  
c/o NDC Housing and Economic Development  
PO Box 845322  
Boston, MA 02284-5322  
Attn: Daniel Marsh III, President

With a copy to: Barnes & Thornburg LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215  
Attn: Katrina Thompson

This document covers goods which are or are to become fixtures.

27. Additional Provisions.

(a) The Mortgagee agrees, notwithstanding any other provision herein to the contrary, that in the event of a foreclosure of the Property, that no tenant may be evicted or tenancy terminated (other than for good cause), and the rent on no apartment unit may be increased, for the three year period following foreclosure if such eviction, termination of tenancy or increase in rent would be contrary to the provisions of Section 42(h)(6)(E) of the Internal Revenue Code of 1986, as amended. This Mortgage is expressly subordinate to this provision.

(b) This Mortgage and the Note shall be construed according to the laws of Minnesota.

(c) In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part hereof, the Mortgagor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the Mortgagee for repayment of the remaining balance of the Loan.

(d) The Mortgagor will permit the Mortgagee's authorized representatives to enter the Property at all times during normal business hours for the purpose of inspecting the same; provided the Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

(e) The Mortgagor hereby agrees to defend, indemnify, and hold harmless Mortgagee from and against any and all claims, losses, damages, liabilities, costs, and expenses, including without limitation reasonable attorneys' fees, incurred by the Mortgagee as a result of any hazardous materials or substances which are on the Property in violation of applicable environmental laws at any time during which the Mortgagor shall be in custody or control of the Property. This indemnification shall remain in full force and effect and shall survive the repayment of the Loan and the exercise of any remedy by the Mortgagee hereunder including a foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure.

(f) The Mortgagor shall have the right and privilege, but not the obligation, to borrow additional funds and to further encumber the security and collateral given and pledged to the Mortgagee hereunder at any time, from time to time, and as often as the Mortgagor shall determine, but only with the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, delayed and conditioned, except for the Permitted Encumbrances set forth in Exhibit B.

(g) If the Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, subject to any applicable cure periods, or if any action or proceeding is commenced which effects the Property or the interest of the Mortgagee

therein, or the title thereto, then the Mortgagee, at Mortgagee's option, upon 60 days advance written notice to the Mortgagor, may perform such covenants and agreements to defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. The Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective 60 days after written notice, to enter upon the Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreements to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph shall become additional indebtedness of the Mortgagor secured by this Mortgage. Unless the Mortgagor and the Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. The Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph.

THE MORTGAGOR ACKNOWLEDGES THAT THIS IS A LEGAL DOCUMENT AND THAT BEFORE SIGNING THE MORTGAGOR HAS FULLY UNDERSTOOD THE TERMS AND CONDITIONS HEREIN, AND THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER OR HAS SOUGHT LEGAL COUNSEL TO EXPLAIN SUCH TERMS AND CONDITIONS, RIGHTS AND THE WAIVER OF SUCH RIGHTS.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed as of the day and year first above written.

**GLADSTONE VILLAGE LIMITED PARTNERSHIP**, a Minnesota limited partnership  
By: 1310 Frost Partners LLC, a Minnesota limited liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: James K. Vang  
Title: President

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024 by James K. Vang, the President of 1310 Frost Partners LLC, a Minnesota limited liability company, the General Partner of Gladstone Village Limited Partnership, a Minnesota limited partnership, on behalf of the limited partnership.

\_\_\_\_\_  
Notary Republic

This document drafted by:  
  
Kennedy & Graven, Chartered (RHB)  
150 South Fifth Street  
Minneapolis, MN 55402-1299

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lots 1, 2, 3, 4, 5, 6, and 7, except the South 7 feet of said Lot 7, Block 3, Gladstone, according to the recorded plat thereof, together with the vacated Ridge Street adjacent, Ramsey County, Minnesota.

Abstract Property

**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

[to be included]



## LOAN AGREEMENT

THIS LOAN AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), between the city of Maplewood, a municipal corporation under the laws of Minnesota (the “City”), and Gladstone Village Limited Partnership, a Minnesota limited partnership (the “Borrower”). The Effective Date is the date this Agreement is executed by the second party to sign.

### WITNESSETH:

WHEREAS, the Borrower has acquired and intends to redevelop the property located at 1310 Frost Avenue in the City and legally described in Exhibit A attached hereto (the “Redevelopment Property”) and construct thereon a multifamily residential rental development consisting of 65 units meeting certain affordability levels (the “Project”); and

WHEREAS, to assist with the costs of the Project, the City, on behalf of the Borrower, applied for and received a Tax Base Revitalization Account (“TBRA”) grant in the total sum of \$100,000 (the “TBRA Grant”) from the Metropolitan Council (the “Council”); and

WHEREAS, on \_\_\_\_\_, the Council and the City entered into a Metropolitan Livable Communities Act Grant Agreement, Tax Base Revitalization Account, Contamination Cleanup Grant Program (the “Grant Agreement”), with an expiration date of December 31, 2026, as may be extended pursuant to Section 5.03 of the Grant Agreement, as more specifically described herein and which is attached hereto as Exhibit B; and

WHEREAS, the proceeds of the TBRA Grant may be used for eligible project activities of the Project to be constructed on the Redevelopment Property and as further described in the Grant Agreement (the “Grant-Eligible Activities”); and

WHEREAS, the City desires to loan the proceeds of the TBRA Grant in the principal amount of \$100,000 to the Borrower (the “Loan”) to provide financing for a portion of the Grant-Eligible Activities with respect to the construction of the Project on the Redevelopment Property; and

WHEREAS, the City believes that the development of the Project, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the City and the Borrower desire to enter into this Agreement for the purpose of setting forth their respective responsibilities with respect to the Loan.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

**ARTICLE I  
DEFINITIONS**

As used in this Agreement, the following terms shall have the following meaning:

Borrower Documents: any and all documents and instruments in connection with the Project as reasonably requested by the City.

Disbursement Request Form: the form, substantially in the form attached hereto as Exhibit C, to be submitted to the City when a disbursement of the Loan is requested and which is referred to in Article VII hereof, together with such other request forms as may be reasonably required from the Council and the City.

Grant Agreement: the Metropolitan Livable Communities Act Grant Agreement Tax Base Revitalization Account, Contamination Cleanup Grant Program No. SG-20142 between the Council and the City for the Gladstone Village Project, attached hereto as Exhibit B.

Grant-Eligible Activities: the activities on the Redevelopment Property funded in full or in part by the TBRA Grant, as set forth in Exhibit A of the Grant Agreement.

Loan: the sum of \$100,000 to be loaned by the City to the Borrower under this Agreement.

Loan Documents: collectively, this Agreement, the Mortgage, and the Note.

Mortgage: the Combination Mortgage and Security Agreement of even date herewith from the Borrower to the City securing repayment of the Note in the form approved by the City.

Note: the Note of even date herewith from the Borrower to the City in the amount of the Loan evidencing Borrower's obligation to repay the Loan in the form approved by the City.

Plans and Specifications: the final plans and specifications for the construction and installation of the Grant-Eligible Activities which have been approved by the City.

Project: the Gladstone Village Project including 65 units of affordable multifamily residential housing.

Project Costs: the costs of the Grant-Eligible Activities eligible to be reimbursed with the proceeds of the TBRA Grant under the Grant Agreement and as authorized by law.

Redevelopment Property: the property legally described in Exhibit A attached hereto.

**ARTICLE II  
TERM OF AGREEMENT**

This Agreement shall take effect and be in force from and after the Effective Date, and shall remain in effect until the Borrower has performed all of its obligations under this Agreement, the Loan Documents, and the Grant Agreement, unless earlier terminated as provided in this Agreement or the Grant Agreement.

**ARTICLE III  
THE LOAN**

Subject to the terms and conditions of this Agreement, the City will make the Loan to the Borrower to be used for payment of Project Costs, which Loan shall be disbursed pursuant to this Agreement. In consideration for the Loan, the Borrower agrees to perform all of its obligations under this Agreement. The Loan shall be evidenced by the Note payable by the Borrower to the City which shall be dated as of the date of closing on the Loan (the "Loan Closing Date"). Proceeds of the Loan shall be disbursed in accordance with Articles V and VI hereof.

**ARTICLE IV  
STATEMENT OF WORK**

Proceeds of the Loan may be used for contamination cleanup costs described as Grant-Eligible Activities in the Grant Agreement in accordance with the terms set forth herein. In accordance with the Grant Agreement, the Borrower will commence the Grant-Eligible Activities and pay the Project Costs with respect to the Project prior to December 31, 2026. The grant expires on December 31, 2026. If the Borrower finds it necessary to request an extension of the Grant Agreement from the Metropolitan Council, the Borrower must provide written notice to the City at least 120 days prior to the expiration date of the grant in order for the City to have sufficient time to request an extension of the Grant Agreement under Section 5.03 of the Grant Agreement.

**ARTICLE V  
CONDITIONS OF DISBURSEMENT**

The obligation of the City to make or cause to be made disbursements of the proceeds of the Loan pursuant to Article VII hereof shall be subject to the conditions precedent that it shall have received on or before the date of the disbursement hereunder the following:

- a. the Borrower Documents, the Mortgage, and the Note, duly executed and delivered by the Borrower;
- b. evidence satisfactory to the City that the Grant-Eligible Activities and the contemplated use thereof are permitted by and comply in all material respects with all applicable restrictions and requirements in prior conveyances, zoning ordinances, subdivision and platting requirements and other laws and regulations;

c. all other conditions specified in the authorizing City approvals and entitlements and the Grant Agreement shall have been duly satisfied by the Borrower or waived in writing by the City or the Council, as applicable;

d. no uncured Event of Default (as defined in Article VIII hereof), and no event which with the giving of notice or the lapse of time or both would constitute an Event of Default, shall have occurred and be continuing and all representations and warranties made by the Borrower in Article VII hereof shall continue to be true and correct as of the date of such disbursement;

e. if required by the City, the City shall have been furnished with a statement of the Borrower and of any contractor, in form and substance acceptable to the City, setting forth the names, addresses and amounts due or to become due as well as the amounts previously paid to every contractor, subcontractor, person, firm or corporation furnishing materials or performing labor in connection with the construction of any part of the Grant-Eligible Activities; and

f. the Borrower shall have provided to the City such documentation and information reasonably necessary to evidence its compliance with all of the provisions of this Agreement, including without limitation the provisions of the Grant Agreement applicable to the Borrower, as the City may reasonably request.

## **ARTICLE VI REQUESTS FOR DISBURSEMENT**

6.01. Disbursement. The City and the Borrower agree that, on the terms and subject to the conditions hereinafter set forth and the conditions set forth in the Grant Agreement, the Loan shall be disbursed from the City to the Borrower, or the Borrower's agent or designee, in disbursements, with the last disbursement being made upon one hundred percent (100%) completion of the Grant-Eligible Activities. Disbursements of the Loan shall not be made more often than monthly. Notwithstanding anything to the contrary contained herein, the City shall only be obligated to make the disbursements hereunder to pay Project Costs in an amount up to or equal to the lesser of the amount of the Loan or the amount actually disbursed by the Council to the City under the Grant Agreement and such obligation is further subject to the conditions of Article V hereof.

### 6.02. Disbursement Request.

a. When the Borrower desires to obtain a disbursement of the Loan, the Borrower shall submit to the City the Disbursement Request Form, together with any additional documents required by the City or the Council, duly signed by the Borrower.

The Disbursement Request Form shall be submitted by the Borrower at least 45 days prior to the date of the requested disbursement. The Disbursement Request Form shall constitute a representation and warranty by the Borrower to the City that all representations and warranties of the Borrower set forth in the Borrower Documents are true and correct as of the date of such Disbursement Request Form, except for such

representations and warranties which, by their nature, would not be applicable as of the date of such Disbursement Request.

b. At the time of submission of the Disbursement Request Form, the Borrower shall also submit the following to the City:

1. a written lien waiver from the general contractor for work done and materials supplied by it which were paid or a conditional lien waiver from the general contractor for work done and materials supplied by it which are to be paid pursuant to the current Disbursement Request Form and from each subcontractor for work done and materials supplied by it which were paid or are to be paid for pursuant to the prior Disbursement Request Form;

2. evidence satisfactory to the City that the Grant-Eligible Activities completed as of the date of the Disbursement Request Form have been constructed in accordance with the Plans and Specifications in all material respects;

3. for the initial disbursement, an executed Sworn Construction Statement, in form and substance acceptable to such parties, signed by the Borrower showing all costs and expenses of any kind theretofore actually paid or incurred in constructing the Grant-Eligible Activities; and

4. a certified statement of the Borrower reflecting the use to which the proceeds of the Loan have been applied in addition to those uses reflected in the Sworn Construction Statement referred to in clause (b)(3) above.

c. Upon receipt of the Disbursement Request Form, if the City has determined that all the conditions set forth in Articles V and VII hereof have been satisfied, a request for disbursement shall be submitted to the Council. The adequacy of the request for disbursement shall be determined by the City and the Council in their sole discretion. After submission of the Disbursement Request Form, if the Borrower has performed all of its agreements and complied with all requirements to be performed or complied with under this Agreement and the Grant Agreement, including satisfaction of all applicable conditions precedent contained in Article V hereof, the City shall make a disbursement to the Borrower, or the Borrower's agent or designee, in the amount of the requested disbursement or such lesser amount as shall be approved, within 45 days after the date of the City's receipt of the Disbursement Request Form, or, if later, upon receipt of grant proceeds from the Council. Each disbursement shall be paid from the proceeds of the TBRA Grant, subject to the City's and the Council's determination that the relevant Project Cost is payable from the TBRA Grant under the Grant Agreement. The City is under no obligation to disburse any proceeds of the Loan until it receives a disbursement of the TBRA Grant from the Council. Notwithstanding anything to the contrary herein, if the Project Costs of the Grant-Eligible Activities exceeds the amount to be reimbursed under this Agreement, such excess shall be the sole responsibility of the Borrower.

**ARTICLE VII  
BORROWER’S COVENANTS, REPRESENTATIONS, WARRANTIES AND  
AGREEMENTS**

The Borrower covenants, represents, warrants and agrees that:

a. The Borrower is a limited partnership duly organized and validly existing under the laws of Minnesota, is duly authorized to operate in Minnesota, has the power to enter into and execute this Agreement and by appropriate action has authorized the execution and delivery of this Agreement.

b. The Borrower Documents will not result in any breach of or constitute a default under any other mortgage, lease, loan, grant or credit agreement, organizational documents, or other instrument to which the Borrower is a party or by which it may be bound or affected.

c. The Loan Documents will constitute valid, legal and binding obligations of the Borrower enforceable against the Borrower.

d. The Borrower has or will have all necessary approvals, licenses and permits required for construction and operation of the Project except those which cannot be obtained until completion of the Grant-Eligible Activities or the Project, as the case may be.

e. The Borrower shall permit the City, upon reasonable notice, to examine all books, records, contracts, plans, permits, bills and statements of account pertaining to the Grant-Eligible Activities and to make copies as the City may require.

f. The Borrower shall obey and comply with all federal, state and local laws, rules and regulations in connection with the Project.

g. The City’s actions in approving the Loan shall not be construed as an approval by the City of providing any additional funds for the Project or other improvements related to the Project.

h. The Borrower agrees to pay for all of the costs incurred to construct the Grant-Eligible Activities including any cost overruns. There are no public funds for the Grant-Eligible Activities except for the Loan.

