

 Metropolitan Council

December 29, 2008 09 - 0074

Senator Keith Langseth, Chair--Capital Investment Committee
Room 122 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Senator Langseth:

The 2008 bonding bill (Chapter 179, section 73) requires the Metropolitan Council to report by January 1, 2009 to the capital investment committees on, "the terms of the grant agreement and progress on design and construction of East Phillips Cultural and Community Center by the Minneapolis Park & Rec. Board with the [\$3.5 million] appropriation in Laws 2006, chapter 258, section 17, subdivision 8." The referenced 2006 state appropriation was to the Metropolitan Council for, "a grant to the Minneapolis Park and Recreation Board to design, construct, furnish, and equip a new cultural and community center in the East Phillips Neighborhood of Minneapolis." This letter and enclosed documents constitute that report.

Here are the primary facts contained in these documents:

1. The Minneapolis Park & Recreation Board has conducted pre-design and design activities from June 2006 to December 2008 resulting in a proposed center that is 19,000 sq. ft. and 3 stories tall.
2. Other funding in addition to the \$3.5 million State bond appropriation has not been legally committed yet to fully fund the construction of the center. Consequently, the \$3.5 million State bond appropriation has not been released in accordance with M.S. Section 16B.31, Subd. 2 which require full funding of a project through legally binding commitments before State bonds can be released for the project. The Minneapolis Park Board of Commissioners is expected to receive a report on the status of other funding sources at its meeting on January 7, 2009. Verification of those other funding sources through legally binding commitments or cash in hand is being sought by the Metropolitan Council and the Minnesota Management and Budget Department.
3. Some costs incurred to-date by the Minneapolis Park & Recreation Board are not consistent with the purpose of the \$3.5 million state bond grant—specifically costs associated with acquiring land and costs associated with pre-design. Further review of these costs and other costs by the Metropolitan Council and Minnesota Management and Budget Department will occur once full funding for the center's construction is verified.

Enclosed with this letter are the following documents:

1. East Phillips Park Cultural Community Center Progress Report, Lonnie Nichols and Michael Kimble, Minneapolis Park & Recreation Board (December 15, 2008) which contains a timeline of work completed to-date, the design of the center and that full funding for the center has not been received yet.
2. December 22, 2008 letter to John Gurban, Superintendent of the Minneapolis Park & Recreation Board from Tom Weaver, Metropolitan Council Regional Administrator regarding the

www.metrocouncil.org

Senator Keith Langseth
December 29, 2008
Page 2

request to verify full funding for the center and a proposal to meet to review costs of project to-date once full funding has been verified.

3. Grant SG-2006-120, the grant agreement between the Metropolitan Council and the Minneapolis Park & Recreation Board which contains the terms and conditions of the State bond financed grant.

The Metropolitan Council looks forward to working with the Minneapolis Park & Recreation Board and the Minnesota Management and Budget Department on the successful implementation of this project in a way that fully complies with applicable laws and regulations regarding the \$3.5 million State bond grant for the center. If you have additional questions, please contact Arne Stefferud from our staff at 651-602-1360. He has been working with the Minneapolis Park Board and Minnesota Management and Budget Department on administering the grant.

Sincerely,



Tom Weaver
Regional Administrator

CC:

Members and staff of the Senate Capital Investment Committee
Katherine Kardell, Assistant Commissioner—Minnesota Management and Budget Department
Jon Gurban, Superintendent--Minneapolis Park & Recreation Board

Enclosures:

East Phillips Park Cultural Community Center Progress Report, Lonnie Nichols and Michael Kimble, Minneapolis Park & Recreation Board (December 15, 2008)

December 22, 2008 letter to John Gurban, Superintendent of the Minneapolis Park & Recreation Board from Tom Weaver, Metropolitan Council Regional Administrator

Grant SG-2006-120, grant agreement between the Metropolitan Council and the Minneapolis Park & Recreation Board

December 29, 2008

Representative Alice Hausman, Chair--Capital Investment Finance Division
453 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Dear Representative Hausman:

The 2008 bonding bill (Chapter 179, section 73) requires the Metropolitan Council to report by January 1, 2009 to the capital investment committees on, "the terms of the grant agreement and progress on design and construction of East Phillips Cultural and Community Center by the Minneapolis Park & Rec. Board with the [\$3.5 million] appropriation in Laws 2006, chapter 258, section 17, subdivision 8." The referenced 2006 state appropriation was to the Metropolitan Council for, "a grant to the Minneapolis Park and Recreation Board to design, construct, furnish, and equip a new cultural and community center in the East Phillips Neighborhood of Minneapolis." This letter and enclosed documents constitute that report.

Here are the primary facts contained in these documents:

1. The Minneapolis Park & Recreation Board has conducted pre-design and design activities from June 2006 to December 2008 resulting in a proposed center that is 19,000 sq. ft. and 3 stories tall.
2. Other funding in addition to the \$3.5 million State bond appropriation has not been legally committed yet to fully fund the construction of the center. Consequently, the \$3.5 million State bond appropriation has not been released in accordance with M.S. Section 16B.31, Subd. 2 which require full funding of a project through legally binding commitments before State bonds can be released for the project. The Minneapolis Park Board of Commissioners is expected to receive a report on the status of other funding sources at its meeting on January 7, 2009. Verification of those other funding sources through legally binding commitments or cash in hand is being sought by the Metropolitan Council and the Minnesota Management and Budget Department.
3. Some costs incurred to-date by the Minneapolis Park & Recreation Board are not consistent with the purpose of the \$3.5 million state bond grant—specifically costs associated with acquiring land and costs associated with pre-design. Further review of these costs and other costs by the Metropolitan Council and Minnesota Management and Budget Department will occur once full funding for the center's construction is verified.

Enclosed with this letter are the following documents:

1. East Phillips Park Cultural Community Center Progress Report, Lonnie Nichols and Michael Kimble, Minneapolis Park & Recreation Board (December 15, 2008) which contains a timeline of work completed to-date, the design of the center and that full funding for the center has not been received yet.
2. December 22, 2008 letter to John Gurban, Superintendent of the Minneapolis Park & Recreation Board from Tom Weaver, Metropolitan Council Regional Administrator regarding the

Representative Alice Hausman
December 29, 2008
Page 2

request to verify full funding for the center and a proposal to meet to review costs of project to-date once full funding has been verified.

3. Grant SG-2006-120, the grant agreement between the Metropolitan Council and the Minneapolis Park & Recreation Board which contains the terms and conditions of the State bond financed grant.

The Metropolitan Council looks forward to working with the Minneapolis Park & Recreation Board and the Minnesota Management and Budget Department on the successful implementation of this project in a way that fully complies with applicable laws and regulations regarding the \$3.5 million State bond grant for the center. If you have additional questions, please contact Arne Stefferud from our staff at 651-602-1360. He has been working with the Minneapolis Park Board and Minnesota Management and Budget Department on administering the grant.

Sincerely,



Tom Weaver
Regional Administrator

CC:

Members and staff of the House Capital Investment Finance Division
Katherine Kardell, Assistant Commissioner—Minnesota Management and Budget Department
Jon Gurban, Superintendent--Minneapolis Park & Recreation Board

Enclosures:

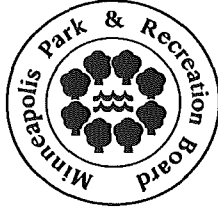
East Phillips Park Cultural Community Center Progress Report, Lonnie Nichols and Michael Kimble, Minneapolis Park & Recreation Board (December 15, 2008)

December 22, 2008 letter to John Gurban, Superintendent of the Minneapolis Park & Recreation Board from Tom Weaver, Metropolitan Council Regional Administrator

Grant SG-2006-120, grant agreement between the Metropolitan Council and the Minneapolis Park & Recreation Board

Enclosure 1

East Phillips Park Cultural Community Center Progress Report, Lonnie Nichols and Michael Kimble, Minneapolis Park & Recreation Board (December 15, 2008) which contains a timeline of work completed to-date, the design of the center and that full funding for the center has not been received yet.



East Phillips Park Cultural Community Center Progress Report

TO: Arne Stefferud, Parks Planning Analyst, Metropolitan Council

PREPARED BY: Lonnie Nichols, MPRB District Planner, 612-230-6525
Michael Kimble, MPRB Governmental Liaison, 612-230-6469

SUBJECT: East Phillips Park Cultural Community Center (EPPCCC) Project

DATE: December 15, 2008

REPORT BACKGROUND:

Section 73 of Laws of MN 2008, Chapter 179 states:

“The Metropolitan Council shall report by January 1, 2009 to the legislative committees with jurisdiction over capital investment on the terms of the grant agreement and progress on design and construction of East Phillips Cultural and Community Center by the Minneapolis Park and Recreation Board with the appropriation in Laws 2006, chapter 258, section 17, subdivision 8.”

The referenced appropriation was for a \$3.5 million “grant to the Minneapolis Park and Recreation Board to design, construct, furnish, and equip a new cultural and community center in the East Phillips Neighborhood of Minneapolis.”

In 2006 Minneapolis Park and Recreation Board (MPRB) staff attended community meetings in the East Phillips Neighborhood and in spring 2007 the MPRB Commission authorized a Community Advisory Committee (CAC) process, contracting LHB, Inc. for professional consulting services to gather input to design and construct an EPPCCC in East Phillips Park. Based on input from East Phillips residents identifying themselves as the East Phillips Community Design Team (EPPCDT), in September 2007 the MPRB Commission modified staff and LHB’s recommendation for site development to allow the EPPCDT to develop an alternative site plan and in April 2008 passed MPRB Resolution 2008-114 to provide a framework and fundraising benchmarks to proceed with an EPPCDT initiated plan. On December 12, 2008, the Minneapolis Planning Commission granted a land use approval for said EPPCDT inspired plan and in January 2009 the MPRB Commission is scheduled to review capital and operating needs for said approved plan and provide direction for detailed design development and construction.

Additional materials on EPPCCC site plans, Minneapolis Planning Commission and MPRB Commission actions, expenditures, funding goals and estimated timeline follows.

PLANNING PROCESS:

On April 18, 2007, the MPRB Board reviewed and on May 2, 2007, the full Board of MPRB Commissioners authorized staff to coordinate a nonappointed Citizen Advisory Committee (CAC) process for the East Phillips Park Cultural and Community Center (Park Building) and related site improvements. Due to the diverse nature of the East Phillips neighborhood and requests from community members, the MPRB held three CAC meetings and eight Focus groups, and attended selected EPPCDT meetings (May through August) to obtain input and share information, as per the schedule below. Several MPRB Staff Advisory Committee (SAC) meetings and Technical Advisory Committee (TAC) contacts have also occurred since LHB was selected by the MPRB Board as the design consulting and construction management firm for the project.

On September 5, 2007, in response to an EPPCDT request, the MPRB Commission directed staff and the LHB consulting team to discontinue work on development plans for an east-side of East Phillips Park in favor of a new plan that would locate the cultural and community center building in the southwest quadrant of East Phillips Park. Site design proceeded with the understanding that the building should be located within close proximity to the existing tot lot and wading pool and that the existing pool mechanical & rest room building and other lesser amenities in the area are removable.

Staff and LHB have met bi-weekly or as needed with members of the EPPCDT, a leadership subcommittee of the full CAC for the project, to work through schematic design options requested by the EPPCDT for the west side of the park, as well as discuss budget scenarios and fundraising options. A full CAC (public) meeting was held in the East Phillips neighborhood on January 24, 2008, to review the revised schematic design.

Schedule of East Phillips CAC-Outreach Activities:

East Phillips Improvement Coalition Annual Meeting, April 21, 2007, announce CAC
Focus Group-EPPCDT Meeting, Monday, May 14, 2007
CAC Meeting #1, Thursday, May 17, 2007
Focus Group-Latino residents, June 7, 2007
Focus Group-American Indian, June 18, 2007
Focus Group-Somali residents, June 21, 2007
Focus Group-ESL class (Somali & Latino) at Holy Rosary, June 20, 2007
Focus Group-Waite House Food Shelf program, June 27, 2007
CAC Meeting #2, Thursday, July 19, 2007
CAC Meeting #3, Thursday, August 2, 2007
Focus Group-EPPCDT Meeting, Monday, August 13, 2007
Focus Group-Minneapolis Urban Indian Directors, Tuesday, August 14, 2007
CAC Meeting #4, Thursday, January 24, 2008

On April 16, 2008, a development consultant retained by the EPPCDT, provided the MPRB Planning Committee a fundraising framework that included a proposed partnership model, programs and activities, and five-point plan to initiate a one-year capital campaign to raise additional funds for the EPPCCC. On May 21, 2008, the

MPRB Commissioners passed Resolution 2008-114 approving the design and project concept for a two story, 19,000+ square foot cultural and community center facility to be located in the southwest quadrant of East Phillips Park, subject to nine (9) guideline parameters and the successive achievement of several progress benchmarks on a timeline.

At the August 6, 2008, Board Meeting, the Commissioners "Received" but took no action on a quarterly progress report by the East Phillips Park Community Design Team (EPPCDT) that included the Commissioners review of the EPPCDT projected Operating Budget, Operations Model, and 5-Year Operating Plan for the proposed 19,000+ square foot East Phillips Park Cultural & Community Center (EPPCCC). The MPRB Commissioners approved an increase to the professional services fee to fund design development of said plan on August 20, 2008.

On December 12, 2008, the Minneapolis Planning Commission (MPC) granted a land use approval for said EPPCDT inspired plan and in January 2009 the MPRB Commission is scheduled to review capital and operating needs for said approved plan and provide direction for detailed design development and construction. LHB consulting has drafted a project implementation timeline based on the MPC approval for MPRB review in 2009.

CURRENT PROJECT FUNDING

The 2006 Minnesota legislative session included "\$3,500,000 is for a grant to the Minneapolis Park and Recreation Board to design, construct, furnish, and equip a new cultural and community center in the East Phillips neighborhood of Minneapolis".

<i>MPRB Funding Sources</i>			
Source	Amount	Use	Date of Approval
MN State Legislature	\$3,500,000	Phase I – Plan, Design, Bidding, Construction	May 26, 2006
MPRB General Funds	\$20,000	Pre-Design	June-August 2006
MPRB Reserve Funds	\$42,390	Additional Design Services for PreDesign	December 5, 2007, to June 30, 2008
Net Debt Bond Funding	\$319,200	East Phillips Park Project Expenses	December 2007 by Mpls City Council
Toyota (Saatchi & Saatchi) Grant	\$100,000 Pledged \$75K received/reserved	Capital Expense-LEED certify and sustainability	May 21, 2008 resolution statement
Foundation for MPLS Parks	\$100	Account established for East Phillips Park	Established July 2008 as reported to staff
EPIC/Hennepin County NRP	\$180,000 Pledged Status: Pending	Design and Construction EPPCCC project	Pending Reviews and Approvals
Mpls Foundation EPPCDT Acct	\$TBA by EPPCDT Status: Pending	Account established for EPPCCC by EPPCDT	January 2009 report to MPRB scheduled
Additional Funding	\$TBA as received	Matching funds for the East Phillips Park Prjt	TBA when received

RELATED MPRB BOARD ACTIONS:

- February 15, 2006 Project is included as a priority on the Board's legislative agenda.
- September 6, 2006 Study session held to inform Board of results of staff research into demographics and similar facilities and services in the area.
- April 18, 2007 LHB, Inc. is retained to provide Architectural Consulting Services for the East Phillips Cultural and Community Center Project.
- May 2, 2007 Staff is authorized to coordinate a nonappointed CAC process for the East Phillips Cultural and Community Center Project.
- September 5, 2007 Public Hearing on East Phillips Cultural and Community Center (Park Building) Schematic Design and Land Use Plan
- December 5, 2007 Approved Additional Design Services Contract amendment for East Phillips Park Cultural and Community Center (Park Building)
- February 20, 2008 Approved Resolution (2008-103) to request \$12 million of funding via a federal congressional appropriation
- April 16, 2008 Study Report presented by EPPCDT
- May 21, 2008 Authorize acquisition of MNDOT parcels in NW corner of Park
- May 21, 2008 MPRB Resolution 2008-114, EPPCDT performance benchmarks
- August 06, 2008 MPRB receives EPPCDT Qtrly report & EPPCCC operations plan
- August 20, 2008 Approve Design Development increase to EPPCCC Contract
- January 2009 Scheduled Review of Minneapolis Planning Commission Approval and EPPCDT fundraising to finalize project design & timeline

Attachments:

- MPRB East Phillips Park Cultural Community Center Expenditures spreadsheet
MPRB Resolution Text 2008-114
LHB Draft Project Implementation Timeline for MPRB Review
Minneapolis Planning Commission Approval of December 12, 2008
Application narrative and photos for CPED-MPC on December 12, 2008
Site and Building Schematics approved by MPC on December 12, 2008

East Phillips Cultural & Community Center							AP451		
Project Manager: Lonnie Nichols									
		Contract Date	BUDGET	2006	2007	To 10/03/08	TOTAL EXPENDED	ENCUMB	TOTAL COMMITTED
REVENUES									
Metropolitan Council #SG-2006-120	06/02/2006-12/31/2009		3,500,000.00				0.00		0.00
Donation from Saatchi & Saatchi North America, Inc. (Toyota)			100,000.00			75,000.00	75,000.00		75,000.00
Deed Tax Ref			11.48			11.48	11.48		11.48
Total Annual Rev Rec'd			3,600,011.48	0.00	0.00	75,011.48	75,011.48		75,011.48
Total Project to Date Rev Rec'd				0.00	0.00	75,011.48	75,011.48		75,011.48
EXPENDITURES									
AP451 00 0 East Phillips Cultural & Comm. Ctr									
PC000 PC General Expenditures						90.25	90.25		90.25
PC102 Advertising/Publication						90.25	90.25		90.25
PF19 Other Consulting Fees					11,200.00		11,200.00		11,200.00
PF21/PC108 Engineering Fees					74,738.19	21,836.69	96,574.88	222,625.12	319,200.00
PC111 Legal Fees						187.50	187.50		187.50
PC113 Preliminary Expenses						100.00	100.00		100.00
PC300 Land Use and Acquisition						3,375.00	3,375.00		3,375.00
PC303 Land Surveying						3,380.00	3,380.00		3,380.00
PF31 Advertising/Publication					164.75		164.75		164.75
Total Annual Expenditures				0.00	86,102.94	29,059.69	115,162.63	222,625.12	337,787.75
Total Project to Date Exp				0.00	86,102.94	115,162.63	115,162.63		337,787.75
PROJECT CASH BALANCE				0.00	(86,102.94)	(40,151.15)	(40,151.15)		
CONTRACTED AVAILABLE BALANCE									3,262,223.73
							Bill Metro Council		103,962.63

**APPROVING THE DESIGN CONCEPT AND
THE PROJECT CONCEPT AS PRESENTED BY THE EAST PHILLIPS PARK
CULTURAL AND COMMUNITY CENTER (EPPCCC)
AT THE APRIL 16, 2008 BOARD MEETING
(adopted as MPRB Resolution 2008-114 on May 21, 2008)**

BE IT RESOLVED THAT THE MINNEAPOLIS PARK AND RECREATION BOARD (MPRB) approves both the design concept and the project concept as presented by the EPPCCC at the April 16th meeting.

BE IT FURTHER RESOLVED that for its part, the MPRB wishes to state the following parameters for the continued development of the project:

1. The MPRB does not have the infrastructure capacity or additional capital to assist in the Capital Campaign.
2. The MPRB encourage the EPPCCC to create a relationship with the Foundation for Minneapolis Parks, currently in the process of hiring a new Executive Director, to assist in this effort.
3. The MPRB will allocate staff time appropriate to provide MPRB advice, representation and guidance as the EPPCCC works to develop the project over the next year.
4. The approval of the current design schematic does not imply that the MPRB will adhere to this schematic should the EPPCCC not meet its stated goals by May 31, 2009, and a redesign is necessary.
5. The MPRB does not have any additional predevelopment or capital dollars to allocate to this project.
6. The \$100,000 Toyota grant allocation will not be used for this next phase of the project. It will be used for Capital expenses promoting environmental sustainability and LEED certification.
7. The MPRB is open to an innovative approach to the operating plan and model for this project. However, the MPRB will not approve any operation budget that is not demonstrably sustainable and revenue neutral to the MPRB. As per President Olson's commitment to the State Legislature, the MPRB will consider an annual Operating expense of \$350,000 to be "revenue neutral".
8. The MPRB strongly encourages the EPPCCC to analyze the viability of an Endowment. An Endowment to fund operations will be their clearest way to demonstrate sustainability.
9. The MPRB will not give-up ownership of the land.

Bench Marks:

Quarterly Progress reports to the MPRB Board via the Planning Committee.

- ⇒ Provide Operating Budget, Operation Model and 5-Year Operating Projections for MPRB approval by August 1st, 2008.
- ⇒ Have successfully raised and established goal of 40% of needed Capital Fundraising by December 31, 2008.
- ⇒ Provision of City Approvals by December 15, 2008.
- ⇒ Provision of Construction Drawing by February 15, 2009.
- ⇒ Provision of Signed Construction Bid by March 15, 2009.

**Adopted by the Park and Recreation Board
in formal meeting assembled May 21, 2008.
MPRB Resolution 2008-114**



250 Third Avenue North, Ste 450
Minneapolis, Minnesota 55401
612 338-2029
Fax 612 338-2088
www.LHBcorp.com

MEMORANDUM

DATE: November 25, 2008

RE: East Phillips Park Community and Cultural Center
Project Schedule – Revised (DRAFT FOR DISCUSSION)
060623.10

The following schedule revises “Option 1 – Construction Begins April 2009” as issued in memorandum form on March 12, 2008. Changes were made based on direction from John Monnens regarding the uncertainty of project funding and the desire of MPRB to not complete design development drawings until after the community presents to the board (assumed to be on January 5, 2009).

Revised Project Schedule:

- Present project to Planning Commission on December 8, 2008 in order to meet bench mark of obtaining City approvals by December 15, 2008.
 - Note: Initial PDR meeting held on November 5th. Resubmission is required but will occur after the Planning Commission Meeting as recommended by the City of Minneapolis and agreed to by MPRB.
- Community presents updated on fundraising benchmark to MPRB Board: January 5, 2009
- Notice to Complete Design Development: January 6, 2009
- Complete Design Development: February 9, 2009 (approx. 1 month)
- Owner Review Period: February 9, 2009 – January 16, 2009 (approx. 2 weeks)
- Notice to Proceed to Construction Documents: January 19, 2009
- Complete Construction Documents (CD): January 19, 2009 – May 19, 2009 (approximately 4 months)
 - Owner review to occur April 24 – May 1, 2009
- Bidding: May 19 - June 18, 2009 (1 month)
 - Bids Due: June 18, 2009
- Award: August 3, 2009 (1.5 months for processing contracts)
- Construction: August 2009 – August 2010 (12 months)

c: LHB File No.: 060623.10-F201.2

Minneapolis City Planning Commission

Regular Meeting

December 8, 2008

4:30 p.m. - Room 317, City Hall, Minneapolis, Minnesota

Commissioners present: President Motzenbecker, Gorecki, Huynh, LaShomb, Luepke-Pier, Norkus-Crampton, Schiff, Tucker and Williams – 9

Not present: Nordyke

Committee Clerk: Lisa Baldwin (612) 673-3710

Call to order

Approval of the Agenda.....

Public Hearings

Introduction to the Public Hearing

Public Hearing

8. East Phillips Park Cultural & Community Center (BZZ-4261, Ward: 9), 2307 17th Ave S (Janelle Widmeier).

A. Conditional Use Permit: Application by Sara Phillips, on behalf of Minneapolis Park and Recreation Board, for a conditional use permit to increase height of the building located at 2307 17th Ave S.

Action: The City Planning Commission adopted the findings and **approved** the application for a conditional use permit to increase the height allowed from 2.5 stories to 3 stories and from 35 feet to 39 feet for the property located at 2307 17th Ave S, subject to the following condition:

1. The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.

B. Variance: Application by Sara Phillips, on behalf of Minneapolis Park and Recreation Board, for a variance to reduce the front yard requirements to allow the building, parking, and walkways wider than 8 feet for property located at 2307 17th Ave S.

Action: The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the required front yard along 17th Ave from 20 feet to 7 feet to allow the building, a surface parking area, and walkways wider than 8 feet in width for the property located at 2307 17th Ave S.

C. Variance: Application by Sara Phillips, on behalf of Minneapolis Park and Recreation Board, for a variance to allow parking between the principal building and the front lot line in a residential district for property located at 2307 17th Ave S.

Action: The City Planning Commission adopted the findings and **approved** the application for a variance to reduce the minimum parking requirement from 20 spaces to 17 spaces for the property located at 2307 17th Ave S, subject to the following condition:

1. Not less than 12 bicycle parking spaces shall be provided adjacent to the 17th Ave entrance.

D. Variance: Application by Sara Phillips, on behalf of Minneapolis Park and Recreation Board, for a variance to reduce the minimum parking requirement for property located at 2307 17th Ave S.

Action: The City Planning Commission adopted the findings and **approved** the application for a variance to allow parking between a principal structure and the front lot line (17th Ave) in a residential district for the property located at 2307 17th Ave S.

E. Site Plan Review: Application by Sara Phillips, on behalf of Minneapolis Park and Recreation Board, for a site plan review for property located at 2307 17th Ave S.