**ARTICLE VIII  
DEFAULT**

Any one or more of the following shall constitute an event of default (an “Event of Default”) under this Agreement:

a. The Borrower shall herein default in the performance or observance of any agreement, covenant or condition required to be performed or observed by the Borrower under the terms of this Agreement or the Grant Agreement, to the extent such obligations exist, and such default shall not be remedied within 60 days after written notice to the Borrower from the City specifying such default.

b. The Borrower shall be in default of any term of any other agreement relating to the Grant-Eligible Activities which is not cured within 60 days after written notice from the City or if the default cannot be cured within 60 days within such reasonable time as is required to cure the default, provided that the Borrower is diligently pursuing a cure.

c. Any representation or warranty made by the Borrower herein or any document or certificate furnished to the City shall prove at any time to be incorrect or misleading as of the date made.

d. The Borrower engages in any illegal activities.

e. The Borrower uses any of the Loan funds contrary to this Agreement or the Grant Agreement which is not cured within 60 days after written notice from the City.

f. The Borrower shall fail to obtain and/or keep in force insurance only of the types and in the amounts as specified within this Agreement, or shall fail to indemnify and hold harmless the City as set forth herein which is not cured within ten (10) business days after written notice from the City.

g. The failure to repay any principal of the Loan when due.

## **ARTICLE IX REMEDIES**

Whenever any Event of Default shall have happened and is continuing beyond any applicable cure period, any one or more of the following remedial steps may be taken by the City:

a. The City may terminate this Agreement;

b. The City may suspend or terminate any further disbursements to be made under this Agreement;

c. The City may suspend its performance under this Agreement during the continuance of the Event of Default; and/or

d. The City may take whatever action at law or in equity may be necessary or appropriate to seek repayment or reimbursement of the Loan funds disbursed to the Borrower, to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower under this Agreement, or any related

instrument; or to otherwise compensate the City for any damages on account of such Event of Default.

No remedy conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power, nor shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or be required by law.

## ARTICLE X ADDITIONAL PROVISIONS

a. Indemnity, Hold Harmless. The Borrower shall and does hereby agree to indemnify against and to hold the City, and its officers, council members, agents, and employees including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this section, collectively the “Indemnified Parties”), harmless of and from any and all liability, loss, or damage that it or they may incur under or by reason of this Agreement and against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Grant-Eligible Activities or the Project, and of and from any and all claims and demands whatsoever that may be asserted against one or more of the Indemnified Parties by reason of any alleged obligations or undertakings on the Borrower’s part to perform or discharge any of the terms, covenants, or agreements contained herein.

Except for any willful misrepresentation or any willful, wanton, or grossly negligent misconduct of the Indemnified Parties, the Borrower agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever under this Agreement, the Grant Agreement or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project or the Grant-Eligible Activities.

This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the creation and repayment of any indebtedness to City under this Agreement.

b. Independent Contractor. For the purpose of this Agreement, the Borrower shall be deemed an independent contractor and not an employee or agent of the City. Any and all employees or agents of the Borrower shall not be considered employees or agents of the City.



c. Compliance With Minnesota Laws. All of the data created, collected, received, stored, used, maintained or disseminated by the Borrower with respect to the Grant-Eligible Activities are subject to the requirements of Minnesota Statutes, Chapter 13, (the “Minnesota Government Data Practices Act” or “MGDPA”) and, except as provided in Section 13.05, subdivision 11(b) of the MGDPA, the Borrower agrees to comply with those requirements under the MGDPA to the extent applicable. The remedies in Section 13.08 of the MGDPA may apply to the Borrower. If any provision of this Agreement is in conflict with the MGDPA or other Minnesota State laws, state law shall control. The Borrower shall comply with the conflict of interest provisions of Minnesota Statutes, Sections 471.87 through 471.88.

d. Contractor and Subcontractor Compliance. The Borrower shall comply with and shall cause all contractors and subcontractors to comply with all applicable state and federal laws, and to the extent applicable to the Borrower, the Grant Agreement. The Borrower shall require all contractors and subcontractors performing work covered by the Loan to obtain all required permits, licenses and certifications and comply with all applicable state and federal Occupational Safety and Health Act regulations.

e. Site Compliance. The Borrower shall meet or require to be met all applicable requirements of:

(1) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and

(2) The Council’s *2030 Water Resources Management Policy Plan* and the City’s local water management plan Property is located.

f. Fair Housing Compliance. The Borrower shall comply in all respects with the affordability and fair housing marketing plan requirements set forth in Article VI of the Grant Agreement.

g. Environmental Site Assessment. The Borrower shall ensure that a Phase I Environmental Site Assessment or other environmental review of the Project will be carried out if appropriate for the scope and nature of the Project.

## **ARTICLE XI INSURANCE**

With respect to the Project, the Borrower shall maintain all insurance required by the Grant Agreement.

**ARTICLE XII  
RECORDS AND REPORTS**

Upon request, the Borrower shall submit to the City a full account of the status of the activities undertaken as part of this Agreement. The following records shall be maintained by the Borrower, copies of which shall be submitted in such form as City may prescribe:

- a. All receipts and invoices relating to expenditure of Loan funds.
- b. Records shall be sufficient to reflect all Project Costs incurred in performance of the Loan. The books, records, documents, and accounting procedures, relevant to the Loan shall be subject to examination by the City, the Council and state agencies and the legislative auditor.

**ARTICLE XIII  
AMENDMENT**

This Agreement shall not be amended or modified without the prior written approval of the City and the Borrower.

**ARTICLE XIV  
INCORPORATION OF GRANT AGREEMENT**

The Borrower acknowledges and agrees that all terms, conditions and obligations contained in the Grant Agreement are incorporated herein, and made a part of this Agreement. In addition to the terms, conditions and obligations described herein, the Borrower further acknowledges, accepts and assumes all of the City's obligations described in the Grant Agreement, unless such obligations can only be reasonably performed by the City, including but not limited to, the obligation to repay the TBRA Grant if required by the Council. For purposes of enforcing this Agreement, the Borrower acknowledges, accepts and agrees that the City shall inure to, and possess the rights and authority of the Council as described in the Grant Agreement.

**ARTICLE XV  
MISCELLANEOUS**

- a. Notices. All notices provided for herein shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to the Borrower:	Gladstone Village Limited Partnership 1335 Pierce Butler Route St. Paul, MN 55104 Attn: James K. Vang
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With a copy to: Hust Law  
5021 Vernon Ave. S. #298  
St. Paul, MN 55104  
Attn: Bridget A. Hust

If to the City: City of Maplewood  
1830 County Road B E  
Maplewood, MN 55109  
Attn: City Manager

With a copy to: Kennedy & Graven, Chartered  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402  
Attention: Ronald H. Batty

If to the limited Partner: NDC Corporate Equity Fund 20, L.P.  
c/o NDC Housing and Economic Development  
PO Box 845322  
Boston, MA 845322  
Attn: Daniel Marsh III, President

With a copy to: Barnes & Thornburg LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215  
Attn: Katrina Thompson

or addressed to either party at such other address as such party shall hereafter furnish by notice to the other party as above provided.

b. Binding Effect; Waiver. The provisions of this Agreement shall inure to the benefit of and be binding upon the Borrower and the City and their respective successors and assigns. No delay on the part of the City in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege constitute such waiver nor exhaust the same, which shall be continuing. The rights and remedies of the City specified in this Agreement shall be in addition to and not exclusive of any other right and remedies which the City, by operation of law, would otherwise have.

c. Survival of Agreements, Representations and Warranties. All agreements, representations and warranties made in this Agreement by the Borrower shall survive its termination.

d. Governing Law. This Agreement and the attachments are to be construed and enforced according to and governed by the laws of Minnesota.

e. Counterparts, Electronic Signatures. This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original. An electronic or facsimile signature is deemed to be the same as an original signature.

f. Time. Time is of the essence in the performance of this Agreement.

g. Entire Agreement. This Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement or promise made by either party or by any employee, officer or agent of either party hereto that is not in writing and signed by both parties to this Agreement shall be binding.

h. No Joint Venture. The relationship between the City and the Borrower is solely that of grantor and grantee and the relationship by and between the City and the Borrower is not, nor shall it be deemed to create, a partnership or joint venture in the Project.

i. Venue. All matters in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement, shall be controlled by and determined in accordance with the laws of Minnesota and the Borrower agrees that all legal actions initiated by the Borrower with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in District Court in Ramsey County, Minnesota.

j. Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of amounts due hereunder or the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will on demand pay to the City the reasonable fee of such attorneys and such other expenses so incurred, but only in the event the City prevails in pursuing such claims.

k. Assignment. This Agreement may not be assigned by the Borrower without the prior written consent of City, which consent shall be in the sole discretion of the City.

(The remainder of this page is intentionally left blank.)

**IN WITNESS WHEREOF**, the parties have caused this Loan Agreement to be executed the day and year first above written.

**GLADSTONE VILLAGE LIMITED  
PARTNERSHIP**, a Minnesota limited partnership  
By: 1310 Frost Partners LLC, a Minnesota limited  
liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: James K. Vang  
Title: President

Dated: \_\_\_\_\_

**CITY OF MAPLEWOOD, MINNESOTA**

By \_\_\_\_\_  
Marylee Abrams, Mayor

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Michael Sable, City Manager

Dated: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY**

The Redevelopment Property is legally described as follows:

Lots 1, 2, 3, 4, 5, 6, and 7, except the South 7 feet of said Lot 7, Block 3, Gladstone, according to the recorded plat thereof, together with the vacated Ridge Street adjacent, Ramsey County, Minnesota.

Abstract Property

**EXHIBIT B**  
**GRANT AGREEMENT**

[to be completed]



**EXHIBIT C**

**DISBURSEMENT REQUEST FORM**

City of Maplewood  
 1830 County Road B E  
 Maplewood, MN 55109  
 Attn: City Manager

The undersigned, Gladstone Village Limited Partnership, a Minnesota limited partnership (the “Borrower”), pursuant to that certain TBRA Loan Agreement, dated as \_\_\_\_\_ (the “Loan Agreement”), between the City of Maplewood, Minnesota (the “City”), and the Borrower, hereby requests payment of the expenses listed on the attached Expense Listing.

The total amount to be disbursed for this draw is \$ \_\_\_\_\_.

In connection with this draw, the undersigned hereby represents as follows:

- a. each obligation listed in the attached Exhibit A has been incurred and is a Project Cost related to the Grant-Eligible Activities,
- b. no license or permit necessary for construction of the Grant-Eligible Activities previously issued has been revoked or the issuance thereof subjected to challenge before any court of other governmental authority having or asserting jurisdiction thereover;
- c. no event has occurred and is continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an event of default under the Loan Agreement or the Grant Agreement;
- d. all funds of the Borrower’s match, if any, have been fully disbursed for the payment of Project Costs; and
- e. \_\_\_\_\_% of the Grant-Eligible Activities have been completed.

<p><b>GLADSTONE VILLAGE LIMITED PARTNERSHIP</b></p> <p>By: _____                  Name: _____                  Its: _____</p>	<p>Approved:</p> <p><b>CITY OF MAPLEWOOD, MINNESOTA</b></p> <p>By _____                  Its City Manager</p>
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Exhibit A

Expense Listing

Expense Description

Amount

**NOTE**

\$100,000

Maplewood, Minnesota  
\_\_\_\_\_, 2024

FOR VALUE RECEIVED, the undersigned (herein called the “Borrower”), promises to pay to the order of the city of Maplewood, a municipal corporation under the laws of Minnesota, or its assigns (the “Lender”), the sum of \$100,000 (the “Loan”). Said sum was made available to the Borrower pursuant to the terms of a Loan Agreement of even date herewith (the “Loan Agreement”) between the Lender and the Borrower to enable the Borrower to undertake the development of the Grant-Eligible Activities (as defined in the Loan Agreement) on Property (as defined in the Loan Agreement) located in the city of Maplewood, Minnesota.

1. This Note shall not bear interest.
2. The principal of the Loan shall be due and payable in one lump sum on the earliest of: (a) \_\_\_\_\_, 2074, (b) the sale of any portion of the Property by the Borrower without the Lender’s prior written consent, or (c) the Borrower’s default under the Loan Agreement or Combination Mortgage and Security Agreement of even date herewith (the “Mortgage”) from the Borrower to the Lender (the “Maturity Date”), at which time all unpaid principal and sums paid or advanced by the Lender is due and payable. This Note may also be required to be repaid in whole or in part in accordance with Article IX of the Loan Agreement. The Note may be prepaid at any time without penalty.
3. If suit is instituted by Lender, or its successors or assigns, to recover on this Note, the Borrower agrees to pay all costs of such collection actually incurred, including reasonable attorneys’ fees and court costs. If this Note be reduced to judgment, such judgment shall bear the lawful interest rate pertaining to judgments, but not to exceed six percent (6%) per annum.
4. The Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note.
5. This Note is given pursuant to the Loan Agreement and the Mortgage delivered by the Borrower. If either the Loan Agreement or the Mortgage is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder. This Note is secured by the Mortgage and such Mortgage describes the rights of the Lender as to the acceleration of the indebtedness evidenced by this Note.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, the Mortgage, or any other instrument securing this Note are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If an Event of Default occurs under the Loan Agreement, the Mortgage, or any other instrument securing this Note, then the Lender may at its right and option, without notice, declare immediately due and payable the principal balance of this Note and sums paid or advanced by the Lender, together with reasonable attorneys’ fees and expenses incurred by the Lender in collecting or enforcing payment hereof, whether by

lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note.

6. The remedies of the Lender as provided herein and in the Loan Agreement, the Mortgage, or any other instrument securing this Note shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Lender, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Lender shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Lender and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

7. If any term of this Note, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

8. This Note shall be governed by and construed in accordance with the laws of Minnesota.

9. Neither the Borrower nor any member shall have any personal liability for the Borrower's obligations hereunder, it being recognized by the Lender the obligations of the Borrower hereunder are non-recourse obligations and that the remedies of the Lender are limited to the collateral security provided in connection with the Loan.

10. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, this Note has been duly executed by the undersigned as of the date and year first written above.