Action: The City Planning Commission adopted the findings and **approved** the application for site plan review located at the property of 2307 17th Ave S, subject to the following conditions:

1. Community Planning and Economic Development Department – Planning Division staff review and approval of the final elevations, site and landscape plans.
2. Site improvements required by Chapter 530 or by the City Planning Commission shall be completed by December 8, 2009, unless extended by the Zoning Administrator, or the permit may be revoked for non-compliance.
3. Screening that complies with section 530.170 of the zoning code shall be provided between the parking area and 17th Avenue.
4. Screening for mechanical equipment shall comply with section 535.70 of the zoning code.
5. Screening for the refuse containers shall comply with section 535.80 of the zoning code.
6. Signage shall comply with the applicable provisions of Chapter 543 of the zoning code.

..... **Adjournment**

The meeting adjourned at 8:10 p.m.

Next Regular Planning Commission Meeting: January 5, 2009

The President reserves the right to limit discussion on Agenda items.

Recommendations of the Planning Commission on public hearing items are only forwarded to the Zoning and Planning Committee of the City Council for applications for rezonings, street or alley vacations, Zoning Code text amendments, and comprehensive plan amendments. Planning Commission decisions are final on all other items unless appealed.

The meeting site is wheelchair accessible; if you need other disability related accommodations, such as a sign language interpreter or materials in alternative format, please contact 612-673-3220 (673-2157 TTY/VOICE) at least five days prior to the meeting.

Attention: If you want help translating this information, call -Hmong - Ceeb toom. Yog koj xav tau kev pab txhais cov xov no rau koj dawb, hu 612-673-2800; **Spanish** - Atención. Si desea recibir asistencia gratuita para traducir esta información, llama 612-673-2700; **Somali** - Ogow. Haddii aad dooneyso in lagaa kaalmeeyo tarjamadda macluumaadkani oo lacag la' aan wac 612-673-3500



250 Third Avenue North, Ste 450
Minneapolis, Minnesota 55401
612 338-2029
Fax 612 338-2088
www.LHBcorp.com

GENERAL LAND USE APPLICATION REQUIREMENTS

DATE: October 27, 2008

TO: Janelle Widmeier, Senior Planner
Planning – Development Services
CPED, City of Minneapolis

FROM: Sara G. Phillips, AIA

RE: Required Written Statements
East Phillips Park Cultural and Community Center
LHB Proj. No: 060623.10

Pre-Application Meeting:

An initial meeting was held on January 18, 2008.

Statement of Proposed Use and Description of the Project:

The East Phillips Park Cultural and Community Center includes informal gathering spaces, a meeting room, classrooms, teen center, and indoor activity space for the East Phillips neighborhood and surrounding communities. The project will provide space for typical park-building activities that may include community-driven classes, seminars, tutoring activities, cultural celebrations and limited indoor recreation activities. The demolition and replacement of an existing pump house and toilet facilities for the adjacent existing wading pool is also included in the project.

Please refer to the Application Worksheet for information specific building data.

Project Site and History:

East Phillips Park became part of the Minneapolis Park and Recreation Board in 1977. It was acquired from the Minneapolis Community Development Agency after the City of Minneapolis forewent plans for housing development on the site. The property is bounded by Cedar and Hiawatha Avenues on the East and 17th Avenue on the West and located between 22nd and 24th Streets on the North and South. Apart from a small pocket park nearby, East Phillips Park is the only publicly owned recreational and open space in the neighborhood.

The initial renovation of the 6.46 parcel in 1978 included construction of an outdoor playground, paths, wading pool, pool/restroom shelter building, landscaping, softball diamonds, picnic tables, bike racks, basketball and volleyball courts, benches, electrical and turf improvements. In 1981 tennis courts, trees, walking and biking paths, and lighting were added. In the 1990's upgrades were made to the wading pool, playground equipment and basketball courts. The park land is located in an EPA (Environmental Protection Agency) superfund cleanup site, but was tested for Arsenic levels in 2003 by

RE: EPPCCC – General Land Use Application

October 27, 2008

Page 2

the Minnesota Department of Agriculture and found to be within acceptable EPA limits at a maximum test reading of 5.6 mg/kg where up to 16 mg/kg are allowed before any cleanup action would be required.

The park had a concrete block building on it when acquired that was vacated by the Police Athletic Council as part of the change in ownership. The MPRB leased the building to the American Indian Center for offices and after a thirty (30) year presence by the American Indian Movement (AIM) and other programs, the building was demolished in 2006 due to structural deterioration, graffiti and lack of code compliance.

East Phillips Park is surrounded by a mix of land uses, including Public Housing Hi-Rises, Little Earth Housing Corporation and Early Childhood Learning Center, Holy Rosary Church, apartment buildings, scattered single and multi-family homes, and new multiple family housing developments. The Franklin Avenue Light Rail Transit Station, American Indian Center, commercial nodes, University of Minnesota Health Care Clinic, industrial businesses, proposed District Energy facility, and The Green Institute are also located nearby. East Phillips Park is surrounded by a diverse population of American Indian, Somali, Latino, Asian, African American, and lesser percentage of other ethnic groups, and a white minority population.

Verification of Historic Status of Property:

East Phillips park is not included in a Historic District and the current pump house and toilet building (construction date: 1978) is not a historic building.

Photos of the Property and Existing Structures:

Existing photos of the park, proposed building location, and neighboring structures are included on the following pages.



Photo 1: Park-side (east) facade of existing toilet/pump house building scheduled for demolition.



Photo 2: Street-side (west) facade of existing toilet/pump house building scheduled for demolition.



Photo 3: Existing wading pool to remain.



Photo 4: Proposed location for East Phillips Park Cultural and Community Center



Photo 5: Apartment building located on the west side of 17th Avenue South, across from proposed building location.



Photo 6: Holy Rosary Catholic Church, located on the southwest corner of 24th Street East and 18th Avenue South, across from the existing play area.



Photo 7: Ventura Village high-rise apartments immediately north of East Phillips park.

Conditional Use Permit Required Findings:

As a Conditional Use Permit is required, an additional list of findings needs to be addressed. They are as follows:

1. *The establishment, maintenance or operation of the conditional use will not be detrimental to or endanger the public health, safety, comfort, or general welfare.*
One goal of the East Phillips Park Cultural and Community Center is to provide a welcoming, safe neighborhood gathering place embracing all cultures and encouraging a shared sense of community.
2. *The conditional use will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.*
The proximity to a facility geared toward multicultural recreational, educational, and healthy development opportunities for residents of all ages should improve the development and improvement of the surrounding property.
3. *Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.*
Please refer to the site plans which indicate access roads and drainage. Utilities will be provided and sized appropriately for the size and intended use of the structure.
4. *Adequate measures have been or will be taken to minimize traffic congestion in the public streets.*
The building is intended for predominately neighborhood use and therefore it is intended that most users will walk to the site.

5. *The conditional use is consistent with the applicable policies of the comprehensive plan.*

The East Phillips Park Cultural and Community Center is consistent with the following policies of The Minneapolis Plan: the City of Minneapolis'

Comprehensive Plan:

- 1.1 Minneapolis will promote opportunities and activities that allow neighbors and residents to get to know each other better
- 1.2 Minneapolis will encourage both private and public development that provides gathering spaces in city neighborhoods.
- 1.3 Minneapolis will encourage public institutions to coordinate their programming and facilities in order to function as neighborhood centers.
- 1.4 Minneapolis will encourage activities that rely on coordinated programming and facilities use with community partners in the volunteer, nonprofit and private sectors.
- 1.5 Minneapolis will promote neighborhood-based arts activities
- 1.6 Minneapolis will promote community-based initiatives in youth programming.
- 1.8 Minneapolis will take steps to eliminate discrimination against protected classes and promote a wider understanding of the value of diversity in our community.
- 1.9 Minneapolis will work to enhance the appeal of city living by improving residents' actual and perceived sense of safety and security.
- 1.10 Minneapolis will continue to support community-based initiatives to assure safety and to prevent crime in neighborhoods.
- 6.2 Minneapolis will develop and support a system of urban parks and 'greenway' connections throughout the City.
- 6.3 Minneapolis will offer a diverse range of programming and recreational facilities for resident use.
- 6.4 Minneapolis will make parks secure, attractive places and ensure that these facilities are accessible, enjoyable and safe.

6. *The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.*

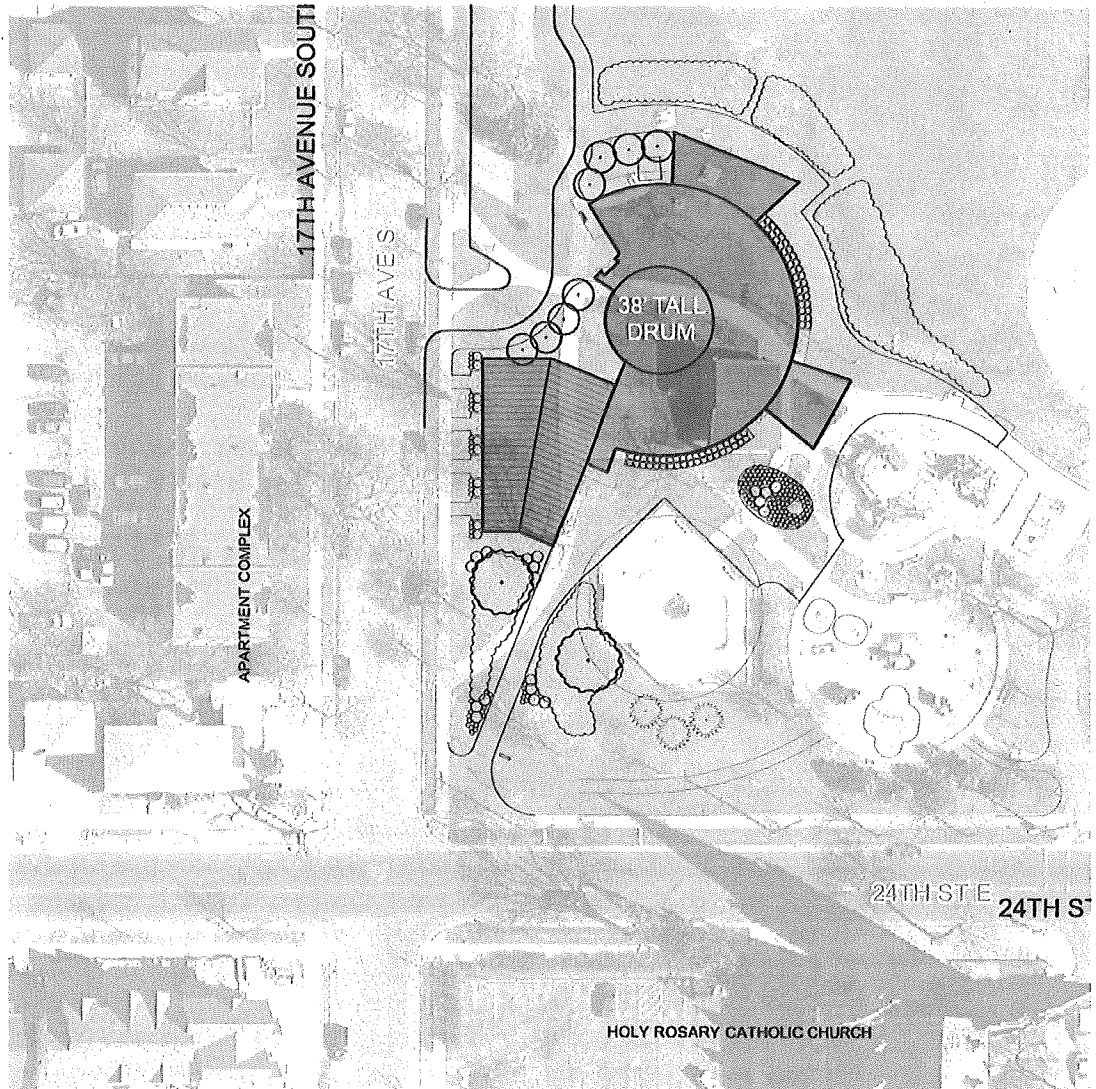
The proposed project conforms to the applicable regulations of the district except as noted in the application.

Conditional Use Permit – Increasing Maximum Height Required Findings:

As a conditional use permit is being requested for an increase in the maximum building height, additional findings need to be addressed. These are as follows:

1. *Access to light and air of surrounding properties*
As the nearest structure is across 17th Avenue South and approximately 80' away, the building will not block light or air access to the surrounding properties.
2. *Shadowing of residential properties or significant public spaces*

The tallest part of the structure, the center “drum” is setback from the western edge of the remaining building, creating an approximate 100’ separation between it and the nearest residential property. While some early morning shadowing may occur, the multi-story apartments across the street would not be affected for the majority of the day, and more likely shaded by tree canopy than the building itself.



Aerial Photo with Proposed Building Overlay

3. *The scale and character of surrounding uses*

While located in a low density residential district, the immediate surroundings provide context for a taller structure. Directly southeast of the proposed location is Holy Rosary Catholic Church (Photo 6), immediately west is a three-story apartment building (Photo 5), and directly north are three high-rise apartment buildings (Photo 7).

4. *Preservation of views of landmark buildings, significant open spaces or water bodies.*

The community has lobbied for a multi-story structure to preserve the limited amount of open space in the East Phillips community. While views across the park to Hiawatha Avenue from the southwest corner may be impacted for some tenants of the apartment building, the majority of adjacent uses would still be able to look into the park, including residents of the high-rise to the north, Little Earth community to the southeast, and motorists passing by on Hiawatha and Cedar Avenue and 22nd and 24th Street East.

Variance – Reduction of Yard Requirement

The project is seeking a variance in order to reduce the yard requirement between the principle building and the front yard. Therefore, the following findings are addressed below:

1. *The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.*

In order to maximize usable green-space within the park, it is necessary to reduce the amount of land utilized as yard areas. Reducing the yard requirement allows for continued use of the existing baseball field, while meeting the zoning requirement would compromise the available amount of green space for multiple recreational activities such as baseball, softball, football and soccer.

2. *The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.*

The circumstances are unique to the public park designation and use of the property. There is a larger surface area parking lot immediately south of 24th Street East along 17th Avenue and a utility easement running North-South through the middle of the park that determines, more or less, that development will occur on either the East or West side of the Park.

3. *The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use of enjoyment of other property in the vicinity.*

The spirit and intent of the ordinance is to provide green spaces within the urban environment and granting the variance allows for more green space within East Phillips Park for recreational use and the enjoyment of residents in the neighborhood.

4. *The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.*

The granting of the variance will not increase the congestion of the public streets, increase the fire danger, be detrimental to the public welfare or endanger public

safety. The variance would help allow for off-street parking, while preserving recreational greenspace in the park.

Variance – Parking between the Building and the Front Lot Line

The project is seeking a variance in order to locate the parking between the building and the street. Therefore, the following findings are addressed below:

1. *The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.*

In order to maximize usable green-space within the park, it is necessary to locate parking adjacent to the street. Locating the parking lot within the park is counterintuitive to the mission of the Minneapolis Park and Recreation Board.

2. *The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.*

The circumstances are unique to the public park designation and use of the property and economic considerations are in no means a factor in this request. It should be noted that the majority of parks within Minneapolis have parking located between the building and front lot line. In this case, there is a larger surface area parking lot immediately south of 24th Street East along 17th Avenue and a utility easement running North-South through the middle of the park that determines, more or less, that development will occur on either the East or West side of the Park.

3. *The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use of enjoyment of other property in the vicinity.*

The spirit and intent of the ordinance is to provide green spaces within the urban environment and granting the variance allows for more green space within East Phillips Park for recreational use and the enjoyment of residents in the neighborhood.

4. *The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.*

The granting of the variance will not increase the congestion of the public streets, increase the fire danger, be detrimental to the public welfare or endanger public safety. The variance would help allow for off-street parking, while preserving recreational greenspace in the park.

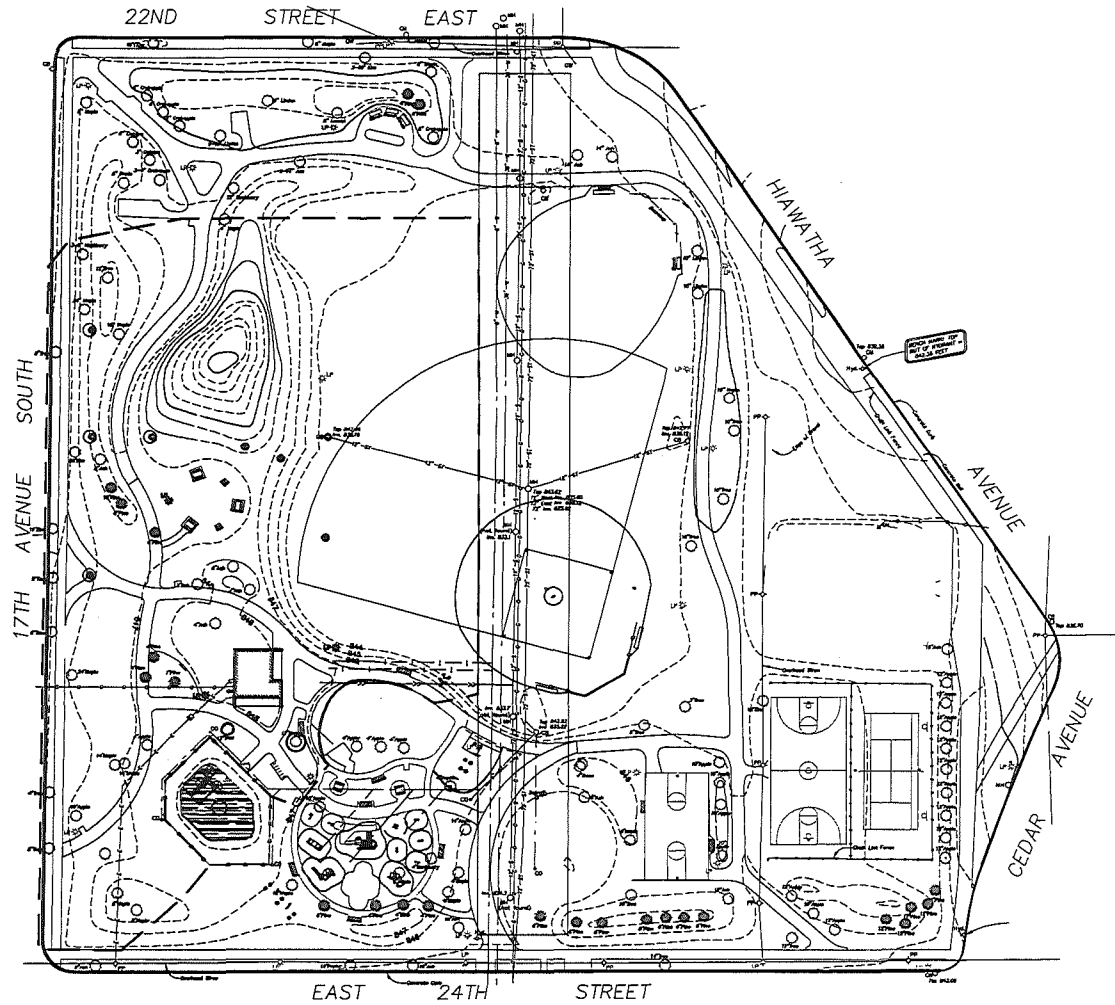
Variance – Reduction of Required Parking

The project is seeking a variance in order to reduce the amount of parking from 20 spaces to 16 (a 20% reduction). Therefore, the following findings are addressed below:

1. *The property cannot be put to a reasonable use under the conditions allowed by the official controls and strict adherence to the regulations of this zoning ordinance would cause undue hardship.*
In order to maximize usable green-space within the park, it is necessary to reduce the amount of land dedicated to parking. This allows a greater area of green space for the community to enjoy and use.
2. *The circumstances are unique to the parcel of land for which the variance is sought and have not been created by any persons presently having an interest in the property. Economic considerations alone shall not constitute an undue hardship if reasonable use for the property exists under the terms of the ordinance.*
The circumstances are unique to the public park designation and use of the property. Economic considerations are not a factor in the request to reduce parking. East Phillips Park is located within close proximity to bus service and the Franklin Avenue LRT station.
3. *The granting of the variance will be in keeping with the spirit and intent of the ordinance and will not alter the essential character of the locality or be injurious to the use of enjoyment of other property in the vicinity.*
The spirit and intent of the ordinance is to provide green spaces within the urban environment and granting the variance allows for more green space within East Phillips Park for recreational use and the enjoyment of residents in the neighborhood.
4. *The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or be detrimental to the public welfare or endanger the public safety.*
The granting of the variance will not increase the congestion of the public streets, increase the fire danger, be detrimental to the public welfare or endanger public safety. The variance would help allow for off-street parking, while preserving recreational greenspace in the park. East Phillips Park is intended for neighborhood use and is located within close proximity to bus service and the Franklin Avenue LRT station.

c: LHB File No.: 060623.10-F201.4

M:\06Proj\060623\ADMN\F200 Design\F201 General Information\F201-4 Regulatory\CPED - Land Use Application\060623MO100208 CPED Statements.doc



GENERAL NOTES:

1. SITE SURVEY AND BOUNDARY INFORMATION PROVIDED BY THE MINNEAPOLIS PARK AND RECREATION BOARD AND PREPARED BY: REIDER & ASSOCIATES CIVIL ENGINEERS AND LAND SURVEYORS 3440 FEDERAL DRIVE, SUITE 110 EAGAN, MN 55122 TELEPHONE: 952-453-0261
2. AS-BUILT INFORMATION FOR TOT LOT IMPROVEMENTS PROVIDED BY THE MINNEAPOLIS PARK AND RECREATION BOARD AND PREPARED BY HOISINGTON KOEGLER GROUP, INC.
3. VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS IN FIELD PRIOR TO CONSTRUCTION.

231 Third Avenue North
 Suite 400
 Minneapolis, MN 55401

TEL 612-338-3223
 FAX 612-338-3228

<http://www.LHBoorp.com>

MINNEAPOLIS • DULUTH



**CITY APPROVAL SUBMITTAL
 NOT FOR CONSTRUCTION
 10-27-08**

**MINNEAPOLIS PARK
 AND RECREATION
 BOARD**
 2117 West River Road
 Minneapolis MN 55411

THIS SQUARE APPROVES UP TO 17" ON FULL SIZE SHEET.

NO	DATE	REVISIONS
1	10-27-08	LAND USE/FOOTPRINT/ADDITIONAL

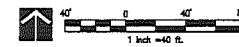
I HEREBY CERTIFY that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

SIGNATURE: *Timothy M. Weiden*
 TYPED OR PRINTED NAME: TIMOTHY M. WEIDEN
 DATE: 10-24-08 REG. NO.: 41353

COPYRIGHT 2008 BY L&H, INC. ALL RIGHTS RESERVED.

**EAST PHILLIPS PARK
 CULTURAL &
 COMMUNITY CENTER**
 2307 17th Ave. S. Minneapolis, MN 55404

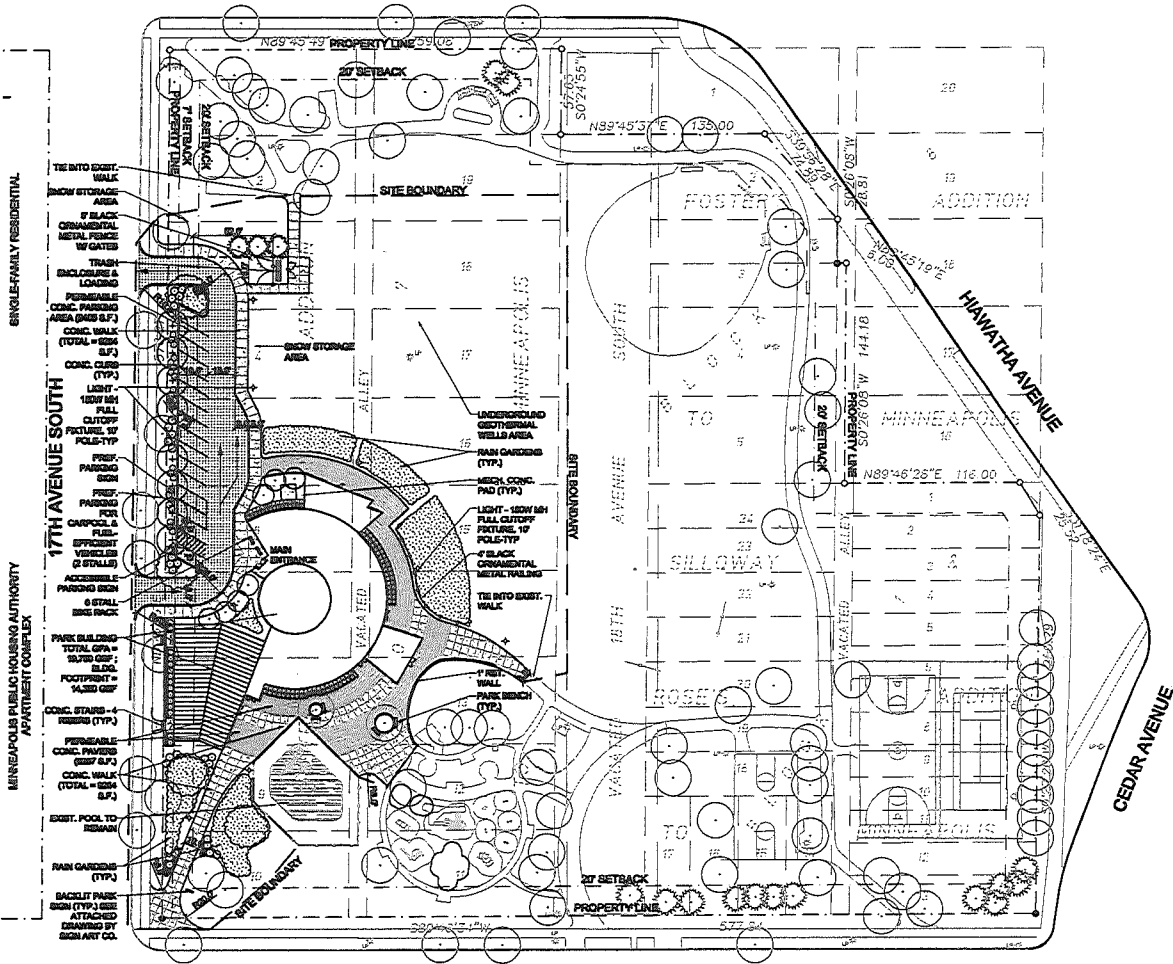
DRAWING TITLE:
**EXISTING
 CONDITIONS**



FILE: J:\MINN20\PHILLIPS\CD\PHILLIPS.dwg
 CONSULT: TMM
 CHECKED: TMM
 PROJECT: PHILLIPS
 DRAWING NO. **C1.00**

AMERICAN INDIAN CENTER APARTMENTS

22ND STREET EAST



24TH STREET EAST

HOLY ROSARY CATHOLIC CHURCH

LITTLE EARTH COMMUNITY

GENERAL NOTES:

1. SITE SURVEY AND BOUNDARY INFORMATION PROVIDED BY THE MINNEAPOLIS PARK AND RECREATION BOARD AND PREPARED BY: REIDER & ASSOCIATES CIVIL ENGINEERS AND LAND SURVEYORS 3440 FEDERAL DRIVE, SUITE 110 SACON, MN 55122 TELEPHONE: 612-452-6001
2. AS-BUILT INFORMATION FOR TOT LOT IMPROVEMENTS PROVIDED BY THE MINNEAPOLIS PARK AND RECREATION BOARD AND PREPARED BY: HORSKOTON KOSGLER GROUP, INC.
3. VERIFY ALL EXISTING CONDITIONS AND DIMENSIONS IN FIELD PRIOR TO CONSTRUCTION.
4. CONTRACTOR TO PROVIDE LAYOUT AND ROUGH STAKING OF ALL SITE ELEMENTS FOR APPROVAL BY OWNER AND LANDSCAPE ARCHITECT PRIOR TO CONSTRUCTION.

PROTECTIONS:

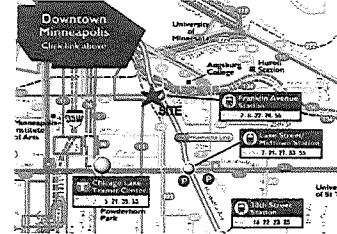
1. CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING STRUCTURES, UTILITIES, TREES, SITE AMENITIES, ETC. THAT ARE NOT INDICATED FOR REMOVAL OR SALVAGE DURING CONSTRUCTION.
2. CONTRACTOR SHALL BE RESPONSIBLE FOR CORRECTING ANY DAMAGE TO EXISTING ITEMS NOT INDICATED FOR REMOVAL OR SALVAGE AT CONTRACTOR'S EXPENSE.
3. CONTRACTOR SHALL SAWCUT ALL ROOTS EXPOSED BY EXCAVATION.

PERVIOUS TO IMPERVIOUS RATIO:

60% PERVIOUS
(1.49 AC. PERVIOUS / 1.04 AC. IMPERVIOUS; TOTAL SITE 2.53 AC.)
NOTE: IMPERVIOUS CALC. INCLUDES PERMEABLE PAVING

BUS LINES & LIGHT RAIL ACCESS TO SITE:

BUS LINES: #14, STOPS AT BLOOMINGTON & 24TH ST; #27, STOPS AT CEDAR & 25TH ST.
LRT LINES: 2, 6, 22, 24, 66; STOPS AT HIAWATHA & FRANKLIN



LEGEND:

- PERMEABLE CONC. PAVERS
- PERMEABLE CONC.
- CONC. WALK
- PROPOSED LIGHT - 150W METAL HALIDE FULL CUT OFF FIXTURE, 10' POLE
- EXIST. LIGHT
- PARK BENCH
- FENCE/RAILING



230 Third Avenue North
Suite 401
Minneapolis, MN 55401



TEL: 612-338-3300
FAX: 612-338-3303

http://www.LHBcorp.com

MINNEAPOLIS • DULUTH



MINNEAPOLIS PARK AND RECREATION BOARD

2117 West River Road
Minneapolis MN 55411

THIS SCALE APPLIES TO ALL SHEETS ON FULL SIZE SHEETS.

NO.	DATE	REVISION
1	10-27-08	LAND USE / PERMISSIBILITY

I HEREBY CERTIFY that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Landscape Architect under the laws of the State of Minnesota.

SIGNATURE: *John P. Dea*

TYPED OR PRINTED NAME: JOHN P. DEA

DATE: 10/27/08 REG. NO.: 4892

COPYRIGHT 2008 BY LHB, INC. ALL RIGHTS RESERVED.

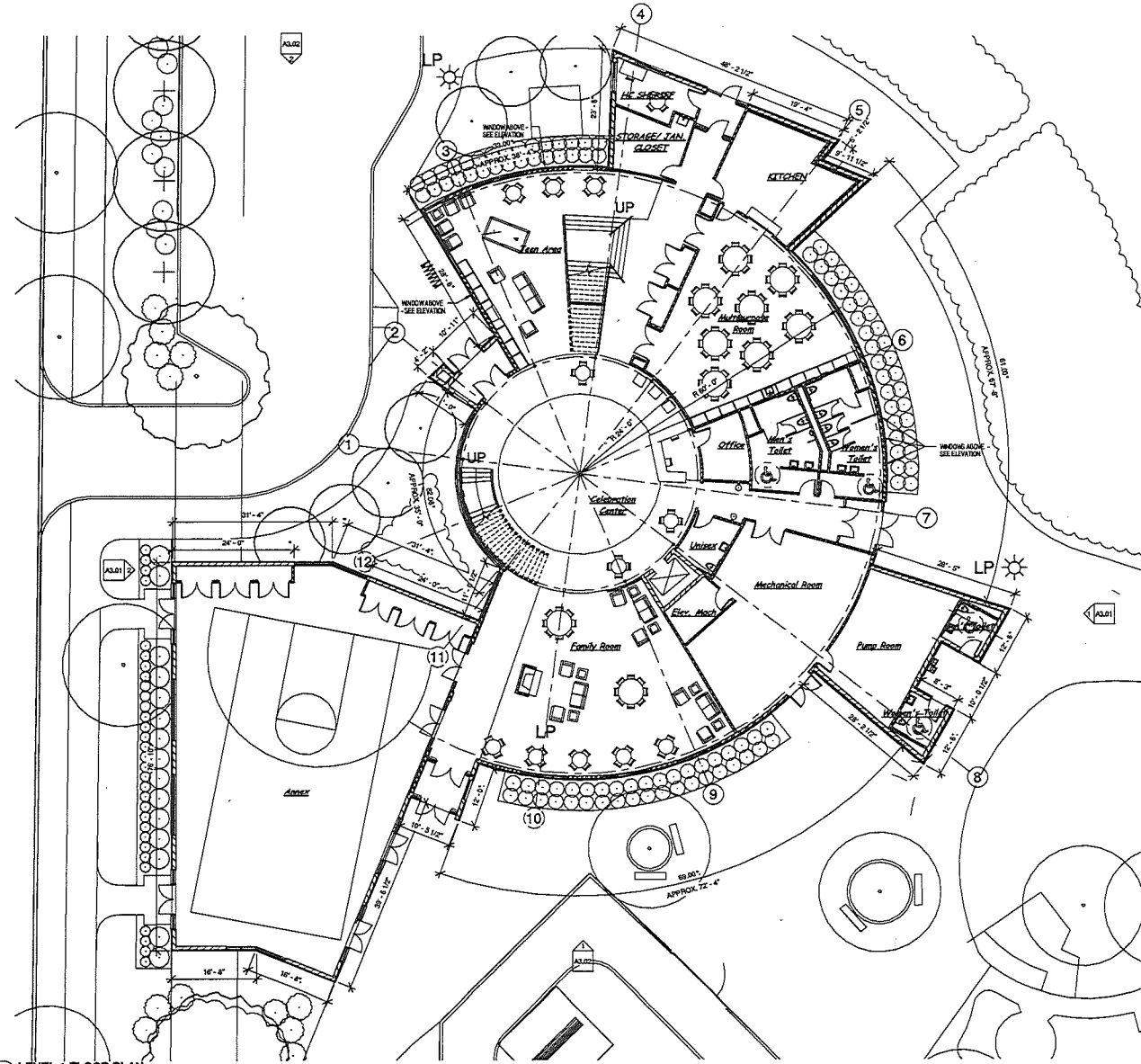
PROJECT NAME:
EAST PHILLIPS PARK CULTURAL & COMMUNITY CENTER
2307 17th Ave. S. Minneapolis, MN 55404

DRAWING TITLE:
SITE PLAN

-
-
-

FILE: J:\2008\17th Ave S\2008_10_27.dwg
DRAWN BY: CPH
CHECKED BY: -
PLOT DATE: 10/27/08
DATE PLOTTED: 10/27/08

L1.00



1 LEVEL 1 FLOOR PLAN
 302-104

L. L. ARCHITECTS, ARCHITECTS, MINNEAPOLIS, MN 55401
 DATE: 12/08 11:37:11 AM

250 Third Avenue North
 Suite 450
 Minneapolis, MN 55401
 TEL 612/338-2029
 FAX 612/338-2088
 http://www.LHBcorp.com

LHB

MINNEAPOLIS DULUTH

NOT FOR CONSTRUCTION - CITY APPROVAL SUBMITTAL

No.	Date	Revision
1	12/08	LANDUSE PER SUBMITTAL

I HEREBY CERTIFY that this plan, specification or contract was prepared by me or under my direct supervision and that I am a duly Licensed Architect in the State of Minnesota.

Signature: *R. E. ...*

Typed or Printed Name: *R. E. ...*
 Date: 02/07/09 Reg. No.: 2771

COPYRIGHT 2007 BY LHB, INC. ALL RIGHTS RESERVED

PROJECT TITLE:
EAST PHILLIPS PARK CULTURAL & COMM CENTER

2307 17th Ave S.
 Minneapolis, MN 55404

DRAWING TITLE:
FIRST FLOOR PLAN

FILE: ...
DRAWN BY: ...
CHECKED BY: ...
PROJ. NO.: ...
DRAWING NO.: **A0.01**

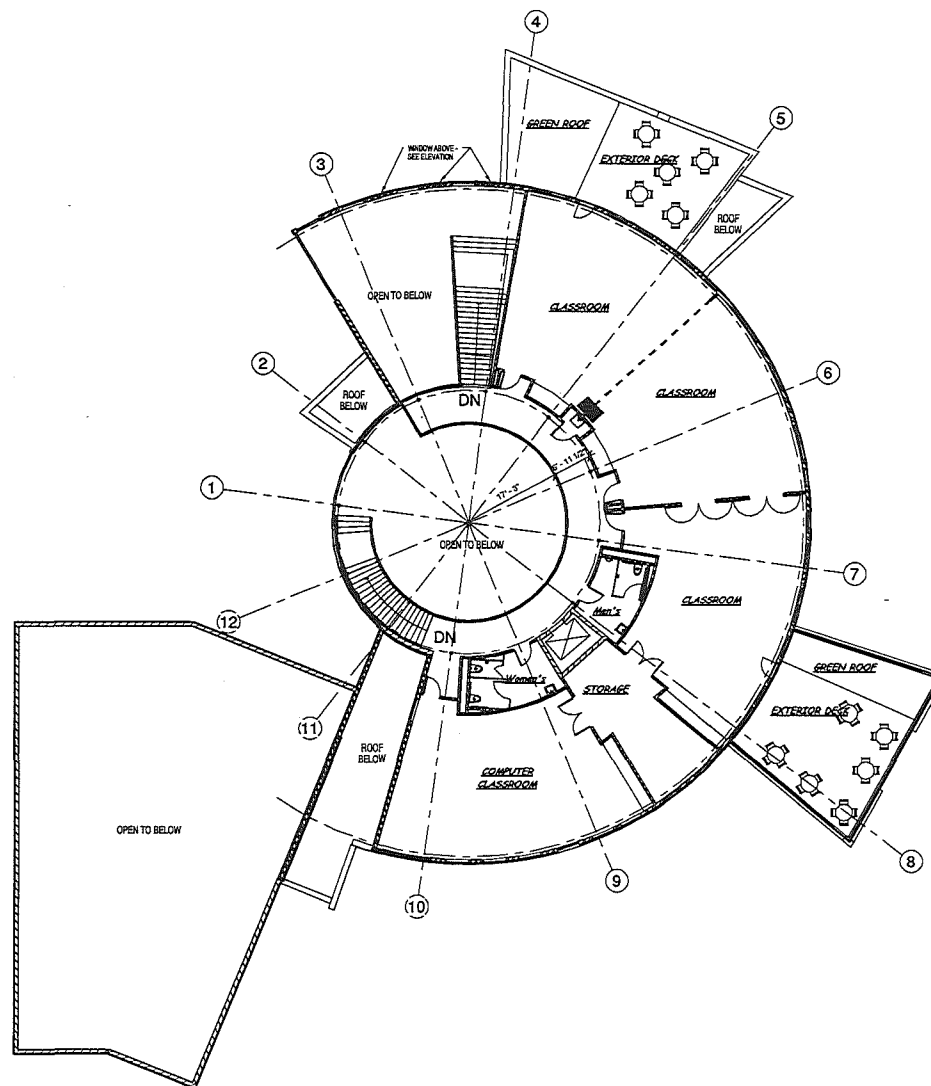
250 Third Avenue North
Suite 450
Minneapolis, MN 55401