**GLADSTONE VILLAGE LIMITED  
PARTNERSHIP**, a Minnesota limited partnership  
By: 1310 Frost Partners LLC, a Minnesota limited  
liability company  
Its: General Partner

By: \_\_\_\_\_  
Name: James K. Vang  
Title: President

**COMBINATION MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE SECURES A LOAN MADE UNDER AN AFFORDABLE HOUSING PROGRAM BY A STATE OR LOCAL GOVERNMENT AGENCY, AND AS SUCH IS EXEMPT FROM MORTGAGE REGISTRATION TAX PURSUANT TO MINNESOTA STATUTES, SECTION 287.04(6).**

THIS COMBINATION MORTGAGE AND SECURITY AGREEMENT (hereinafter referred to as the “Mortgage”) is made and given as of the \_\_\_ day of \_\_\_\_\_, 2024, by Gladstone Village Limited Partnership, a Minnesota limited partnership (the “Mortgagor”), in favor of the city of Maplewood, a municipal corporation under the laws of Minnesota (the “Mortgagee”).

**RECITALS:**

WHEREAS, the Mortgagor hereby mortgages and conveys to the Mortgagee the real property and improvements situated in the County of Ramsey, State of Minnesota, and legally described on Exhibit A attached hereto and made a part hereof, the leases and rents with respect to the real property and improvements and all personal property and equipment, and all products and proceeds thereof owned by Mortgagor and used in the operation of the Project (as defined in the hereinafter-described Loan Agreement) (herein, collectively the “Property”); and

WHEREAS, this Mortgage, together with the Loan Agreement of even date herewith (the “Loan Agreement”) between the Mortgagor and the Mortgagee and all other documents securing the Loan as defined below (collectively, the “Loan Documents”) are given in consideration of and as security for the payment of \$100,000 (the “Loan”), receipt of which is hereby acknowledged and which is made to enable the Mortgagor to complete the Grant-Eligible Activities (as defined in the Loan Agreement). The Loan is evidenced by a Note (the “Note”) in the amount of \$100,000 executed by the Mortgagor, to the order of the Mortgagee, of even date herewith. The unpaid principal sum shall be due and payable by the Mortgagor in full on \_\_\_\_\_, 2074 unless forgiven in accordance with the Note (the “Maturity Date”).

**AGREEMENTS:**

NOW, THEREFORE, to secure (a) the due and punctual payment of principal on the Note and the obligations of the Mortgagor under the Loan Agreement and all renewals, extensions and modifications thereof any agreements or obligations issued in substitution therefore (provided the

principal amount secured by this Mortgage shall not exceed \$100,000) and (b) the performance of all the covenants and agreements of the Mortgagor herein, in the Loan Agreement and in any other agreement now or hereafter entered into between the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein (the payment and other obligations evidenced by the Loan Agreement, this Mortgage and all such other agreements are hereinafter collectively referred to as the “Indebtedness”), the Mortgagor does hereby mortgage, grant, bargain, sell, assign, transfer and convey unto the Mortgagee forever, with power of sale the following:

### I.

All of the Mortgagor’s right, title and interest in and to the Property and the buildings, structures, other improvements, fixtures and personal property now standing or at any time hereafter constructed or placed upon the Property (the “Improvements”), including but not limited to (i) all building materials, supplies and equipment now or hereafter located on the Property and suitable or intended to be incorporated in any Improvements located or to be erected on the Property; (ii) all heating, plumbing and lighting apparatus, motors, engines and machinery, electrical equipment, incinerator apparatus, air-conditioning equipment, water and gas apparatus, pipes, faucets, and all other fixtures of every description which are now or may hereafter be placed or used upon the Property or in any of the Improvements now or hereafter located thereon; (iii) all additions, accessions, increases, parts, fittings, accessories, replacements, substitutions, betterments, repairs and proceeds to and of any and all of the foregoing; (iv) all hereditaments, easements, appurtenances; estates, and other rights and interests now or hereafter belonging to or in any way pertaining to the Property or to any of the Improvements now or hereafter located thereof; and (v) all tangible personal property owned by the Mortgagor and now or at any time hereafter located on or relating to the Property.

### II.

All rents, issues, profits, condemnation awards, revenues and income arising from the ownership, operation or sale of the Property and the Improvements and all proceeds and products thereof (herein collectively called “Revenues and Income”).

To Have and To Hold the Property and the Improvements (together, the “Mortgaged Property”), and the Revenues and Income unto the Mortgagee forever; provided, nevertheless, that this Mortgage is granted upon the express condition that if the Mortgagor shall cause to be paid to the Mortgagee as and when due and payable the Indebtedness, and shall also keep and perform each and every covenant and agreement of the Mortgagor herein contained, then this Mortgage and the estate hereby granted shall cease and be and become void and shall be released of record at the expense of the Mortgagor; otherwise this Mortgage shall be and remain in full force and effect.

The Mortgagor represents, warrants and covenants to and with the Mortgagee that Mortgagor is lawfully seized of the Property and has good right and full power and authority to execute this Mortgage and to mortgage the Mortgaged Property; that the Mortgagor owns the Mortgaged Property free from all liens; security interests and encumbrances except as agreed to by the Mortgagee; that the Mortgagor will warrant and defend the title to the Mortgaged Property

and the lien and priority of this Mortgage against all claims and demands of all persons whomsoever, whether now existing or hereafter arising, except (i) as agreed to by the Mortgagee, (ii) listed on Exhibit B attached hereto and made a part hereof, and (iii) the regulatory agreement or land use restriction agreement to be entered into relating to low-income housing tax credits (collectively, the “Permitted Encumbrances”). The covenants and warranties of this paragraph shall survive foreclosure of this Mortgage and shall run with the Property.

The Mortgagor further covenants and agrees as follows:

1. Payment of the Indebtedness and Compliance with Other Agreements.

(a) The Mortgagor will cause the principal on the Indebtedness to be duly and punctually paid in accordance with the terms of the Note, the Loan Agreement and this Mortgage, when and as due and payable. The provisions of the Note and Loan Agreement are hereby incorporated by reference into this Mortgage as fully as if set forth at length herein.

(b) Mortgagor will duly and punctually perform each and every obligation under the Loan Agreement and any other agreement on or hereafter entered into by the Mortgagor and Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein.

2. Payment of Taxes, Assessments and Other Charges; Escrow. Subject to paragraph 6 relating to contests, the Mortgagor shall pay before a penalty might attach for nonpayment thereof, all taxes and assessments and all other charges whatsoever levied upon or assessed or placed against the Mortgaged Property, except that assessments may be paid in installments so long as no fine or penalty is added to any installment for the nonpayment thereof. The Mortgagor shall likewise pay all taxes, assessments and other charges, levied upon or assessed, placed or made against, or measured by, this Mortgage, or the recordation hereof, or the Indebtedness secured hereby, provided that the Mortgagor shall not be obliged to pay such tax, assessment or charge if such payment would be contrary to law or would result in the payment of an unlawful rate of interest on the Indebtedness secured hereby; and provided further that nothing herein contained shall be construed as requiring the Mortgagor to pay any net income, profits or revenues taxes of the Mortgagee. The Mortgagor shall promptly furnish to the Mortgagee all notices received by the Mortgagor of amounts due under this paragraph and shall furnish receipts evidencing such payments within ten (10) days after such payments are made.

3. Payment of Utility Charges. Subject to paragraph 6 relating to contests, the Mortgagor shall pay all charges made by utility companies, whether public or private, for electricity, gas, heat, water, or sewer, furnished or used in connection with the Mortgaged Property or any part thereof, and will upon written request of the Mortgagee, furnish proper receipts evidencing such payment.

4. Liens. Subject to paragraph 6 hereof relating to contests, the Mortgagor shall not create, incur or suffer to exist any lien, encumbrance or charge on the Mortgaged Property or Revenues and Income or any part thereof which may have priority over the lien hereof, other than the lien of current real estate taxes and installments of special assessments with respect to which



no penalty is yet payable, and other than any lien granted in connection with the current financing secured by the Property including without limitation the Permitted Encumbrances. Subject to paragraph 6 relating to contests, the Mortgagor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Mortgaged Property.

5. Compliance with Laws. Subject to paragraph 6 relating to contests, the Mortgagor shall comply with all present and future statutes, laws, rules, orders, regulations and ordinances affecting the Mortgaged Property, any part thereof or the use thereof. The Mortgagor shall not use or occupy nor permit the use and occupancy of the Property without a current Certificate of Occupancy issued by the city of Maplewood, Minnesota.

6. Permitted Contests. The Mortgagor shall not be required to (i) pay any tax, assessment or other charge referred to in paragraph 2 hereof, (ii) pay any charges referred to in paragraph 3 hereof, (iii) discharge or remove any lien, encumbrance or charge referred to in paragraph 4 hereof, or (iv) comply with any statute, law, rule, order, regulation or ordinance referred to in paragraph 5 hereof, so long as the Mortgagor shall (a) contest, in good faith, the existence, or the validity thereof, the amount of damages caused thereby or the extent of the Mortgagor's liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (A) the collection of, or other realization upon the tax, assessment, charge or lien, encumbrance or charge so contested, (B) the sale, forfeiture or loss of the Mortgaged Property or any part thereof, and (C) any interference with the use or occupancy of the Mortgaged Property or any part thereof, and (b) shall give such security to the Mortgagee as may be reasonably demanded by the Mortgagee to insure compliance with the foregoing provisions of this paragraph 6. Mortgagor shall give prompt written notice to Mortgagee of the commencement of any contest referred to in this paragraph 6.

7. Insurance. The Mortgagor shall keep the improvements now existing or hereafter erected on the Mortgaged Property insured against loss by fire and any other hazards for which the Mortgagee requires insurance for full replacement value of the improvements. This insurance shall be maintained only in the amounts and for the periods as required under the terms of the Loan Agreement. If the Mortgagor fails to maintain coverage described above, the Mortgagee may, at the Mortgagee's option, obtain coverage to protect the Mortgagee's rights in the Mortgaged Property in accordance with paragraph 6.

All insurance policies and renewals shall be reasonably acceptable to the Mortgagee and shall include a standard mortgage clause. If the Mortgagee requires, the Mortgagor shall promptly give to the Mortgagee all receipts of paid premiums and renewal notices. In the event of loss, the Mortgagor shall give prompt notice to the insurance carrier and the Mortgagee. The Mortgagee may make proof of loss if not made promptly by the Mortgagor.

If the Mortgaged Property is acquired by the Mortgagee, the Mortgagor's rights to any insurance policies and proceeds resulting from damage to the Mortgaged Property prior to the acquisition shall pass to the Mortgagee to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

8. Preservation and Maintenance of Mortgaged Property. The Mortgagor (i) shall keep the buildings and other Improvements hereafter erected as part of the Project on the Property

in safe and good repair and condition, ordinary wear and tear and damage by insured casualty excepted (provided that the Mortgagor may proceed to demolish the existing buildings when vacant), (ii) shall reasonably maintain the parking and landscaped areas of the Mortgaged Property, (iii) shall not commit waste or permit impairment or deterioration of the Mortgaged Property, and (iv) shall not remove from the Property any of the fixtures and personal property included in the Mortgaged Property unless the same is immediately replaced with like property of at least equal value and utility (provided that Mortgagor may proceed to demolish and remove all existing personal property and fixtures located on the Property).

9. Inspection. The Mortgagee, or its agents, shall have the right at all reasonable times, to enter upon the Mortgaged Property for the purposes of inspecting the Mortgaged Property or any part thereof. The Mortgagee shall, however, have no duty to make such inspection.

10. Protection of Mortgagee's Security. Subject to the rights of the Mortgagor under paragraph 6 hereof, if the Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage or if any action or proceeding is commenced which affects the Mortgaged Property or the interest of the Mortgagee therein, or the title thereto, then the Mortgagee, at the Mortgagee's option, upon advance written notice to the Mortgagor, may perform such covenants and agreements, defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. The Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective upon the occurrence of an Event of Default, to enter upon the Mortgaged Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreement to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph 10 shall become additional Indebtedness of the Mortgagor secured by this Mortgage. Unless the Mortgagor and the Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. The Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the Indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall be additional and cumulative security for this Mortgage. Nothing contained in this paragraph 10 shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph 10.

11. Condemnation.

(a) The Mortgagor hereby irrevocably assigns to the Mortgagee any award or payment which becomes payable by reason of any taking of the Mortgaged Property, or any part thereof, whether directly or indirectly or temporarily or permanently, in or by condemnation or other eminent domain proceedings or by reason of sale under threat thereof, or in anticipation of the exercise of the right of condemnation or other eminent domain proceedings (hereinafter called "Taking"). Forthwith upon receipt by Mortgagor of notice of the institution of any proceeding or negotiations for a Taking, the Mortgagor shall give notice thereof to the Mortgagee. The Mortgagee may appear in any such proceedings and participate in any such negotiations and may be represented by counsel.

The Mortgagor, notwithstanding that the Mortgagee may not be a party to any such proceeding, will promptly give to the Mortgagee copies of all notices, pleadings, judgments, determinations, and other papers received by the Mortgagor therein. The Mortgagor will not enter into any agreement permitting or consenting to the Taking of the Mortgaged Property, or any part thereof, or providing for the conveyance thereof in lieu of condemnation, with anyone authorized to acquire the same in condemnation or by eminent domain unless the Mortgagee shall first have consented thereto in writing, which consent will not be unreasonably withheld. All Taking awards shall be adjusted jointly by the Mortgagor and the Mortgagee. All awards payable as a result of a Taking shall be paid to the Mortgagee, which may, at its option, apply them after first deducting the Mortgagee's expenses incurred in the collection thereof, to the payment of the Indebtedness, whether or not due and in such order of application as the Mortgagee may determine, or to the repair or restoration of the Mortgaged Property, in such manner as the Mortgagee may determine. Any application of Taking awards to principal of the Indebtedness shall not extend or postpone the due date of any installments payable under the Indebtedness or change the amount of such installments.

(b) If the Taking involves a taking of any building or other Improvements now or hereafter located on the Property, the Mortgagor shall proceed, with reasonable diligence, to demolish and remove any ruins and complete repair or restoration of the Mortgaged Property as nearly as possible to its size, type and character immediately prior to the Taking, but only to the extent that the condemnation awards are available or adequate to complete such repair or restoration.

(c) The Mortgagor shall promptly reimburse the Mortgagee upon demand for all of the Mortgagee's expense, including reasonable attorneys' fees, incurred in the collection of awards.

12. Information; Books and Records. The Mortgagor will prepare or cause to be prepared at the Mortgagor's expense and deliver to the Mortgagee immediately upon becoming aware of the existence of any condition or event which constitutes, or which after notice or lapse of time or both would constitute, an Event of Default, written notice specifying the nature and period of existence thereof and what action the Mortgagor has taken, is taking or proposes to take with respect thereto. The Mortgagor shall keep and maintain at all times at the Mortgagor's address stated below or at such other place as the Mortgagee may approve in writing, complete and accurate books of accounts and records in sufficient detail to correctly reflect the receipts and expenses in connection with the acquisition, construction, operation and/or sale of the Mortgaged Property and copies of all written contracts, leases and other instruments which affect the Mortgaged Property. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection by the Mortgagee or its representative during ordinary business hours.