TEL 612/338-2029
FAX 612/338-2088

http://www.LHBcorp.com



MINNEAPOLIS DULUTH



**NOT FOR
CONSTRUCTION -
CITY APPROVAL
SUBMITTAL**

No	Date	Revision
1	10/27/08	LAND USE FOR SUBMITTAL

I HEREBY CERTIFY that this plan, specification and contract documents were prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the State of Minnesota.
Signature: *R. E. ...*

Typed or Printed Name: R. E. ...
Date: 10/27/08 Reg. No.: 2777

COPYRIGHT 2007 BY LHB, INC. ALL RIGHTS RESERVED

PROJECT TITLE:
**EAST PHILLIPS
PARK CULTURAL
& COMM CENTER**

2307 17th Ave S.
Minneapolis, MN 55404

DRAWING TITLE:
**SECOND
FLOOR PLAN**

FILE: 08-020-001-101p1.dwg
DRAWN BY: ...
CHECKED BY: ...
PROJECT NO.: 08-020-001
DRAWING NO.:

A0.02

1 LEVEL 2 FLOOR PLAN
302-110

L. ... ARCHITECTS, INC. ...

CITY APPROVAL SUBMITTAL
 NOT FOR CONSTRUCTION
 10-21-08

**MINNEAPOLIS PARK
 AND RECREATION
 BOARD**

2117 West River Road
 Minneapolis, MN 55411

THIS DRAWING APPROX. 1/2" = 1/4" ON FULL SIZE
 SHEET.

NO.	REVISION	DATE	BY
1	ISSUE FOR PERMITS		

I HEREBY CERTIFY that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the State of Minnesota.

SIGNATURE: *[Signature]*

TYPED OR PRINTED NAME, R. BRUCE CORNWALL

DATE: 10-21-08 REG. NO.: 30720

EXPIRES: 10/31/09

PROJECT NAME:

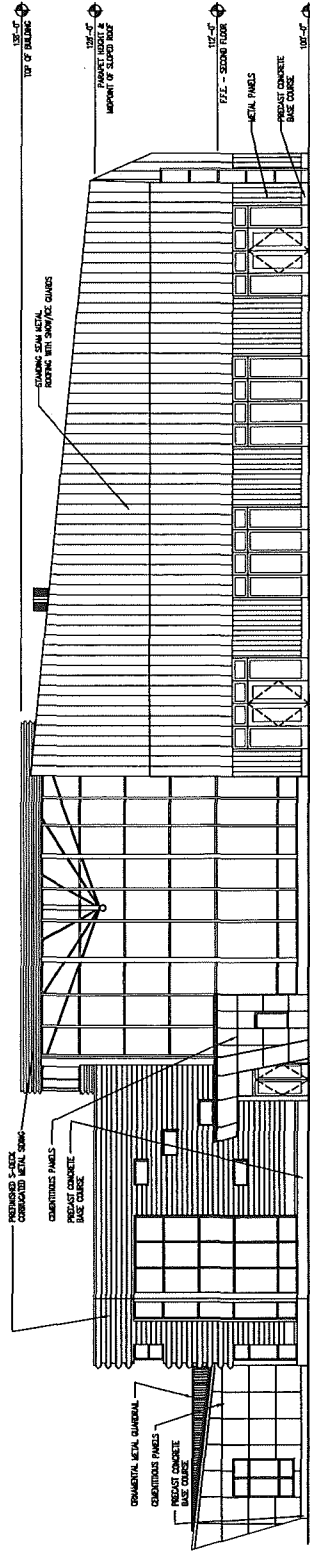
**EAST PHILLIPS PARK
 CULTURAL &
 COMMUNITY CENTER**

2317 7TH Ave. S. Minneapolis, MN 55404

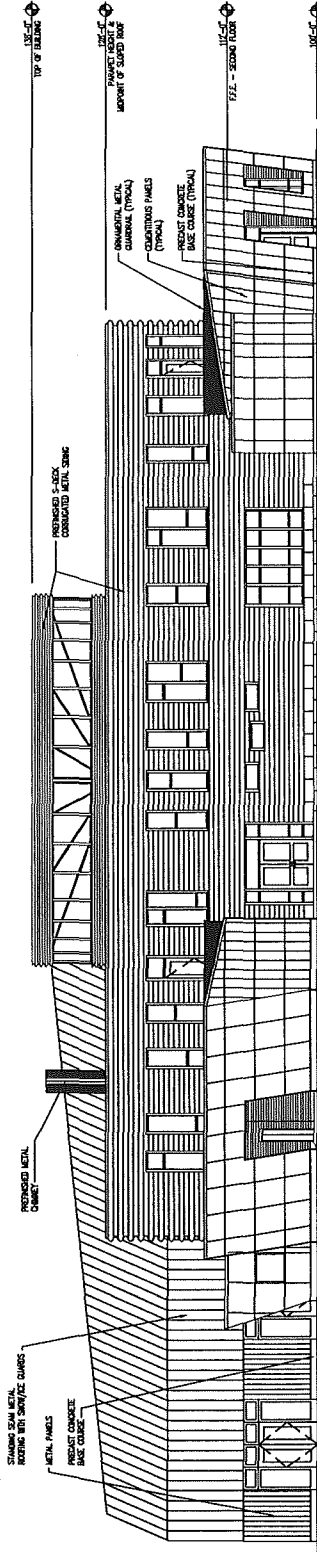
EXTERIOR ELEVATIONS

FILE #:
 DRAWING NO. BY:
 CHECKED BY:
 DATE:

A3.01



② WEST ELEVATION
 1/8" = 1'-0"



① EAST ELEVATION
 1/8" = 1'-0"

230 Third Avenue North
 Suite 400
 Minneapolis, MN 55401

TEL: 612.288.2200
 FAX: 612.288.2200

http://www.LJBcorp.com

MINNEAPOLIS • DULUTH



**CITY APPROVAL SUBMITTAL
 NOT FOR CONSTRUCTION
 10-27-08**

**MINNEAPOLIS PARK
 AND RECREATION
 BOARD**

2117 West River Road
 Minneapolis MN 55411

THIS SQUARE APPEARS 1/2" x 1/2" ON FULL SIZE SHEETS.

NO.	DATE	REVISION
1	10-27-08	LAUNCH FOR SUBMITTAL

I HEREBY CERTIFY that this plan, specification or report was prepared by me or under my direct supervision and that I am a duly Licensed Architect under the laws of the State of Minnesota.

SIGNATURE: *R. Bruce Connall*

TYPED OR PRINTED NAME: R. BRUCE CONNALL

DATE: 10-27-08 REG. NO.: 18720

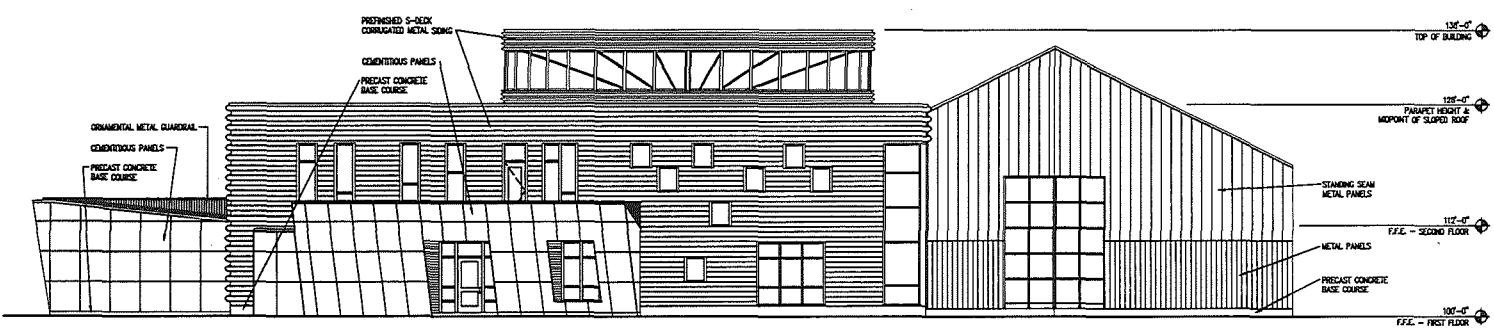
COPYRIGHT 2008 BY LJA, INC. ALL RIGHTS RESERVED.

PROJECT NAME:
**EAST PHILLIPS PARK
 CULTURAL &
 COMMUNITY CENTER**

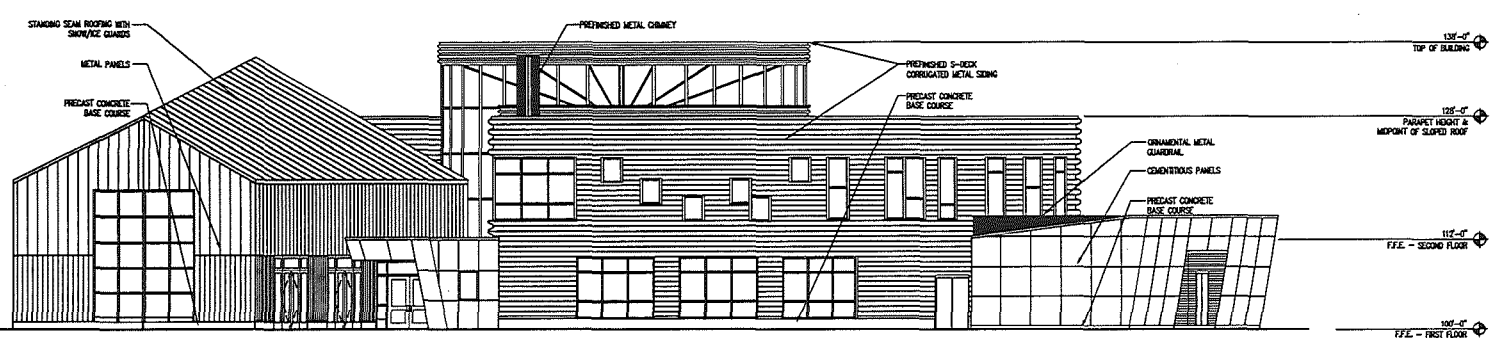
2307 17th Ave. S. Minneapolis, MN 55404

DRAWING TITLE:
EXTERIOR ELEVATIONS

FILE: 2307PHILLIPS/CDD/081027
 DRAWN BY: SSP
 CHECKED BY: RUP/RC
 PLOTTED BY: BMS
 DRAWING NO: **A3.02**



2 NORTH ELEVATION
 1/8"=1'-0"



1 SOUTH ELEVATION
 1/8"=1'-0"

Enclosure 2

December 22, 2008 letter to John Gurban, Superintendent of the Minneapolis Park & Recreation Board from Tom Weaver, Metropolitan Council Regional Administrator regarding the request to verify full funding for the center and a proposal to meet to review costs of project to-date once full funding has been verified

December 22, 2008

Jon Gurban, Superintendent
Minneapolis Park & Recreation Board
2117 West River Road
Minneapolis, MN 55411

Re: \$3.5 million State bond appropriation for design and construction of East Phillips Park Community Center

Dear Superintendent Gurban:

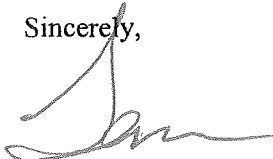
Since 2006, the Metropolitan Council and Minnesota Dept. of Finance (now Minnesota Management and Budget Department) have been working with the Minneapolis Park & Recreation Board on utilizing the \$3.5 million 2006 State bond grant to design, construct, equip and furnish the East Phillips Park Community Center. We recently received a progress report on the center which indicates that full funding for the center has not been received or legally committed as required by State law (M.S. Section 16B.31, Subd. 2). Consequently, reimbursements from the State bond grant cannot be released until the Metropolitan Council and Minnesota Management and Budget Department have verified that the project is fully funded. To assist you in providing required documentation on matching funds, please refer to pages 15-18 of the enclosed State of Minnesota Capital Grants Manual.