13. Indemnification by the Mortgagor. The Mortgagor shall bear all loss, expense (including reasonable attorneys' fees) and damage in connection with, and agrees to indemnify and hold harmless the Mortgagee and its agents, servants and employees (the "Indemnified Parties") from, all claims, demands and judgments made or recovered against the Indemnified Parties because of bodily injuries, including death at any time resulting therefrom, and/or because

of damages to property of the Mortgagee or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the construction and/or operation of the Improvements prior to appointment of a receiver or foreclosure of this Mortgage or arising by reason of the presence of hazardous or toxic substances on the Property or in the Improvements or releases thereof from the Mortgaged Property, whether or not due to any act of omission or commission, including negligence of the Mortgagor or the Mortgagor's employee, servants or agents. The Mortgagor's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Mortgagor or subject to any exclusion from coverage in any insurance policy. The obligations of the Mortgagor under this paragraph shall survive the payment of the Note; provided, however, that Mortgagor shall not be required to indemnify, defend, and hold harmless the Indemnified Parties from and against any of the foregoing if such claims, demands, losses, expenses, and/or judgements made or recovered against or suffered by the Indemnified Parties are the result of the gross negligence of intentional misconduct of such Indemnified Parties.

14. Security Interest. This Mortgage shall constitute a security agreement with respect to (and the Mortgagor hereby grants the Mortgagee a security interest in) the tangible personal property and fixtures included in the Mortgaged Property, as more particularly described in Granting Clause I of this Mortgage, and the Revenues and Income, as more particularly described in Granting Clause II. The Mortgagor will from time to time, at the request of the Mortgagee, execute any and all financing statements covering such personal property and fixtures (in a form satisfactory to the Mortgagee) which the Mortgagee may reasonably consider necessary or appropriate to perfect its interest.

15. Events of Default. Each of the following occurrences shall constitute an event of default hereunder (herein called an "Event of Default"):

(a) The Mortgagor shall fail to duly and punctually pay any obligation payable under the Note or Loan Agreement which is not cured within ten (10) business days after written notice from the Mortgagee.

(b) The Mortgagor shall fail duly to perform or observe any of the covenants or agreements contained in this Mortgage (other than default in the performance, or breach, of any covenant of the Mortgagor in paragraph 1(a) hereof) and such failure shall continue for a period of 60 days after the Mortgagee has given written notice to the Mortgagor specifying such default or breach.

(c) The Mortgagor shall make assignment for the benefit of the Mortgagor's creditors, or shall admit in writing the Mortgagor's inability to pay the Mortgagor's debts as they become due, or shall file a petition in bankruptcy, or shall become or be adjudicated bankrupt or insolvent, however defined, or shall file a petition seeking any reorganization, dissolution, liquidation, arrangement, composition, readjustment or similar relief under any present or future bankruptcy or insolvency statute, law or regulation or shall file an answer admitting to or not contesting the material allegations of petition filed against the Mortgagor in such proceedings, or shall not, within 90 days after the filing of such petition against the Mortgagor, have same dismissed or vacated, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of a material part of the Mortgagor's properties or of the Mortgaged Property or shall not, within 90 days after the

appointment, without the Mortgagor's consent or acquiescence, of a trustee, receiver or liquidator of any material part of the Mortgagor's properties or of the Mortgaged Property, have such appointment vacated.

(d) An Event of Default under the Loan Agreement (as defined in the Loan Agreement) or Note shall have occurred and be continuing or the Mortgagor shall be in default under any other agreement now or hereafter entered into by the Mortgagor and the Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated therein after expiration of any applicable cure periods.

16. Remedies. Whenever any Event of Default shall have occurred and be continuing, the Mortgagee may, at its option, exercise one or more of the following rights and remedies (and/or any other rights and remedies available to it), subject to the rights of the Senior Lender (hereinafter defined) pursuant to the terms and conditions of the Subordination Agreement (hereinafter defined):

(a) The Mortgagee may, by written notice to the Mortgagor, declare immediately due and payable all Indebtedness secured by this Mortgage, and the same shall thereupon be immediately due and payable, without further notice or demand.

(b) The Mortgagee shall have and may exercise with respect to all personal property and fixtures which are part of the Mortgaged Property and with respect to the Revenues and Income all the rights and remedies accorded upon default to a secured party under the Uniform Commercial Code, as in effect in Minnesota. If notice to the Mortgagor of the intended disposition of such property is required by law in a particular instance, such notice shall be deemed commercially reasonable if given to the Mortgagor in the manner specified in paragraph 20 at least ten (10) calendar days prior to the date of intended disposition. The Mortgagor shall pay on demand all costs and expenses incurred by the Mortgagee in exercising such rights and remedies, including without limitation, reasonable attorneys' fees and legal expenses.

(c) The Mortgagee may (and is hereby authorized and empowered to) foreclose this Mortgage by action or advertisement, pursuant to the statutes of Minnesota in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the purchaser in fee simple the Mortgagor's interest in the Property at the time of such sale and, out of the proceeds arising from such sale, to pay all Indebtedness secured hereby, and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges and fees the Mortgagor agree to pay.

THE MORTGAGOR HEREBY CONSENTS TO AND ACKNOWLEDGES THE RIGHT OF THE MORTGAGEE, AT MORTGAGEE'S OPTION, TO ACT TO FORECLOSE THIS MORTGAGE BY ACTION OR ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES, CHAPTER 580 OR 581. A POWER OF SALE BEING HEREIN EXPRESSLY GRANTED WHICH SHALL ALLOW THE MORTGAGEE TO SELL AT PUBLIC AUCTION AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY, THE MORTGAGOR ACKNOWLEDGES THAT SUCH SERVICE NEED NOT

BE MADE ON THE MORTGAGOR PERSONALLY UNLESS THE MORTGAGOR IS AN OCCUPANT OF THE MORTGAGED PROPERTY AND THAT NO HEARING IS REQUIRED IN CONNECTION WITH THE SALE. MORTGAGOR EXPRESSLY WAIVES ANY AND ALL RIGHTS TO PRIOR NOTICE OF SALE AND ANY AND ALL RIGHTS TO PRIOR HEARING IN CONNECTION WITH THE SALE. OUT OF THE PROCEEDS OF SUCH SALE THE PRINCIPAL AMOUNT OF THE LOAN SHALL BE PAID TOGETHER WITH ALL LEGAL COSTS AND CHARGES OF FORECLOSURE WITH MAXIMUM ATTORNEYS' FEES PERMITTED BY LAW.

(d) The Mortgagee shall be entitled, without notice and without any showing of waste of the Mortgaged Property, inadequacy of the Mortgaged Property as security for the Indebtedness, or insolvency of the Mortgagor, to the appointment of a receiver of the rents and profits of the Mortgaged Property, including those past due.

(e) The Mortgagee may pursue one or more of the remedies provided for in the Loan Agreement or any other agreement now or hereafter entered into between the Mortgagor and the Mortgagee in connection with the Loan Agreement or the Grant-Eligible Activities contemplated herein.

17. Estoppel Certificate. The Mortgagor agrees at any time and from time to time, upon not less than 15 days' prior notice by the Mortgagee, to execute, acknowledge and deliver, without charge, to the Mortgagee or to any person designated by the Mortgagee, a statement in writing certifying, to the best of its knowledge, that this Mortgage is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), the principal amount then secured hereby, that the Mortgagor has not received any notice of default or notice of acceleration or foreclosure of this Mortgage (or if the Mortgagor has received such a notice, that it has been revoked, if such be the case), that to the knowledge of the Mortgagor no Event of Default exists hereunder (or if any such Event of Default does exist, specifying the same and stating that the same has been cured, if such be the case), the Mortgagee to the Mortgagor's knowledge have no claims or offsets against the Mortgagee (or if the Mortgagor have any such claims, specifying the same), and the dates to which the principal and the other sums and charges payable by the Mortgagor pursuant to the Loan Agreement have been paid. In the event the Mortgagor fails to execute, acknowledge and deliver such statement within the time above required, the Mortgagor hereby appoint and constitute the Mortgagee as the Mortgagor's attorney-in-fact to do so (which power of attorney is coupled with an interest and is irrevocable), the Mortgagor shall be fully bound by any such statement executed by the Mortgagee on the Mortgagor's behalf to the same extent as if the Mortgagor had executed, acknowledged and delivered the same. The Mortgagee agrees to provide statements of the principal balance payable pursuant to the Note from time to time upon request of the Mortgagor.

18. Forbearance Not a Waiver, Rights and Remedies Cumulative. No delay by the Mortgagee in exercising any right shall be deemed a waiver of or preclude the exercise of such right or remedy, and no waiver by the Mortgagee of any particular provision of this Mortgage shall be deemed effective unless in writing signed by the Mortgagee. All such rights and remedies provided for herein or which the Mortgagee may have otherwise, at law or in equity, shall be distinct, separate and cumulative and may be exercised concurrently, independently or successively in any order whatsoever, and as often as the occasion therefor arises. The

Mortgagee's taking action pursuant to paragraph 10 or receiving proceeds, awards or damages pursuant to paragraph 7 or 11 shall not impair any right or remedy available to the Mortgagee under paragraph 16 hereof. Acceleration of maturity of the Indebtedness, once claimed hereunder by the Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by the Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity of the Indebtedness.

19. Successors and Assigns Bound; Number; Gender; Agents; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, legal representatives, successors and assignees of the Mortgagee and the Mortgagor. Wherever used, the singular number shall include the plural, and the plural the singular, and the use of any gender shall apply to all genders. In exercising any rights hereunder or taking any actions provided for herein, the Mortgagee may act through its employees, agents or independent contractor as authorized by Mortgagee. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

20. Notice. Any notice from the Mortgagee to the Mortgagor under this Mortgage shall be deemed to have been given by the Mortgagee and received by the Mortgagor when mailed by certified mail by the Mortgagee or its agents to the Mortgagor at the address set forth in paragraph 26(a) below or at such other address as the Mortgagor may designate in writing to the Mortgagee.

21. Governing Law; Severability. This Mortgage shall be governed by the laws of Minnesota. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provisions and to this end the provisions of the Mortgage are declared to be severable.

22. Counterparts. This Mortgage may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

23. Waiver of Marshaling. The Mortgagor, any party who consents to this Mortgage and any party who now or hereafter acquires a lien on the Mortgaged Property and who has actual or constructive notice of this Mortgage hereby waives any and all right to require the marshaling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein and waives any right to have the Mortgaged Property sold in separate tracts pursuant to Minnesota Statutes, Section 580.08.

24. Construction Mortgage. This Mortgage secures an obligation incurred for the construction of an improvement on land and is a construction mortgage.

25. Application of Rents. Notwithstanding anything to the contrary herein, all Rents collected by the Mortgagee or any receiver each month shall be applied as determined by Mortgagor, or as otherwise determined by applicable law.

26. Fixture Filing. From the date of its recording, this Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the

Mortgaged Property (as more particularly described in Granting Clause I of this Mortgage) which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

(a) Name and Address of the Mortgagor:

Gladstone Village Limited Partnership  
1335 Pierce Butler Route  
St. Paul, MN 55104  
Attn: James K. Vang

With a copy to: Hust Law  
5021 Vernon Ave. S., #298  
Minneapolis, MN 55436  
Attn: Bridget A. Hust

(b) Name and Address of the Mortgagee:

City of Maplewood  
1830 County Road B E  
Maplewood, MN 55109  
Attn: City Manager

With a copy to: Kennedy & Graven, Chartered  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402  
Attention: Ronald H. Batty

(c) Name and Address of the Limited Partner:

NDC Corporate Equity Fund 20, L.P.  
c/o NDC Housing and Economic Development  
PO Box 845322  
Boston, MA 02284-5322  
Attn: Daniel Marsh III, President

With a copy to: Barnes & Thornburg LLP  
41 South High Street, Suite 3300  
Columbus, OH 43215  
Attn: Katrina Thompson

This document covers goods which are or are to become fixtures.



27. Additional Provisions.

(a) The Mortgagee agrees, notwithstanding any other provision herein to the contrary, that in the event of a foreclosure of the Property, that no tenant may be evicted or tenancy terminated (other than for good cause), and the rent on no apartment unit may be increased, for the three year period following foreclosure if such eviction, termination of tenancy or increase in rent would be contrary to the provisions of Section 42(h)(6)(E) of the Internal Revenue Code of 1986, as amended. This Mortgage is expressly subordinate to this provision.

(b) This Mortgage and the Note shall be construed according to the laws of Minnesota.

(c) In the event of any fire or other casualty to the Project or eminent domain proceedings resulting in condemnation of the Project or any part hereof, the Mortgagor shall have the right to rebuild the Project, and to use all available insurance or condemnation proceeds therefor, provided that no material default then exists under the Loan Documents. If the casualty or condemnation affects only part of the Project and total rebuilding is infeasible, then proceeds may be used for partial rebuilding and partial repayment of the Loan in a manner that provides adequate security to the Mortgagee for repayment of the remaining balance of the Loan.

(d) The Mortgagor will permit the Mortgagee's authorized representatives to enter the Property at all times during normal business hours for the purpose of inspecting the same; provided the Mortgagee shall have no duty to make such inspections and shall not incur any liability or obligation for making or not making any such inspections.

(e) The Mortgagor hereby agrees to defend, indemnify, and hold harmless Mortgagee from and against any and all claims, losses, damages, liabilities, costs, and expenses, including without limitation reasonable attorneys' fees, incurred by the Mortgagee as a result of any hazardous materials or substances which are on the Property in violation of applicable environmental laws at any time during which the Mortgagor shall be in custody or control of the Property. This indemnification shall remain in full force and effect and shall survive the repayment of the Loan and the exercise of any remedy by the Mortgagee hereunder including a foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure.

(f) The Mortgagor shall have the right and privilege, but not the obligation, to borrow additional funds and to further encumber the security and collateral given and pledged to the Mortgagee hereunder at any time, from time to time, and as often as the Mortgagor shall determine, but only with the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, delayed and conditioned, except for the Permitted Encumbrances set forth in Exhibit B.

(g) If the Mortgagor fails to perform any of the covenants and agreements contained in this Mortgage, subject to any applicable cure periods, or if any action or proceeding is commenced which effects the Property or the interest of the Mortgagee

therein, or the title thereto, then the Mortgagee, at Mortgagee's option, upon 60 days advance written notice to the Mortgagor, may perform such covenants and agreements to defend against and/or investigate such action or proceeding, and take such other action as the Mortgagee deems necessary to protect the Mortgagee's interest. The Mortgagee shall be the sole judge of the legality, validity and priority of any claim, lien, encumbrance, tax assessment, charge and premium paid by it and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby given the irrevocable power of attorney (which power is coupled with an interest and is irrevocable) effective 60 days after written notice, to enter upon the Property as the Mortgagor's agent in the Mortgagor's name to perform any and all covenants and agreements to be performed by the Mortgagor as herein provided. Any amounts disbursed or incurred by the Mortgagee pursuant to this paragraph shall become additional indebtedness of the Mortgagor secured by this Mortgage. Unless the Mortgagor and the Mortgagee agree in writing to other terms of repayment, such amounts shall be immediately due and payable. The Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other lien discharged in whole or in part by the indebtedness or by the Mortgagee under the provisions hereof, and any such subrogation rights shall require the Mortgagee to incur any expense or do any act hereunder, and the Mortgagee shall not be liable to the Mortgagor for any damages or claims arising out of action taken by the Mortgagee pursuant to this paragraph.

THE MORTGAGOR ACKNOWLEDGES THAT THIS IS A LEGAL DOCUMENT AND THAT BEFORE SIGNING THE MORTGAGOR HAS FULLY UNDERSTOOD THE TERMS AND CONDITIONS HEREIN, AND THE RIGHTS WAIVED HEREBY AND THE EFFECT OF SUCH WAIVER OR HAS SOUGHT LEGAL COUNSEL TO EXPLAIN SUCH TERMS AND CONDITIONS, RIGHTS AND THE WAIVER OF SUCH RIGHTS.

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**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lots 1, 2, 3, 4, 5, 6, and 7, except the South 7 feet of said Lot 7, Block 3, Gladstone, according to the recorded plat thereof, together with the vacated Ridge Street adjacent, Ramsey County, Minnesota.

Abstract Property

**EXHIBIT B**  
**PERMITTED ENCUMBRANCES**

[to be included]

**CITY COUNCIL STAFF REPORT**

Meeting Date April 22, 2024

**REPORT TO:** Michael Sable, City Manager

**REPORT FROM:** Steven Love, Public Works Director / City Engineer

**PRESENTER:** Steven Love

**AGENDA ITEM:** Resolution Approving Grant Agreement with the Minnesota Department of Natural Resources for EAB Tree Removal and Planting

**Action Requested:**  Motion  Discussion  Public Hearing

**Form of Action:**  Resolution  Ordinance  Contract/Agreement  Proclamation

**Policy Issue:**

Emerald Ash Borer (EAB) insects are having a significant impact on the health of ash trees in the City of Maplewood and the surrounding metro area. To help address EAB impacted ash trees that lie within City right-of-way or on City property, an application was submitted to the Minnesota Department of Natural Resources (MN DNR) for their Shade Tree Program Bonding Grants, 2023-2027. The MN DNR notified staff that Maplewood was selected to receive \$450,000 for ash tree removal and replacement. Tonight, the City Council will consider approving a grant agreement with MN DNR as part of their Shade Tree grant program.

**Recommended Action:**

Motion to approve the resolution entering into a grant agreement with the Minnesota Department of Natural Resources for EAB tree removal and planting and authorize the Mayor and City Manager to sign the grant agreement. Minor revisions as approved by the City Attorney are authorized as needed.

**Fiscal Impact:**

Is There a Fiscal Impact?  No  Yes, the true or estimated cost is \$50,000

Financing source(s):  Adopted Budget  Budget Modification  New Revenue Source  
 Use of Reserves  Other: The grant provides \$450,000 for the removal and replacement of ash tree within City right-of-ways and active areas of City parks. The City's share of this project is \$50,000 for three years of tree maintenance for the newly planted trees.

**Strategic Plan Relevance:**

Community Inclusiveness  Financial & Asset Mgmt  Environmental Stewardship  
 Integrated Communication  Operational Effectiveness  Targeted Redevelopment

The City's urban forest is an important asset to the City and the public. EAB has had a significant impact on the health of ash trees in Maplewood and surrounding metro area. This grant will aid the City in the management of EAB and ash trees that lie within City right-of-way and on City property.

**Background:**

Based on the 2011 tree survey, it was estimated that there were approximately 2,138 ash trees located in City right-of-way or on City property. City staff have removed approximately 970 ash trees by Public Works crew work, awarded grants, and City street improvement projects. Leaving approximately 1,168 ash trees that will need to be addressed due to likely EAB impacts.

At the September 11, 2023 Council Workshop, staff presented on EAB impacts, ash tree removals by staff, awarded grant updates, and upcoming DNR grant opportunities. Following the workshop staff applied for the DNR's Shade Tree Program grant. This grant provides funding for the removal and replacement of ash trees located in City right-of-ways or on City park land that pose significant public safety concerns. Projects that benefit underserved populations and areas of concern for environmental justice were given priority in the selection process.

Using information from Minnesota's Pollution Control Agency's (MPCA) GIS site for understanding environmental justice in Minnesota we identified the top three Census tracts that will have the most benefit to environmental justice priority populations. These three Census tracts are located east of Rice Street, north of Larpenteur Road, west of Hazelwood Street, and south of Highway 36.

The City further consulted with its Climate Adaptation Plan to further confirm that these three Census tracts were the best location to concentrate the proposed project. The Climate Adaptation Plan depicted these areas of Maplewood as having some of the highest priority rankings throughout the City for a healthy tree canopy in terms of environmental equity, heat island reduction, stormwater uptake, and carbon sequestration. There are an estimated 434 public ash trees within City right-of-way and active park areas in the proposed project area.

The grant funds will cover the cost for removing approximately 200 ash trees, stump grinding, restoration, and planting of new trees at a one to one ratio. As there are more trees than what is expected the funding to be able to cover in the project area, we will be identifying project ash trees starting at Rice Street and working to the east. The new trees are required to be planted near the location of the removed ash trees. As part of the grant requirements the City must plant a diverse selection of new trees to help prevent large areas of public trees being impacted by future disease or insects. Therefore, staff will develop a tree planting plan for the project area.

As part of the grant, the City is required to have a three-year maintenance plan to help insure the successful establishment of the newly planted trees. The cost associated with the maintenance plan is not a grant eligible item. Funding for the maintenance plan will come from the forestry budget.

If the City Council approves the resolution for entering into the grant with the MN DNR the project staff would prepare bid documents, start public engagement, submit the project for bidding, and bring back a recommendation for award of contract. The goal is for the removal work to take place over the summer and planting to take place later this fall.

This proposed project and grant funding will help the City by addressing public ash trees that are or will be affected by EAB along City roads or in City parks. Public Works staff will continue to address public ash trees throughout the City as available resources allow.

**Attachments:**

1. Resolution
2. Project Location Map
3. MN DNR Grant Agreement



**RESOLUTION  
APPROVAL OF GRANT AGREEMENT WITH THE MINNESOTA  
DEPARTMENT OF NATURAL RESOURCES FOR  
THE SHADE TREE PROGRAM BONDING GRANTS, 2023-2027**

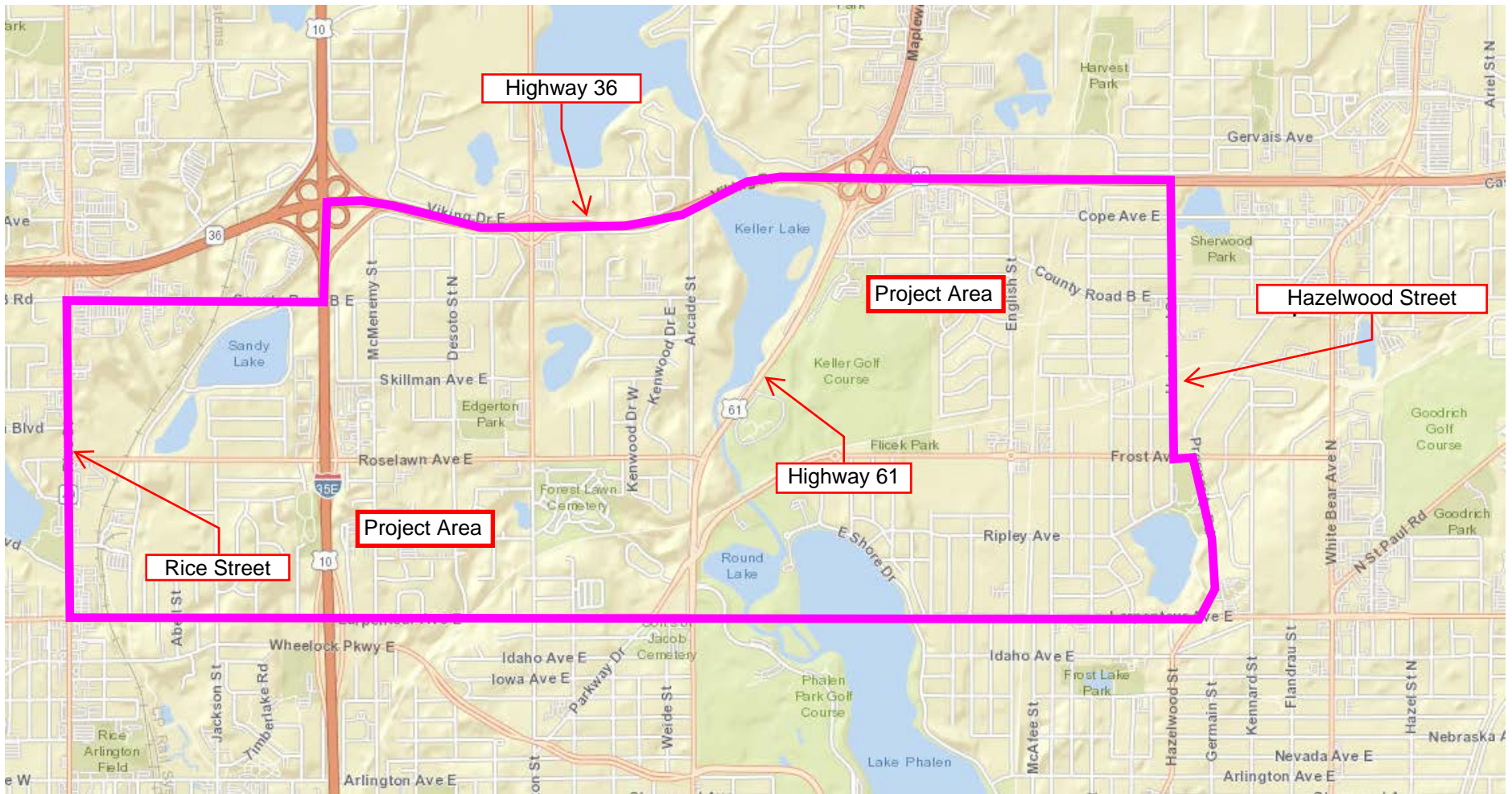
WHEREAS, the City Council of Maplewood, Minnesota has approved the grant agreement between the City of Maplewood and the Minnesota Department of Natural Resources for the Shade Tree Program Bonding Grants, 2023-2027.

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

1. The Mayor and City Manager are hereby authorized to enter into the grant agreement.

Adopted by the Maplewood City Council on this 22nd day of April 2024.

# EAB Grant Project Area



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**General Obligation Bond Proceeds**

**Grant Agreement - Construction Grant**  
**for the**  
**City of Maplewood Shade Tree Project**  
**under the**  
**MN NATURAL RESOURCES SHADE**  
**TREE**  
**Program**

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**General Obligation Bond Proceeds**

**Grant Agreement – Construction Grant**

**for the**

City of Maplewood Shade Tree

**Project**

**under the**

MN Natural Resources Shade Tree

**Program**

**THIS AGREEMENT** shall be effective as of February 27<sup>th</sup>, 2024, and is between City of Maplewood, a Statutory City - Plan B (the “Public Entity”), and the Minnesota Department of Natural Resources, Division of Forestry (the “State Entity”).

**RECITALS**

A. The State Entity has created and is operating a MN Natural Resources Shade Tree (the “State Program”) under the authority granted by Minn. Stat. § 88.82 and all rules related to such legislation (the “State Program Enabling Legislation”).

B. Under the State Program, the State Entity is authorized to provide grants that are funded with proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution.

C. Under the State Program the recipients of a grant must use such funds to perform those functions delineated in the State Program Enabling Legislation.

D. The Public Entity submitted, if applicable, a grant application to the State Entity in which the Public Entity requests a grant from the State Program the proceeds of which will be used for the purposes delineated in such grant application.

E. The Public Entity has applied to and been selected by the State Entity for a receipt of a grant from the State Program in an amount of \$ 450,000.00 Four Hundred Fifty Thousand Dollars (the “Program Grant”), the proceeds must be used by the Public Entity to perform those functions and activities imposed by the State Entity under the State Program and, if applicable, delineated in that certain grant application (the “Grant Application”) attached hereto as **Attachment V** that the Public Entity submitted to the State Entity.

F. Under the provisions contained in Minnesota Statute §412.221, the Public Entity has been given the authority to perform those functions and activities required of it under the State Program and, if applicable, delineated in the Grant.

G. The Public Entity’s receipt and use of the Program Grant to acquire an ownership interest in and/or improve real property (the “Real Property”) and, if applicable, structures situated thereon (the “Facility”) will cause the Public Entity’s ownership interest in all of such real property and structures to become “state bond financed property”, as such term is used in Minn. Stat. §

16A.695 (the “G.O. Compliance Legislation”) and in that certain “Fourth Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated July 30, 2012, as amended (the “Commissioner’s Order”), even though such funds may only be a portion of the funds being used to acquire such ownership interest and/or improve such real property and structures and that such funds may be used to only acquire such ownership interest and/or improve a part of such real property and structures.

H. The Public Entity and the State Entity desire to set forth herein the provisions relating to the granting and disbursement of the proceeds of the Program Grant to the Public Entity and the operation of the Real Property and, if applicable, Facility.

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

### **Article I DEFINITIONS**

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

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

“Agreement” - means this General Obligation Bond Proceeds Grant Agreement - Construction Grant for the City of Maplewood Shade Tree Project under the MN Natural Resources Shade Tree Program, as such exists on its original date and any amendments, modifications or restatements thereof.

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

“Architect”, if any - means Not Applicable, which will administer the Construction Contract Documents on behalf of the Public Entity.

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

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

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

“Completion Date” – means December 31, 2027, the date of projected completion of the Project.

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

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

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

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

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

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

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

“Facility”, if applicable, - means Not Applicable, which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds of the Program Grant.



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

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

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

“Grant Application” – means that certain grant application attached hereto as **Attachment V** that the Public Entity submitted to the State Entity. *This definition is only needed and only applies if the Public Entity submitted a grant application to the State Entity. If the Public Entity did not submit a grant application to the State Entity, then this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

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

“Inspecting Engineer”, if any - means the State Entity's construction inspector, or its designated consulting engineer.

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

“Lessor/Grantor” – means the fee owner/lessor or grantor of the Leased/Easement Premises. *This definition is only needed and only applies if the Public Entity’s ownership interest in the Real Property, the Facility, if applicable, or both, is by way of a leasehold*

*interest under a Real Property/Facility Lease or by way of an easement. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

“Outstanding Balance of the Program Grant” – means the portion of the Program Grant that has been disbursed to or on behalf of the Public Entity minus any portions thereof previously paid back to the Commissioner of MMB.