Our review of the progress report also found expenses for acquiring land from the Minnesota Dept. of Transportation, which are not consistent with the State bond appropriation purpose. Finally, review of expenses to LHB Engineers & Architects in 2007 and possibly in 2008 appear to also be inconsistent with the appropriation purpose. In this case, it appears their work was for pre-design by developing schematic design options for review by the Citizens Advisory Committee from May 2007 to January 2008.

Once verification has been made that the project is fully funded, we suggest that a meeting with your staff, Metro Council staff and staff from the Minnesota Management and Budget Department be scheduled to review expenditure documentation to determine what expenses are consistent with the State bond appropriation purpose.

We look forward to working with the Park Board and Minnesota Management and Budget Department in meeting the requirements to utilize the State bond appropriation for this project. If you have any questions on this matter, please contact Arne Stefferud, Planning Analyst-Parks at 651-602-1360. He has been working with the Minnesota Dept. of Management and Budget on administering this grant.

Sincerely,

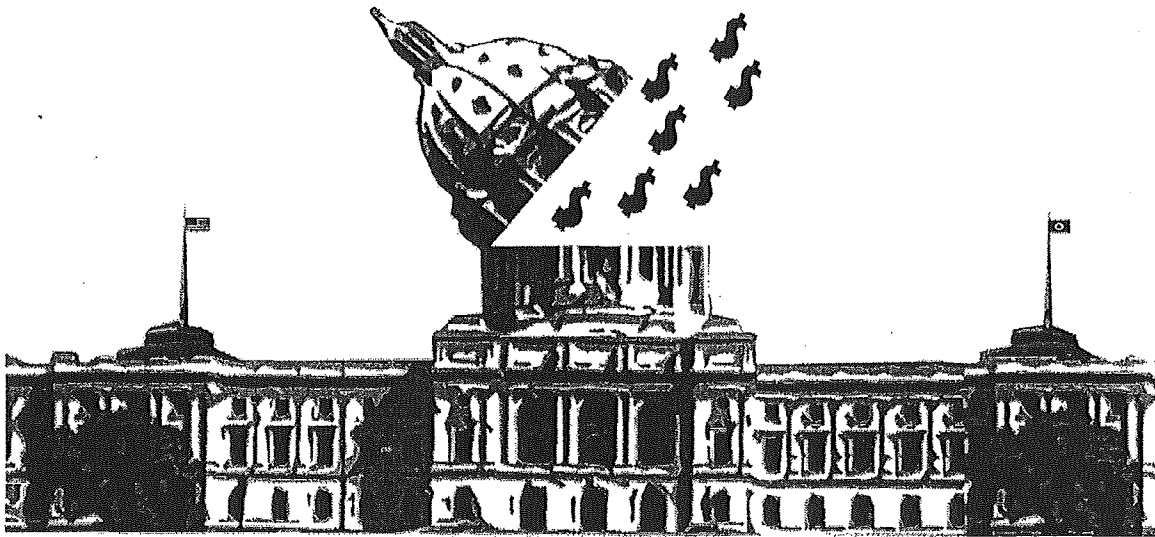


Tom Weaver
Regional Administrator

CC: Kathy Kardell, Assistant Commissioner, Minnesota Management and Budget Department

Enclosure: State of Minnesota Capital Grants Manual.

STATE OF MINNESOTA CAPITAL GRANTS MANUAL



**A step-by-step guide that describes what
grantees need to do to receive state capital
grant payments**

Prepared November 2002

TOTAL PROJECT FUNDING

This chapter applies to projects with total capital costs that exceed the state appropriation and require additional, non-state funding. The grantee must document that all project funding has been received or a legally binding commitment is in place. This information must be submitted to and approved by the state granting agency and the Department of Finance before the grant agreement can be executed and before the appropriation can be loaded into the state accounting system.

Grantees will typically be asked to document the total project cost (total capital costs) and identify the source and status of all non-state funding.

State agencies must process capital grants within the requirements of M.S. Section 16B.31, subd.2. This law reads in part, "No plan may be adopted, and no improvement made or building constructed by the commissioner or any other agency to whom an appropriation is made for a capital improvement, that contemplates the expenditure for its completion of more money than the appropriation for it, unless otherwise provided in this section or the act making the appropriation."

Bonding bills, appropriation bills, and other session laws commonly require non-state matching funds as a condition of receiving a capital appropriation. Bill language for these appropriations typically specify that the recipient may not receive a capital appropriation until the recipient has a commitment for or receipt of matching funds to complete project financing. Non-state funding may include federal, local and private funds.

In many cases, additional financing is needed to complete a project above and beyond the amount of the state appropriation plus matching requirements named in the appropriation bill. In these cases, the grantee must demonstrate that *all financing* is in place to complete the project.

For projects that will be owned, developed or managed by a political subdivision, non-state matching funds will not need to be deposited in the state treasury. Rather, the political subdivision must provide documentation that all non-state funds necessary to complete the project have been secured or are legally committed. The state agency making the grant will not sign a grant agreement or release funds until evidence of the availability of matching funds has been provided.

Grantees should understand that pledges, promises and I.O.U.'s do not qualify as legally binding commitments. Matching funds must be real and must be available before costs are incurred.

Federal Authorizations, Appropriations and Grant Letters

Federal funds can be documented through line items in approved federal budgets and grant award letters from federal agencies. Federal authorizations must be accompanied with corresponding budget appropriations and a grant award letter to be considered binding federal commitments.

Local Government Budgets and Resolutions

Local government funds can be documented through line items in approved local budgets or resolutions of support from local governing bodies. Although a resolution of the local governing board is not a legally binding commitment, the grantee must legally obligate such funds as part of the subsequent grant agreement.

Private Contributions, Loans and Letters of Credit

Private pledges that have been deposited into a segregated account can be documented through financial statements and reports. However, multi-year pledges that have not been received do not qualify as a legally binding commitment unless converted into cash or cash equivalent through a loan or irrevocable letter of credit from a third-party financial institution.

All capital funds must produce new or additional value in project assets. Loans or letters of credit supported by operating revenues rather than new contributions are not considered eligible matching funds because they do not improve the project balance sheet. In such cases, increased asset values on the balance sheet are offset by loan payable obligations.

Documentation for in-kind contributions, when permitted by law, must include the name of the contributor, a description of the contribution, and the details of how the amount of the in-kind contribution or service was determined. The value of land or buildings donated to a project should be included when estimating total project costs and may be considered as part of a matching contribution if used exclusively for the purpose of the new capital project. The value of contributed land or buildings should be documented through a qualified appraisal.

Qualified Capital Expenditures

State funds and non-state matching funds may only be used for qualified capital expenditures. *Non-qualified capital costs must be paid by the local government and do not count toward the local match.*

Documentation of total project funding must be provided to the state granting agency. Upon approval by the granting agency, the information should be forwarded to DOF by the granting agency with an appropriation entry form. Agencies should prepare all appropriation entry forms.

For further information, please refer to MAPS operating policies 0302-01, 0302-02, 0302-03 and 0302-04 (posted to the Department of Finance web site at www.finance.state.mn.us).

Questions regarding the requirements of this chapter can be forwarded to the granting agency or Lee Mehrkens of the Department of Finance at (651) 296-1700.

EXHIBIT 2

Documentation Demonstrating Total Project Funding
(Hypothetical Example)

Name of the Project: Johnstown Community Center
Total Project Costs (total capital costs): \$3.5 million

Funding Sources	Amount	Status
State funds	\$500,000	Authorized in the 2000 bonding bill (Laws of MN 2000, Chapter 492, Article 1, Section 90, subd. 5)
Federal funds	\$250,000	Grant award letter dated 6/15/00 from the U.S. Dept. of Housing and Urban Development
Local funds	\$1,500,000	Bond referendum approved by voters 11/4/00
	\$500,000	City Council Budget Resolution #xxx dated 12/31/00
Private funds	\$600,000	Received and deposited into city account # xxx-xx
	\$150,000	Irrevocable letter of credit dated 6/20/00 from Wells Fargo bank
Total Project Funding	\$3,500,000	

Copies of all documents demonstrating the funding sources described above must be provided to the granting agency, which will forward a copy of the information to the Department of Finance.

Enclosure 3

Grant SG-2006-120, the grant agreement between the Metropolitan Council and the Minneapolis Park & Recreation Board which contains the terms and conditions of the State bond financed grant

**GRANT AGREEMENT
BETWEEN THE METROPOLITAN COUNCIL AND
THE CITY OF MINNEAPOLIS
FOR RECREATION OPEN SPACE DEVELOPMENT**

Grantee:	The City of Minneapolis, acting by and through its Park and Recreation Board		SG-2006-120
Address:	Mike Kimble, Community and Government Relations Manager Planning and Project Management Division Minneapolis Park and Recreation Board 2117 West River Road Minneapolis, MN 55411		
Development Project:	Grant to the Minneapolis Park and Recreation Board to design, construct, furnish, and equip a new cultural and community center in the East Phillips neighborhood of Minneapolis.		
Grant Amount:	\$3,500,000.00	Council Action:	July 12, 2006
Council Bonds:	\$0.00		
State Bonds:	\$3,500,000.00		
Grant Period:	June 2, 2006 through December 31, 2009	Effective Date: Final execution by both parties.	
Grant Manager:	Jan Youngquist Metropolitan Council 390 North Robert Street St. Paul, MN 55101 (651) 602-1029 Jan.youngquist@metc.state.mn.us		

AGREEMENT

THIS AGREEMENT is made and entered into on the Effective Date by and between the Metropolitan Council (“the Council”) and the City of Minneapolis, acting by and through its Park and Recreation Board (“the Grantee”).

WHEREAS, the Council is authorized by Minnesota Statutes section 473.301 *et seq.* to make grants to eligible governmental units situated wholly or partly within the metropolitan area for the purpose of development of regional recreation open space in accord with the Council’s Recreation Open Space Policy Plan; and

WHEREAS, the Minnesota Legislature, by Minnesota Laws 2006, Chapter 258, Section 17, Subdivision 8, appropriated \$35,362,000 to the Council for the costs of improving and bettering the metropolitan regional parks system and for the costs of acquisition land by the Council and local government units for the metropolitan regional parks system consistent with the Council’s Regional Recreation Open Space Capital Improvement Plan (“State Bond Appropriation”); and

WHEREAS, the State Bond Appropriation earmarked \$3,500,000 to the Grantee for the development project listed above; and

WHEREAS, this Agreement is intended to pass through the State Bond Appropriation to the Grantee under the terms of this grant.

NOW, THEREFORE, the Council and the Grantee agree as follows:

I. DEFINITIONS

1.01 "Development Project" means the development described on the attached **Exhibit A**.

II. GRANT AMOUNT, GRANT PERIOD, AND PAYMENT OF PROCEEDS

2.01 Grant Amount. The Council agrees to make available to the Grantee during the grant period a grant of up to \$3,500,000.00 of which \$0.00 are Council bond proceeds and \$3,500,000.00 are proceeds from the State Bond Appropriation. This amount is granted for the purpose of performing the Development Project as set forth on **Exhibit A**. In no event will the Council's obligation under this agreement exceed the total grant amount. The Council shall bear no responsibility for any cost overruns that may be incurred by the Grantee in the performance of the Development Project.

2.02 Grant Period. The grant period shall commence on **June 2, 2006** and remain in full force and effect until **December 31, 2009**, or until all Grantee obligations set forth in this agreement have been satisfactorily fulfilled and the Grantee's final report is received and accepted by the Council, whichever occurs first. After that date, all grant funds that have not been expended shall revert to the Council.

2.03 Acknowledgment. The Grantee acknowledges that the proceeds from Appropriation 2 are from state bond proceeds and therefore the Project is subject to the requirements of Minnesota Statutes section 16A.695 and the Addition Provisions to the Grant Agreement, which are attached hereto and incorporated herein to this grant as **Exhibit B** ("the Additional Provisions"). The requirements in the Additional Provisions are in addition to and do not supplant requirements found elsewhere in this agreement. If any requirement in the Additional Provisions is inconsistent with a provision found elsewhere in this agreement and is irreconcilable with such provision, the requirement in the Additional Provisions shall prevail.

2.04 Requests for Reimbursement. To obtain reimbursement under this agreement, the Grantee shall provide the Council with evidence that the portion of the Project for which payment is requested has been satisfactorily completed. 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 is not to be construed as waiver by the Council of any Grantee noncompliance with this agreement.