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

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

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

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

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

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

left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.

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

“State Program” – means the program delineated in the State Program Enabling Legislation.

“State Program Enabling Legislation” – means the legislation contained in the Minnesota statute(s) delineated in Recital A and all rules related to such legislation.

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

“Use Contract” - means a lease, management contract or other similar contract between the Public Entity and any other entity that involves or relates to any part of the Real Property and/or, if applicable, Facility. *This definition is only needed and only applies if the Public Entity enters into an agreement with another party under which such other party will operate the Real Property and/or, if applicable, Facility. For all other circumstances this definition is not needed and should be ignored and treated as if it were left blank, and any reference to this term in this Agreement shall be ignored and treated as if the reference did not exist.*

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

## **Article II GRANT**

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

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

(Check the appropriate box for the Real Property and, if applicable, for the Facility.)

Ownership Interest in the Real Property.

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

Ownership Interest in, if applicable, the Facility.

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

**Section 2.03 Use of Grant Proceeds.** The Public Entity shall use the Program 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 Program Grant for any other purpose.

(Check all appropriate boxes.)

- Acquisition of fee simple title to the Real Property.
- Acquisition of a leasehold interest in the Real Property.
- Acquisition of an easement for the Real Property.
- Improvement of the Real Property.
- Acquisition of fee simple title to the Facility.
- Acquisition of a leasehold interest in the Facility.
- Construction of the Facility.
- Renovation of the Facility.
- Remove and/or plant shade trees on public land as described in the Deliverables..  
(Describe other or additional purposes.)

**Section 2.04 Operation of the Real Property and Facility.** The Real Property and, if applicable, Facility must be used by the Public Entity or the Public Entity must cause such Real Property and, if applicable, Facility to be used for those purposes required by the State Program and in accordance with the information contained in the Grant Application, or for such other purposes and uses as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

The Public Entity may enter into Use Contracts with Counterparties for the operation of all or any portion of the Real Property and, if applicable, Facility; provided that all such Use Contracts must have been approved, in writing, by the Commissioner of MMB and fully comply with all of the provisions contained in Sections 3.01, 3.02 and 3.03.

The Public Entity must, whether it is operating the Real Property and, if applicable, Facility or has contracted with a Counterparty under a Use Contract to operate all or any portion of the Real Property and, if applicable, Facility, annually determine that the Real Property and, if applicable, Facility is being used for the purpose required by this Agreement, and shall annually supply a statement, sworn to before a notary public, to such effect to the State Entity and the Commissioner of MMB.

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

For those programs, if any, that will be operated on all or any portion of the Real Property and, if applicable, Facility by a Counterparty under a Use Contract, the Public Entity covenants with and represents and warrants to the State Entity that: (i) it will not enter into such Use Contract unless the Counterparty has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Counterparty to provide an initial program budget and annual program budgets that clearly show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iii) it will promptly review all submitted program budgets to determine if such budget clearly and accurately shows that the forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses for each fiscal year, (iv) it will reject any program budget that it believes does not accurately reflect forecast program revenues or expenses or does not show that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, and require the Counterparty to prepare and submit a revised program budget, and (v) upon receipt of a program budget that it believes accurately reflects forecast program revenues and expenses and that shows that forecast program revenues along with other funds available for the operation of such program (from all sources) will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to the State Entity and the Commissioner of MMB certified copies of such resolution and budget.

**Section 2.05 Public Entity Representations and Warranties.** The Public Entity further covenants with, and represents and warrants to the State Entity as follows:

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

B. It has legal authority to use the Program Grant for the purpose or purposes described in the State Program Enabling Legislation.

C. It has legal authority to operate the State Program and the Real Property and, if applicable, Facility for the purposes required by the State Program and for the functions and activities proposed in the Grant Application.

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

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

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

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

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

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

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

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

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

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

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

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

P. It has complied with the matching funds requirement, if any, contained in Section 7.23.

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

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

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

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

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



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

W. It has or will promptly record a fully executed Declaration with the appropriate governmental office and deliver a copy thereof to the State Entity and to Minnesota Management and Budget (attention: Capital Projects Manager) that contains all of the recording information.

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

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

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

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

1. It must be in form and contents acceptable to the Commissioner of MMB, and specifically state that it may not be modified, restated, amended, changed in any way, or prematurely terminated or cancelled without the prior written consent and authorization by the Commissioner of MMB.

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

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

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

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

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

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

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

9. It must provide that any use restrictions contained therein only apply as long as the Public Entity is the lessee under the Real Property/Facility Lease or grantee under the easement, and that such use restrictions will terminate and not apply to any successor lessee or grantee who purchases the Public Entity's ownership interest in the Real Property/Facility Lease or easement. Provided, however, it may contain a provisions that limits the construction of any new structures on the Real Property or modifications of any existing structures on the Real Property without the written consent of Lessor/Grantor, which will apply to any such successor lessee or grantee.

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

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

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

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

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

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

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

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

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

C. If the Public Entity fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the State Program Enabling Legislation.

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

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

F. If the Public Entity fails to record the Declaration and deliver copies thereof as set forth in Section 2.05.W.

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

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

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

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions contained in Sections 4.01 or 4.02, then the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the Program Grant be returned to it, and upon such demand the Public Entity shall return such amount to the Commissioner of MMB.

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

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

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

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

Section 2.09 **Notification of Event of Default.** The Public Entity shall furnish to the State Entity and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which

with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

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

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

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

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

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

### Article III USE CONTRACTS

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

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

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

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering into such contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that it is being entered into in order for the Counterparty to operate the State Program and must describe such program.

D. It must contain a provision that will provide for oversight by the Public Entity. Such oversight may be accomplished by way of a provision that will require the Counterparty to provide to the Public Entity: (i) an initial program evaluation report for the first fiscal year that the Counterparty will operate the State Program, (ii) program budgets for each succeeding fiscal year showing that forecast program revenues and additional revenues available for the operation of the State Program (from all sources) by the Counterparty will equal or exceed expenses for such operation for each succeeding fiscal year, and (iii) a mechanism under which the Public Entity will annually determine that the Counterparty is using the portion of the Real Property and, if applicable, Facility that is the subject of the Use Contract to operate the State Program.

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

F. It must terminate upon the termination of the statutory authority under which the Public Entity is operating the State Program.

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

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

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

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

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

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

M. It must contain a provision that clearly states that the Public Entity is not required to renew the Use Contract beyond the original term thereof and that the Public Entity may,

at its sole option and discretion, allow the Use Contract to expire at the end of its original term and thereafter directly operate the governmental program in the Real Property and, if applicable, Facility or contract with some other entity to operate the governmental program in the Real Property and, if applicable, Facility.

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

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

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

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



## Article IV SALE

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

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

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

The Public Entity may participate in any public auction of its ownership interest in the Real Property and, if applicable, Facility and bid thereon; provided that the Public Entity agrees that if it is the successful purchaser it will not use any part of the Real Property or, if applicable, Facility for the State Program.

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

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

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

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

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

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

The Public Entity shall not be required to pay or reimburse the State Entity or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the Program Grant.

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

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

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

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

B. It will deposit into and hold all of the Program Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

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

D. It will, upon the occurrence of any act or omission by the Public Entity or any Counterparty that could cause the interest on the GO Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the G.O. Bonds as a “qualified bond” within the meaning of Section 141(e) of the Code, (ii) changing the nature or terms of the Use Contract so that it complies with Revenue Procedure 97-13, as amended by Rev. Proc 2016-44 and Rev. Proc. 2017-13, with Revenue Procedure 97-13, as amended by Rev. Proc 2016-44 and Rev. Proc. 2017-13, or (iii) changing the nature of the use of the Real Property or, if applicable, Facility so that none of the net proceeds of the G.O. Bonds will be used, directly or indirectly, in an “unrelated trade or business” or for any “private business use” (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

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

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

## **Article VI DISBURSEMENT OF GRANT PROCEEDS**

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

Advances shall only be for expenses that (i) are for those items of a capital nature for the Project, (ii) accrued no earlier than the effective date of the legislation that appropriated the funds that are used to fund the Program Grant, or (iii) have otherwise been consented to, in writing, by the State Entity and the Commissioner of MMB.

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

## Formula #1

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

## Formula #2

Cumulative Advances  $\leq$  (Program Grant)  $\times$  (percentage of Project completed)

**Section 6.02 Draw Requisitions.** Whenever the Public Entity desires a disbursement of a portion of the Program Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1<sup>st</sup> day and the 15<sup>th</sup> day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the State Entity, less (iii) any applicable retainage, and less (iv) all prior Advances.

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

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Public Entity shall submit to the State Entity such supporting evidence as may be requested by the State Entity to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

O. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials 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 State Entity and the Public Entity dual obligees thereunder, or such other evidence as may be acceptable to the Public Entity and the State Entity.

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

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

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

## Article VII MISCELLANEOUS

**Section 7.01 Insurance.** The Public Entity shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Public Entity, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the State Entity under which the State Entity and the Public Entity are named as loss payees. If damages which are covered by such required insurance occur, then the Public Entity shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair



such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

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

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

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

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

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

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

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

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

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

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

If the Public Entity fails to maintain the Real Property and, if applicable, Facility in accordance with the provisions contained in this Section, then the State Entity may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and, if applicable, Facility and the Public Entity irrevocably authorizes and empowers the State Entity to enter upon the Real Property and, if applicable, Facility, to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility. Any actions taken or funds expended by the State Entity hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the State Entity to take any action, incur any expense, or expend any funds, and the State Entity shall not be responsible for or liable to the Public Entity or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the State Entity to perform such acts as may be necessary to so maintain the Real Property and, if applicable, Facility shall be due and payable on demand by the State Entity and bear interest from the date of advancement by the State Entity at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

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

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

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

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

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

Section 7.09 **Antitrust Claims.** The Public Entity hereby assigns to the State Entity and the Commissioner of MMB all claims it may have for overcharges as to goods or services provided with respect to the Project, and operation or management of the Real Property and, if applicable, Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

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

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

B. Prior to its proceeding with design activities for the Project the Public Entity shall prepare a predesign package and submit it to the Commissioner of Administration for the State of Minnesota for review and comment. The predesign package must be sufficient to define the purpose, scope, cost, and projected schedule for the Project, and must demonstrate

that the Project has been analyzed according to appropriate space and needs standards. Any substantial changes to such predesign package must be submitted to the Commissioner of Administration for the State of Minnesota for review and comment.

C. If the Project includes the construction of a new building, substantial addition to an existing building, a substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then the Public Entity shall not prepare final plans and specifications until it has prepared a program plan and cost estimates for all elements necessary to complete the Project and presented them to the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee and the chairs have made their recommendations, and it has notified the Chair 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 Public Entity must notify the Chairs and Ranking Minority Members of the Minnesota State Senate Finance and Capital Investment Committees, and the Minnesota House of Representatives Capital Investment and Ways and Means Committees of any significant changes to the program plan and cost estimates referred to in Section 7.10.C.

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

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

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs 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) substantially completed in accordance with the program plan and cost estimates referred to in Section 7.10.C, (ii) completed in accordance with the

time schedule contained in the program plan referred to in Section 7.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 7.10.C.

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

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

**Section 7.12 Liability.** The Public Entity and the State Entity agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the State Entity and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, as it may be amended, modified or replaced from time to time. If the Public Entity is a “municipality” as such term is used in Chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Public Entity, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

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

to any act of omission or commission, including negligence of the Public Entity or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the State Entity, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

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

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

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

The Public Entity represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and, if applicable, Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and, if applicable, Facility shall not have any contractual relationship with the State Entity, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Public Entity, its officers, agents, contractors, or employees shall in no way be the responsibility of the State Entity, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the State Entity, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

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

To the Public Entity at:

City of Maplewood  
1830 County Road B East  
Maplewood, MN 55109  
 Attention: Steven Love, Public Works Director/City  
Engineer. steve.love@maplewoodmn.gov  
651-249-2404

To the State Entity at:

MN Department of Natural Resources, Forestry Division  
500 Lafayette Road  
St Paul, MN 55155  
 Attention: Valerie McClannahan, Urban and Community Forestry  
Coordinator valerie.mcclannahan@state.mn.us 651-259-5283

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 7.16 **Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Public Entity and the State Entity, and their respective successors and assigns. Provided, however, that neither the Public Entity nor the State Entity 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 Public Entity or the State Entity unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 **Waiver.** Neither the failure by the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Public Entity, the State Entity, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the State Program Enabling Legislation, be provided by either the Public Entity or a Counterparty under a Use Contract.

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

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

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

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

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

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

Section 7.31 **Additional Requirements.** The Public Entity and the State Entity agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

### **Grant Project Deliverables**

#### ***2023 Shade Tree Program Bonding Grants***

#### **City of Maplewood Deliverables**

Grant Sum Total: \$450,000.00

#### **Grant Parameters**

- Planting trees can take place without removal.
- Removals need to be considered a necessary component of replanting.
- Removals conducted on streets and manicured parks must meet a minimum of one tree planted for each tree removed.
- Removals conducted in park woodlands must incorporate replanting at a meaningful rate.
  - Removals in woodlands need to be mitigating a public safety concern or to address degraded ecosystems.
  - Removals must meet a minimum of one tree planted for five trees removed.

#### **Accomplishment Reports**

*As work is completed, thoroughly address all applicable bullet points below. Add in the date of reporting (e.g. 1/1/24) and change the font color of your update to red, to show where information has been added. Continually add to this document over the lifetime of your grant, making sure that all bullet points are addressed by the time of the grant’s completion.*

*A written update must be submitted by each reporting deadline, to ensure project is moving forward and on track to completion. Add written reports below corresponding to each reporting date:*

July 1, 2024 Update:  
 January 1, 2025 Update:  
 July 1, 2025 Update:  
 January 1, 2026 Update:  
 July 1, 2026 Update:  
 January 1, 2027 Update:  
 July 1, 2027 Update:  
 January 15, 2028 Final Report:

**Work with DNR to fully execute and report on the impacts of the work plan by meeting the requirements as submitted in the application:**

**Anticipated Accomplishments:    Trees Removed-200    Trees Planted-200**  
**Project Overview and Need**

The first EAB infestation in Maplewood was identified in 2017. At that time, the City's asset management program showed there were approximately 2,115 public ash trees (PATs) on City right-of-ways and parks. The City has since removed 820 PATs, replanted 327 boulevard trees, and diversified the City's tree canopy through resident tree sales totaling 1,194 newly trees planted.

The majority of ash tree removals have been done by Maplewood staff, who are also responsible for snow plowing and maintenance of City streets, utilities and parks. The City also addresses PATs as part of annual street reconstruction projects. Staff are stretched thin and the expense of removal is overwhelming city resources and funding. There are 1,295 remaining PATs that are experiencing compromised health and high mortality due to EAB, leading many to become hazards. Without this funding, the City will not be able to keep up with the increasing number of hazardous PATs.

MPCA's GIS site for understanding environmental justice in Minnesota shows that all Maplewood census tracts have 40% or more people of color and all but one has at least 35% of people reporting income less than 200% of federal poverty level. Utilizing this information, we identified the top three census tracts that will have most benefit to environmental justice priority populations. Maplewood's project will target these three census tracts which have approximately 434 PATs.

Maplewood staff will bid out and manage a project that includes tree removal, hauling, stump grinding, replacement tree planting, including supplies such as water bags, mulch, tree guards and fiberglass staking with rubber connectors, if needed. The City will utilize bid alternatives to maximize the use of the grant funds, address as many trees as possible, and react to bid results. The City will also contract for tree watering, pruning, and supplemental mulching as part of our 3-year maintenance plan (funded by the City of Maplewood). The City recently purchased a new water truck that will allow staff to provide supplemental watering as needed.

**Project Timeline**

The following schedule will be implemented to maximize the benefits of grant dollars and meet grant reporting/reimbursement deadlines:

Generic GO Bond Proceeds

Contract # 244299 / PO # 3-248205

Ver – 10/26/20

Grant Agreement for Program Construction Grants

- December 2023-February 2024: Development of bid documents
- March 2024: Distribution of bid documents/award of contract
- March 2024: Removal of hazardous PAT's
- Fall 2024: Installation of replacement trees during species appropriate planting window
- Fall 2024: 3-Year maintenance window begins (Funded by Maplewood)
- Prior to the first reimbursement request, ensure all declarations/certificates are approved and filed
- By January 1, 2025: Reimbursement request for tree removals and plantings
- 2025, 2026, 2027: Ongoing maintenance and inspections
- By June 30, 2027: Final reimbursement request and required reports must be submitted
- December 31, 2027: Projects must be completed
- January 15, 2028: Final grant reports must be submitted

### **Project Budget Explanation**

City staff time, 3-year maintenance plan costs, forestry consultant costs, communication costs, mailings, and flyers will not be requested for reimbursement as part of this project. These costs will be covered by the City as part of the City's general operation costs in an effort to maximize the use of grant dollars to specifically remove and replace hazardous PATs. The attached budget is based on the City of Maplewood preparing a public bid package for PAT removal and replacement tree plantings. A 3-year maintenance plan will be included as part of the bid package, but will be financed by the City of Maplewood. A public bid is required by the City's financial policies and procedures. The bid will be awarded to the lowest responsible bidder utilizing prevailing wages.

The estimated costs are based on past city projects that contained tree removal and replanting work. In order to maximize the use of the grant funding awarded to the City, the bid package will consist of a base bid and bid alternatives. The base bid will allow for the removal of hazardous PATs, planting of approximately 200 climate change adaptable trees (utilizing the guidance of MNDNR and Climate Change Response Framework). During the preparation of bid documents staff will look at utilizing bid alternatives to potentially increase the number of trees removed and replanted if the bids come back lower than anticipated. The goal is to remove and replace as many PATs as possible with climate change adapted trees.

### **Project Impacts on Priority Landscapes and Populations**

City staff reviewed the MPCA's GIS site for understanding environmental justice in Minnesota as a starting point to choose the project location. All census tracts in Maplewood are shown to have 40% or more people of color and all but one has at least 35% of people reporting income less than 200% of federal poverty level.

The City further consulted with its Climate Adaptation Plan (<https://palebluedot.llc/maplewood-cap>) to hone in on the portions of the City in which this grant could be utilized to have the largest benefit to priority populations. Staff overlaid the top three census tracts from the MPCA data on top of the data from our Climate Adaptation Plan. In doing so, it was noted that these areas of Maplewood contain significant populations of children under 5, adults over the age of 65, individuals with disabilities, and Maplewood's highest concentration of limited English-speaking households. The Climate Adaptation Plan also depicts these areas of Maplewood having some of the highest priority rankings throughout the City for a healthy tree canopy in terms

of environmental equity, heat island reduction, stormwater uptake, and carbon sequestration.

Maplewood's project will target the top three census tracts from the MPCA data, which is further supported by Maplewood's Climate Adaptation Plan. These areas consist of the Gladstone, Parkside, and Western Hills neighborhoods, which have approximately 434 public ash trees. Trees in city parks with active use areas (non-wooded areas), along City sidewalks and trails, and along boulevards will be prioritized for safety reasons and to help ensure these public amenities are not diminished by the loss of ash trees to EAB. A 2023 Minnesota DNR Shade Tree Bonding Grant award will allow City staff to address additional PAT's in other priority areas throughout the City.

### **Communication**

The Maplewood Communication Department will announce the tree removal and replacement program via social media and the Maplewood Living publication. Additionally, this department will help create and manage a city project webpage. These efforts will provide information on the grant, the proposed project, timing of work, and a primary point of contact for any questions. The City's website has been created with the ability to allow people to choose the language they prefer for City webpage viewing. Letters will be sent to property owners that have ash trees in the public right-of-way adjacent to their property that are planned for removal. These letters will provide information on the proposed project, timing of work, and a primary point of contact. As the project moves forward, additional mailings or flyers will be sent out to these properties with project updates and information on how to help care for the new trees.

Translation services are available for limited English-speaking populations.

### **Key Personnel**

Key Staff:

Carole Gernes, Natural Resources Coordinator:

- Project Lead
- Bachelors and Master's Degrees in Biology
- 20+ years' experience in Natural Resources Management
- Minnesota DNR Certified Tree Inspector, 2020 – 2023 (#20105256).
- Recent grants administered:
  - 2019-2022 EAB Community Forest Response Tree Planting Grant
  - 2021-2024 Shade Tree Program Bonding Grant
  - FFY22 SUFR Grant, Reforesting Underserved Urban Communities

Jon Jarosch, P.E., Assistant City Engineer:

- Project bid documents and contract administration
- Professional Civil Engineer
- 18 years' experience of design and administration of public improvement projects totaling over 80M.
- Management of multiple State and watershed grant projects totaling over \$5M.

Rehder Forestry Consulting, City Consultant Forester:

Mark Rehder, President of Rehder Forestry Consulting

- ISA Board Certified Master Arborist
- ISA Tree Risk Assessor Qualification
- Certified ISA Arborist MN-0256B
- MN Certified Tree Inspector
- Assist with project bid documents, specification, inspections, and provide professional services
- Staff includes Minnesota Licensed Tree Inspectors, EAB First Detectors, International Society of Arboriculture Tree Risk Assessment Qualification (TRAQ), Certified Arborists, and Board-Certified Master Arborist.

#### Contracted Services:

All work needed for the removal, planting of replacement trees, and 3 years of maintenance will be bid out as public project. The contract will be award to the lowest responsible bidder. The project will be bid out following Maplewood's financial policies and procedures and will require:

- Contractor to meet prevailing wage requirements.
- A minimum of one tree planted for each removed.
- Removal and replanted trees will be mapped and recorded in the City's asset management system
- A 3-year maintenance plan for all newly planted trees.
- All replacement trees will meet the requirements of the MN DNR's grant program and to the City's standards and specification included in the bidding documents.
- Replacement tree plantings will be done in a manner to create a diverse tree canopy in order to be more resilient to disease and insects in the future.

#### **Tree Planting**

Grant funds will not fund the purchase of trees that are over-represented in your community. Any genera that comprise 10% or more of the community forest make-up will not be funded. Numbers derived from the Minnesota Department of Natural Resources 2010 Rapid Assessment will be used unless an updated inventory is provided. For this community it means grant funds cannot be spent on purchasing:

- *Picea* (spruce): 24.7%
- *Acer* (maple): 20.3%
- *Fraxinus* (ash): 13.7%

All trees planted with grant funds are expected to be maintained based on the grantee submitted Three Year Maintenance Plan and attached to contract. Trees that do not survive will need to be replaced prior to grant close-out utilizing the warranty the city has with the nursery that stock was purchased from, or at the expense of the grantee.

Trees must be planted in accordance with the standards set in the Minnesota Department of Natural Resources [Pocket Guide to Planting Trees](#).

#### **Reporting and Preparing for Reimbursement**

Accomplishment reports, maps, and declarations and/or certifications of completed work will need to be submitted in order to make an official request for reimbursement. You may wait until the end of your project to submit an official request for reimbursement; however,

you will be required to submit the following annually on reporting deadlines as listed above under “Accomplishment Reports” to ensure that you are on track for completing grant accomplishments and securing necessary documentation.

- Partial payment form along with invoices and proof of payment for grant-funded purchases, Cash Match form along with proof of payment, and In-Kind Match form
- Accomplishment Reports will include grant contract deliverables and their impacts (required biannually, see dates above)
- Photo documentation of the project’s progress at appropriate phases, and illustrations, diagrams, charts, graphs, and maps to show results
- Maps will:
  - Identify the location of ash that have been removed
  - Identify the location of ash stumps that have been ground
  - Identify the location and species of trees that have been planted
- All trees removed, and planted will be mapped and submitted as shapefiles, with the planted trees identified by species, to obtain grand fund reimbursement. If your community does not have access to shapefile-generating software, please notify your DNR Urban and Community Forestry Team Member, and they will work to assist you.

Following the submission of invoices and accomplishment reports, a compliance check will be conducted by Minnesota Department of Natural Resources staff. Staff will do a site evaluation ensuring that tree species submitted on maps are correctly identified and planted in accordance with the standards set in the Minnesota Department of Natural Resources [Pocket Guide to Planting Trees](#).

Staff will also ensure that the project adheres to the 20-10-5 guideline which means that following planting, a community has no more than 20% of their trees within a single family, no more than 10% of their trees within a single genus, and no more than 5% of their trees within a single species. Staff will confirm that planted tree stock is  $\frac{3}{4}$  - 2 inch caliper bareroot or a container class size #20 or smaller.

### **To Obtain Reimbursement**

All documentation within the above section “Preparing for Reimbursement” will be required to obtain reimbursement. Additionally, you will be required to submit all relevant certifications and/or declarations.

### **Certifications and Declarations**

This grant requires a declaration be recorded against real estate that is purchased or improved with state general obligation bond proceeds. When trees are planted in parks or public-owned properties, a General Obligation Bond Financed Property Declaration must be recorded on the legal description with the County Recorder. The recorded declaration proclaims a property as “Restricted Property,” which prevents these properties from being sold, mortgaged, encumbered, or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget for 125% of the useful life of the Restricted Property. The useful life for this grant is 30 years, meaning 125% of that is 37.5 years.

If the grant project involves more than one park or public-owned property, **one declaration can be recorded with multiple legal descriptions** (this means you only pay one filing fee). Consider recording the declaration after all trees have been planted in parks or on public-owned properties, instead of beforehand, since removing a declaration



from a legal description requires a written release from the commissioners of Management and Budget and Department of Natural Resources.

For projects or portions of projects that lie within roads, highways or utility or transit corridors, easements or rights-of-way, a waiver appeal can be requested. If approved, the grantee will require a certification in which the grantee acknowledges that the property purchased and/or improved is still state bond financed property and thus subject to certain statutory requirements will suffice in lieu of a declaration.

Certifications and declarations must be submitted **before** requesting reimbursement from DNR.

Please see Attachments 1A, 1B, and 2A. For more information and templates.

### **Acknowledgment**

The Minnesota Department of Natural Resources needs to be acknowledged in publications, audiovisuals, and electronic media developed as a result of this award.

- Including any publications or outreach materials related to this grant or agreement, a statement of affiliation with Minnesota Department of Natural Resources, e.g., “This publication made possible through a grant from the Minnesota Department of Natural Resources.” OR “This project was conducted in cooperation with the Minnesota Department of Natural Resources.”
- Logo is permitted for use and can be obtained by contacting an Urban and Community Forestry Team Member.

**IN TESTIMONY HEREOF**, the Public Entity and the State Entity have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the City of Maplewood Shade Tree Project under the MN Natural Resources Shade Tree on the day and date indicated immediately below their respective signatures.

**PUBLIC ENTITY:**

\_\_\_\_\_ City of Maplewood \_\_\_\_\_,  
a \_\_\_\_\_ Statutory City - Plan B \_\_\_\_\_

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

\_\_\_\_\_

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

Dated: \_\_\_\_\_

And: \_\_\_\_\_

\_\_\_\_\_

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

Dated: \_\_\_\_\_

And: \_\_\_\_\_

\_\_\_\_\_

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

Dated: \_\_\_\_\_

**STATE ENTITY:**

Minnesota Department of Natural Resources, Division of Forestry,

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

\_\_\_\_\_

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

Dated: \_\_\_\_\_



**Attachment I to Grant Agreement**

**State of Minnesota  
General Obligation Bond Financed  
DECLARATION**

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

- (Check the appropriate box.)
- a fee simple title,
  - a lease, or
  - an easement,

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

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695, 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, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that certain \_\_\_\_\_ [Insert title of the general obligation grant agreement] between \_\_\_\_\_ and \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_.

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration 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, at which time it shall be released therefrom by way of a written release in recordable form signed by both the Commissioner of \_\_\_\_\_ [Insert the name of the State Entity that provided the grant] and the Commissioner of Minnesota 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.

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

Exhibit A to Declaration  
**LEGAL DESCRIPTION OF RESTRICTED PROPERTY**

Generic GO Bond Proceeds

**Contract # 244299 / PO # 3-248205**

Ver – 10/26/20

Grant Agreement for Program Construction Grants

**Attachment II to Grant Agreement  
LEGAL DESCRIPTION OF REAL PROPERTY**

To be determined once Real Property is finalized by Public Entity with the Declaration  
(Attachment 1)

Grant Agreement – City of Maplewood

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

Source of Funds		Use of Funds	
Identify Source of Funds	Amount	Identify Items	Amount
<b>State G.O. Funds</b>		<b>Ownership Acquisition</b>	
Program Grant	\$450,000.00	<b>and Other Items Paid for</b>	
		<b>with Program Grant Funds</b>	
<b>Other State Funds</b>		Purchase of Ownership	\$
	\$	Interest	
	\$	Other Items of a Capital	
	\$	Nature	
Subtotal	\$	Tree Removal and	\$450,000.00
		Planting	
			\$
<b>Matching Funds</b>			\$
	\$	Subtotal	\$
	\$		
Subtotal	\$	<b>Items Paid for with</b>	
		<b>Non- Program Grant Funds</b>	
<b>Other Public Entity Funds</b>			\$
	\$		\$
	\$		\$
Subtotal		Subtotal	\$
<b>Loans</b>			
	\$		
Subtotal	\$		
<b>Other Funds</b>			
	\$		
Subtotal	\$		-
<b>Prepaid Project Expenses</b>			
	\$		
	\$		
Subtotal	\$		
<b>TOTAL FUNDS</b>	\$450,000.00	<b>TOTAL PROJECT COSTS</b>	\$450,000.00

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

Not Applicable

## Attachment V to Grant Agreement Shade Tree Program Bonding Grants

2023 Application



Please refer to the Request for Applications (RFA) when completing this application.  
Submit this form, along with required attachments, to [ucf.dnr@state.mn.us](mailto:ucf.dnr@state.mn.us) by October 2, 2023.

**Checklist:**

- Application Form (filled out, guided by the RFA)
- Budget Form (Attachment A)
- 3-Year Tree Maintenance Plan (Attachment B)
- Species Selection and Stock List (follow guidelines in RFA)

<b>Local Unit of Government (LUG)</b>	City of Maplewood, MN
<b>Project Coordinator</b>	Carole Gernes
<b>Coordinator Title</b>	Natural Resources Coordinator
<b>Address</b>	1902 County Road B
<b>City, State, Zip</b>	Maplewood, MN 55109
<b>County</b>	Ramsey
<b>Coordinator Email</b>	carole.gernes@maplewoodmn.gov
<b>Coordinator Phone Number</b>	651-249-2416
<b>Grant Amount Requested</b>	\$450,000
<b>Cash Match (refer to RFA for match guidance)</b>	N.A.
<b>In-Kind Match</b>	N.A.
<b>Total Match (combined In-Kind and Cash Match)</b>	N.A.

**Have you received a DNR community forestry grant in the past?**       Yes     No     Don't Know

**Is this application limited to serving a community, or communities, with populations less than 20,000?**       Yes     No

*(To encourage applications from smaller communities across Minnesota, points will be awarded to grants that serve communities with populations less than 20,000)*



**Project Overview and Need** (25 points; 2,050 character maximum including spaces) *Provide a summary of the project, why this funding is needed, what project work will not happen without these grant funds, and expected outcomes. This should include a description of the project location (community wide project, specific parks, etc.). A successful application will demonstrate a readiness to take on a project of the proposed scope and size, and will benefit environmental justice priority populations, and focus on significant public safety concerns.*

The first EAB infestation in Maplewood was identified in 2017. At that time, the City's asset management program showed there were approximately 2,115 public ash trees (PATs) on City right-of-ways and parks. The City has since removed 820 PATs, replanted 327 boulevard trees, and diversified the City's tree canopy through resident tree sales totaling 1,194 newly trees planted.

The majority of ash tree removals have been done by Maplewood staff, who are also responsible for snow plowing and maintenance of City streets, utilities and parks. The City also addresses PATs as part of annual street reconstruction projects. Staff are stretched thin and the expense of removal is overwhelming city resources and funding. There are 1,295 remaining PATs that are experiencing compromised health and high mortality due to EAB, leading many to become hazards. Without this funding, the City will not be able to keep up with the increasing number of hazardous PATs.

MPCA's GIS site for understanding environmental justice in Minnesota shows that all Maplewood census tracts have 40% or more people of color and all but one has at least 35% of people reporting income less than 200% of federal poverty level. Utilizing this information, we identified the top three census tracts that will have most benefit to environmental justice priority populations. Maplewood's project will target these three census tracts which have approximately 434 PATs.

Maplewood staff will bid out and manage a project that includes tree removal, hauling, stump

**Project Timeline** (15 points; 2,600 character maximum including spaces) *Describe the approximate project schedule showing intermediate steps and milestones. A successful timeline will provide specific dates, is easy to comprehend, and will follow best management practices*

The following schedule will be implemented to maximize the benefits of grant dollars and meet grant reporting/reimbursement deadlines:

- December 2023-February 2024: Development of bid documents
- March 2024: Distribution of bid documents/award of contract
- March 2024: Removal of hazardous PAT's
- Fall 2024: Installation of replacement trees during species appropriate planting window
- Fall 2024: 3-Year maintenance window begins (Funded by Maplewood)
- Prior to the first reimbursement request, ensure all declarations/certificates are approved and filed
- By January 1, 2025: Reimbursement request for tree removals and plantings
- 2025, 2026, 2027: Ongoing maintenance and inspections
- By June 30, 2027: Final reimbursement request and required reports must be submitted
- December 31, 2027: Projects must be completed
- January 15, 2028: Final grant reports must be submitted

**Project Budget Explanation** (20 points; 2,200 character maximum including spaces)

*Provide additional remarks to clarify the budget request. If applicable, provide an explanation of how you are funding portions of your project that are not eligible with grant dollars. A successful budget will provide specific dollar amounts for anticipated use, will be financially realistic and cost effective. Budget will be correctly calculated.*

City staff time, 3-year maintenance plan costs, forestry consultant costs, communication costs, mailings, and flyers will not be requested for reimbursement as part of this project. These costs will be covered by the City as part of the City's general operation costs in an effort to maximize the use of grant dollars to specifically remove and replace hazardous PATs. The attached budget is based on the City of Maplewood preparing a public bid package for PAT removal and replacement tree plantings. A 3-year maintenance plan will be included as part of the bid package, but will be financed by the City of Maplewood. A public bid is required by the City's financial policies and procedures. The bid will be awarded to the lowest responsible bidder utilizing prevailing wages.

The estimated costs are based on past city projects that contained tree removal and replanting work. In order to maximize the use of the grant funding awarded to the City, the bid package will consist of a base bid and bid alternatives. The base bid will allow for the removal of hazardous PATs, planting of approximately 200 climate change adaptable trees (utilizing the guidance of MNDNR and Climate Change Response Framework). During the preparation of bid documents staff will look at utilizing bid alternatives to potentially increase the number of trees removed and replanted if the bids come back lower than anticipated. The goal is to remove and replace as many PATs as possible with climate change adapted trees.

**Project Impacts on Priority Populations** (20 points; 2,200 character maximum including spaces)

*This grant opportunity aligns with state initiatives to reduce disparities in health and environmental quality for diverse populations. A successful proposal will serve and include areas of concern for environmental justice (communities with higher populations of low-income residents and/or people of color, including tribal communities), and the applicant will describe actionable items for these communities.*

City staff reviewed the MPCA's GIS site for understanding environmental justice in Minnesota as a starting point to choose the project location. All census tracts in Maplewood are shown to have 40% or more people of color and all but one has at least 35% of people reporting income less than 200% of federal poverty level.

The City further consulted with its Climate Adaptation Plan (<https://palebluedot.illc/maplewood-cap>) to hone in on the portions of the City in which this grant could be utilized to have the largest benefit to priority populations. Staff overlaid the top three census tracts from the MPCA data on top of the data from our Climate Adaptation Plan. In doing so, it was noted that these areas of Maplewood contain significant populations of children under 5, adults over the age of 65, individuals with disabilities, and Maplewood's highest concentration of limited English-speaking households. The Climate Adaptation Plan also depicts these areas of Maplewood having some of the highest priority rankings throughout the City for a healthy tree canopy in terms of environmental equity, heat island reduction, stormwater uptake, and carbon sequestration.

Maplewood's project will target the top three census tracts from the MPCA data, which is further supported by Maplewood's Climate Adaptation Plan. These areas consist of the Gladstone, Parkside, and Western Hills neighborhoods, which have approximately 434 public ash trees. Trees in city parks with active use areas (non-wooded areas), along City sidewalks and trails, and along boulevards will be prioritized for safety reasons and to help ensure these public amenities are not

**Communication** (10 points; 2,200 character maximum including spaces) *Describe the methods you will use to conduct outreach to citizens about this grant project. A successful communication strategy will use multiple formats that have the potential to reach the public about the use of grant funds and community forest practices.*

The Maplewood Communication Department will announce the tree removal and replacement program via social media and the Maplewood Living publication. Additionally, this department will help create and manage a city project webpage. These efforts will provide information on the grant, the proposed project, timing of work, and a primary point of contact for any questions. The City's website has been created with the ability to allow people to choose the language they prefer for City webpage viewing.

Letters will be sent to property owners that have ash trees in the public right-of-way adjacent to their property that are planned for removal. These letters will provide information on the proposed project, timing of work, and a primary point of contact. As the project moves forward, additional mailings or flyers will be sent out to these properties with project updates and information on how to help care for the new trees.

Translation services are available for limited English-speaking populations.

**Key Personnel** (10 points; 2,200 character maximum including spaces) *Please list all certifications and education degrees for staff or contractors involved in the project. Describe the duties internal staff will conduct, and any work that will be contracted out, or the partnerships you will leverage to complete tasks. Include key personnel and their past experience with similar tasks. If you expect to contract work out, describe requirements you will have for contractors.*

#### Key Staff:

Carole Gernes, Natural Resources Coordinator:

- Project Lead
- Bachelors and Master's Degrees in Biology
- 20+ years' experience in Natural Resources Management
- Minnesota DNR Certified Tree Inspector, 2020 – 2023 (#20105256).
- Recent grants administered:
  - 2019-2022 EAB Community Forest Response Tree Planting Grant
  - 2021-2024 Shade Tree Program Bonding Grant
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Jon Jarosch, P.E., Assistant City Engineer:

- Project bid documents and contract administration
- Professional Civil Engineer
- 18 years' experience of design and administration of public improvement projects totaling over 80M.
- Management of multiple State and watershed grant projects totaling over \$5M.

Rehder Forestry Consulting, City Consultant Forester:

- Mark Rehder, President of Rehder Forestry Consulting



## Attachment VI to Grant Agreement

### 3-Year Tree Maintenance Plan Template for Newly Planted Trees

**LUG:** City of Maplewood

**Year and Season of Planting:** Fall 2024

**Project Coordinator:** Carole Gernes

**Phone:** 651-249-2416

**Email:** carole.gernes@maplewoodmn.gov

**# of Trees to be Planted:** 200

**Size (caliper for deciduous, height for conifers):** 1.0- 2.0 inch, 6.0 feet

**Type of Stock to be Planted (Bare root, etc.):** Size 15 containerized trees preferred, with option of #10 or #20 if preferred

**Describe how the activities below will be completed.**

#### 1. Tree Maintenance Personnel

- a. Describe who is responsible for maintenance.

The City will include three years of maintenance as part of the contracted bid work. All costs associated with the three year maintenance plan will be covered by the City of Maplewood. The contractor selected through the bidding process will be required to water, provide pruning services in the second year after planting, and refresh all mulch areas in the third year after planting. The City's forestry consultant firm, Rehder Forestry Consulting, will inspect trees to assess health and need for pruning. Trees will not be

- b. Volunteers, homeowners, or inexperienced staff that will provide maintenance should receive basic training and literature on proper maintenance techniques. Is training needed and how will you do it?

The Maplewood Natural Resources Coordinator has a long history of providing excellent educational programming such as "Tree Care and Shrub Pruning Basics", "EAB, What Can I Do?" and Arbor Day Events. The Natural Resources Coordinator will provide specific training, as appropriate, to residents, staff and volunteers. We also have educational materials available such as the MN DNR Pocket Guide to Tree Planting and the USDA Tree Owner's Manual. We have a tree inspection door hanger for

- c. How will you inspect tree maintenance work periodically to make sure it is being done correctly?

Inspections will be performed with a two-pronged approach.

City staff will perform regular inspections throughout the growing season to ensure that the contractor is regularly watering the trees per the contract and that the mulch, tree watering bag, tree protection devices, etc. are intact and functioning properly.

Annual fall/ winter and spring/ summer inspections will be performed by the City's forestry consultant firm. The consultant will review the overall health of each tree and recommend any pruning, staking, etc. that is needed to ensure a healthy tree. These inspection results will be provided to the City to utilize in working with the contractor to address any issues through the 3-year tree maintenance (funded by the City of Maplewood).

#### 2. Tree Watering Process

Describe in detail how trees will be watered, the time period and frequency of watering. Trees should be watered weekly for the first 3 to 5 years when the ground is thawed, unless it has rained 1 inch in a week.

As part of the three-year maintenance plan, the selected contractor will check and fill watering bags throughout the growing seasons unless it has rained 1 inch during the week. The City's forestry consultant and City staff will be checking to make sure the trees are adequately watered. City staff will also be available to provide additional filling of the water bags on an as needed basis should we encounter ongoing drought conditions.

The City's natural resource staff will provide information to property owners on how to help best care for the new trees. This will include mailings, doorhangers and links to online resources such as MN DNR Pocket Guide to Tree Planting, the USDA Tree Owner's Manual, and other educational materials.

**3. Mulching Trees**

Will you mulch your trees and if so, how will you maintain mulch?

Three inches of shredded composted wood mulch will be required as part of the tree planting contract and will be incidental to the Install Climate Resilient Tree Species (See List), #15 Container (EACH) pay item. Mulch will be spread in a donut-like pattern, with mulch pulled away from the base of the tree trunks. Mulch will be inspected each year, corrected if necessary, and will be refreshed in year three after planting.

**4. Staking and Tying Trees**

Explain if staking is necessary due to mowing, vandalism, or wind conditions, and describe plans for inspection and removal.

Only trees with excess sway or those with excessive leaning upon first year inspection will be staked using flexible fiberglass stakes to promote some movement for trunk strength development. Twine or string will be used rather than wire. Ties will be attached to the tree using rubber connectors to prevent bark damage. Stakes will be removed one year after installation.

**5. Checking Tree Health**

The grantee will check trees every 6 – 12 months to identify and address problems. Describe inspection process and follow-up.

Trees will be inspected prior to installation to ensure the tree is in healthy condition and in proper form by City Staff or the City's Forestry Consultant.

During the three-year maintenance program, inspection of newly planted trees will include the following:

**6. Tree Protection**

Young trees in busy urban areas may be easily damaged by human activity, animals, and equipment. Describe how planted trees will be protected.

The bid documents will include the following materials related to tree protection:

- Removable corrugated plastic tree guards
- Watering bags
- Mulch around base which will remove the temptation to mow close to the tree base.
- Flexible fiberglass tree stakes such as Plantrex with rubber ties for trees in need of staking.

**7. Pruning**

Newly planted trees should need little pruning, if they were properly cared for in the nursery. In the first year after planting, remove only dead or broken branches. In later years, weakly attached limbs can be removed, and corrective pruning can be done if needed. Describe your pruning maintenance cycle.

- Year One:
  - Pruning of dead branches only, following fall/winter inspection.
- Year Two and Three:
  - Pruning of oaks and elms with weak limbs or for corrective pruning, following fall inspection. Pruning

**8. Tree Warranty**

Tree planting should include a warranty from the nursery for replacement (due to poor condition or mortality). The grantee should be prepared to fully replace all trees that are in poor condition or die prior to inspection at the end of the project grant agreement, unless loss was due to natural disaster. Describe your tree warranty or how trees will be replaced.

The City will require a one-year replacement warranty, on all trees planted, for defects or poor tree health. Further, replacement trees will be replanted if the newly planted trees die, or are in need replacement due to defects, poor planting methods, or poor health, prior to the end of the three-year maintenance period.

Beyond the grant and contract, the City maintains boulevard trees throughout the City. If a tree dies outside of the three-year contract, the City will replace the boulevard tree in the same location, or in a nearby location if conditions require.