The Grantee shall submit reimbursement requests to the Council's authorized contact person who will process the request and, if necessary, forward it to the Minnesota Department of Finance for final approval and disbursement of state appropriated funds to the Council. The Council will make payment to the Grantee only after receipt of funds from the Appropriation. The Grantee shall submit reimbursement requests to the Council once every three (3) months of

the grant period for grant eligible costs paid during the previous period. The Council will not approve requests for reimbursement unless the Grantee is current in its obligations for filing status reports to the Council as described in article V of this agreement.

All documentation of expenditures to be reimbursed out of Council bond proceeds shall be submitted in a form acceptable to the Council. The Council shall reimburse all grant eligible expenditures not in excess of the total amount of Council bond proceeds granted under this agreement within thirty (30) days of the receipt of satisfactory documentation from the Grantee. The documentation shall be subject to review and acceptance or rejection by the Council's Regional Administrator. Documentation shall be deemed to be accepted if it is not rejected in writing within ten (10) working days of receipt.

A final reimbursement request for this Project must be received by the Council's contact person by January 15, 2010. No facsimile transmissions of reimbursement requests will be accepted. Requests received after this date may not be eligible for reimbursement. No reimbursements will be awarded under this agreement for work done after December 31, 2009. If authorization for the Project is extended by the Legislature, or the council for the Council funded portion, this agreement and the Appropriations may not be canceled until the new expiration date.

2.05 Fund Requirement. The Grantee recognizes that this grant is funded entirely by State Bond proceeds. The Grantee acknowledges that Council payments of state-appropriated funds are contingent upon timely transfer of the funds to the Council from the State.

2.06 Declaration as to Use of State Bond Proceeds. When state bond proceeds are used to acquire or improve real property in whole or in part, the Grantee shall cause to be recorded in the official real estate title records maintained by the county recorder for the county in which the property is located, the following declaration:

The Property is bond financed property within the meaning of Minnesota Laws 1996, Chapter 463, Section 7, and cannot be sold, mortgaged, or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Minnesota Commissioner of Finance, which approval must be evidenced by a written statement signed by the Commissioner of Finance and attached to the deed, mortgage, or instrument used to sell, mortgage, or otherwise dispose of the Property.

Title to the property shall remain subject to this restriction until (i) the restriction has been fully complied with as evidenced by a written approval from the Minnesota Commissioner of Finance, or (ii) a written release, releasing the property from the restriction, signed by the Minnesota Commissioner of Finance, is recorded in the real estate records relating to the property. This declaration shall be made in substantially the form attached to this agreement as part of the Additional Provisions in **Exhibit B, Attachment I.**

The Council has the ability to withhold payment of the grant proceeds unless and until the Declaration has been filed with the county recorder for the county in which the property is located.

III. AUTHORIZED USE OF GRANT PROCEEDS

3.01 Use of Funds. The Grantee shall use the proceeds of this grant only for the eligible costs of the Development Project as described in this agreement and in the approved work program.

3.02 Project Specifications. The Development Project shall have a work program approved by the Council. This Work Program describes the work to be completed by the Grantee, the specific products that will be produced along with the date by which they will be delivered, and an estimate of the cost, including any training or other special costs associated with each product. All material changes to the work program must be approved by the Council's authorized contact person. The Grantee shall complete the Project in accordance with the approved work program and any additional work program amendments submitted to and approved by the Council's authorized contact person. The Council has relied on the Grantee's estimate of the total funds required to complete the Development Project. Without exception, the Grantee shall submit all deliverables or evidence that the deliverables have been satisfactorily completed to the Council's authorized contact person by December 31, 2009.

The Council may require the Grantee to supply additional specifications about the Development Project, including site plans, building specifications, research methodology, and detailed work schedules. These additional specifications are subject to approval by the Council. After completion of the Project, the Grantee shall certify to the Council that the Project, as conducted, conforms to these approved specifications.

3.03 Eligible Costs. Eligible costs are those costs directly incurred by the Grantee for Development Project activities that are solely related to and necessary for the completion of the Development Project, as described in the approved work program during the Appropriation period. Eligible costs may include the following, if specified in the work program:

- A. Expenditures incurred only after the effective date of this agreement.
- B. Capital expenditures for facilities, equipment, and other capital assets as expressly approved in the work program.
- C. Computer, if unique to the project and specifically approved by the Council.
- D. Materials and supplies and incoming freight charges for them.
- E. Publication and printing costs (including the processes of composition, plate-making, press work, and binding, and the end products produced) necessary for contract administration; work products production; and biennial reports relating to work program accomplishments.
- F. Transportation and travel expenses such as lodging, meals, and mileage of personnel involved in the Development Project in the same manner and in no greater amount than provided for in the current "Commissioner's Plan" promulgated by the Minnesota Commissioner of Employee Relations, found at <http://www.doer.state.mn.us/lr-cmrpl/lr-cmrpl/lr-cmrpl.htm>, and shown on **Exhibit C**. Allowable meal and lodging expenses are for employees only. Purchasing meals for others is not an allowable expense. All out of state travel must be explicitly approved in the work program.
- G. Wages and expenses of salaried Grantee employees if specified and documented in the work program.

- H. Fringe benefit costs of the Grantee's employees, limited to salary, FICA/Medicare, retirement, and health insurance of Grantee's employees if specified in the work program.
- I. Professional services specified in the approved work program that are rendered by individuals and organizations not a part of the Grantee.
- J. Expenditures incurred after the effective date of the approved work program and before the effective date of this agreement.

3.04 Non-Eligible Costs. The Grantee shall not be reimbursed for non-eligible costs. Any cost not defined as an eligible cost or not included in the approved work program or approved in writing by the Council is a non-eligible cost, including but not limited to the following:

- A. Any costs incurred before the project appropriation is authorized, or work program approval, whichever is later.
- B. Fund raising.
- C. Taxes, except sales tax on goods and services.
- D. Insurance, except title insurance.
- E. Attorney fees, except for acquisition and clearing title to land.
- F. Loans, grants, or subsidies to persons or entities for development.
- G. Bad debts, late payment fees, finance charges or contingency funds, interest, investment management fees.
- H. Lobbyists, political contributions.
- I. Memberships (including subscriptions and dues).
- J. Indirect costs (such as office maintenance, office utility costs, refreshments for staff, decorations, office materials and supplies).
- K. Directors or officers salary.
- L. Office rental fees (including storage space rental).
- M. Publications and periodicals.
- N. Merit awards and bonuses.
- O. Employee worksite parking.
- P. Entertainment, gifts and prizes, food and refreshments.
- Q. Communication costs incurred for telephone calls, cell phones, personal data assistants.
- R. Computers (unless unique to the project and specifically approved in the work program).

3.05 Administration and Supervision. The Grantee shall be responsible for the administration, supervision, management, and oversight of the Project that may be required for the work performed under this agreement. The Grantee may employ such professional services as it deems reasonable and necessary to provide these services, subject to the provisions of paragraphs 3.03 and 3.04. The Grantee or anyone providing these professional services is responsible for adhering to all provisions of paragraphs 3.03 and 3.04.

3.06 Purchase of Recycled and Recyclable Materials. The Grantee shall use the funds granted under this agreement in compliance with Minnesota Statutes sections 16B.121 to 16B.123 requiring the purchase of recycled, repairable, and durable materials, the purchase of uncoated paper stock, and the use of soy-based ink, the same as if it were a state agency. The

Grantee shall ensure that all contractors paid with funds reimbursed under this agreement comply with this requirement. Any deliverables submitted to the Council will be rejected if not in compliance and the reports will be deemed late or unacceptable.

IV. ACCOUNTING, RECORD, AND AUDIT REQUIREMENTS

4.01 Separate Account. The Grantee agrees to establish and maintain a separate account for the Development Project and to maintain accurate and complete records and accounts relating to the receipt and expenditure of any and all grant funds. Such accounts and records shall be kept and maintained for a period of at least twenty (20) years following the expiration of the grant or such shorter period as may be specified in writing by the Council at the expiration of the grant period.

4.02 Audit. The above accounts and records of the Grantee shall be audited in the same manner as other accounts and records of the Grantee and may be audited and/or inspected on the Grantee's premises or otherwise by individuals designated or authorized by the Council at any time following reasonable notification during the grant period and for a period of twenty (20) years thereafter.

V. REPORTS

5.01 Reimbursement Request/Progress Reports. To obtain Reimbursement under this agreement, the Grantee shall submit a Reimbursement Request/Progress Report on forms provided by the Council. Reimbursement Request/Progress Reports may be submitted once per month, but must be submitted at least semi-annually by December 1 and June 1 of each calendar year of the grant period. The Grantee shall describe the financial, construction, and consulting activities undertaken in connection with the grant and shall provide sufficient documentation of grant eligible expenditures and such other information as the Council's staff reasonably requests.

5.02 Final Report. Within two (2) months following the expiration of the grant period, the Grantee shall submit a final report in a format determined by the Council, detailing total Development Project receipts and expenditures, summarizing all Development Project activity, and containing a certification by the Grantee's chief financial officer that all grant funds were expended in accordance with this agreement.

VI. GENERAL CONDITIONS

6.01 Consultation. The Grantee agrees specifically to review and solicit recommendations and advice from the Council's staff at the earliest possible time if and when the Grantee expects that the following will or may occur:

- A. The costs for any portion of the Development Project will be higher than the Grantee's projected costs for that portion of the Development Project; or
- B. The total cost of the Development Project will exceed the total grant award.

6.02 Compliance With Law. The Grantee agrees to comply with restrictions regarding the use of grant proceeds contained in Minnesota Statutes section 473.301 *et seq.*, and with the

provisions of all applicable state and federal laws, including those laws pertaining to the use of bond proceeds. This grant is financed with bonds issued in accordance with Federal arbitrage restrictions. The Grantee will not use the grant funds in any way which would cause the bonds to be classified as "Arbitrage Bonds" under Section 148 of the Internal Revenue Code. The Grantee will not take any action that would adversely affect the exemption from federal income taxation of the bonds or omit to take any action necessary to maintain such tax exempt status. Further, the Grantee agrees that it is the Grantee's obligation and responsibility, and not the Council's, to comply with all other laws, regulations, and rules relating to activities undertaken in performing the Development Project.

6.03 Maximum Use of Other Funds. If the Grantee at any time receives funding or reimbursement from another source for amounts charged by the Grantee against this grant, such funds charged against this grant shall be immediately refunded to the Council upon discovery of the duplicate funding or reimbursement.

6.04 Liability. Each party agrees that it 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 the other party and the results thereof. The Council's liability shall be governed by the Minnesota Municipal Tort Claims Act, Minnesota Statutes chapter 466, and other applicable law.

6.05 Revenue. All revenue generated from or by the Park shall be used by the Grantee only as provided in the Policy Plan. Revenue from recreational uses may be used by the Grantee for any park-related purposes. Revenue from nonrecreational uses of the Park or on land acquired with regional grant funds must be used for land stewardship or for the capital costs of providing regional recreation opportunities. By March 31, 2007, and by March 31 of each year thereafter, the Grantee shall make a written report to the Council detailing all revenue generated from nonrecreational use of the Park during the preceding calendar year, if such revenue exceeds the threshold amount set by the Council. The Grantee shall return to the Council all nonrecreation revenue that is not expended by December 31 of the year following the year in which it was generated.

6.06 Amendments. The terms of this agreement may be changed by mutual agreement of the parties. Changes shall be effective only upon execution of written amendment(s) signed by authorized representatives of the Council and the Grantee.

6.07 Equal Opportunity; Affirmative Action. The Grantee agrees to comply with all applicable laws, rules, and regulations relating to nondiscrimination and affirmative action in public purchase, involvement, and use. In particular, the Grantee agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, national origin, marital status, disability, status with regard to public assistance, membership or activity in a local civil rights commission, or age, and to take affirmative action to insure that 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. In addition, the Grantee agrees to include affirmative action and equal employment provisions in any written contract entered into after the date of execution of this agreement which involves the provision of work or services which will be paid for in whole or in part out of the grant proceeds.

6.08 Permits, Bonds, and Approvals. The Grantee is responsible for obtaining all applicable local and state licenses, permits, bonds, and authorizations necessary for performing the Development Project.

6.09 Acknowledgments. The Grantee shall appropriately acknowledge the financial assistance provided by the Council in any promotional materials, press releases, reports, and publications relating to the Development Project. Upon completion of the Development Project, the Grantee must post a permanent funding acknowledgement sign in a conspicuous location at the site, including language similar to the following:

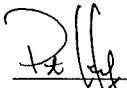
Funding for this project was provided through a regional recreation open space grant funded by the Metropolitan Council.

6.11 Termination. This agreement may be terminated by the Council upon thirty (30) days' written notice in the event of a default by the Grantee or in the event the Legislature rescinds the Appropriation. In the event of such a cancellation, the Grantee shall be entitled to payment determined on a pro rata basis for work or services satisfactorily performed.

6.12 Jurisdiction and Venue. Venue for all legal proceedings arising out of this grant agreement, or breach of this grant agreement, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

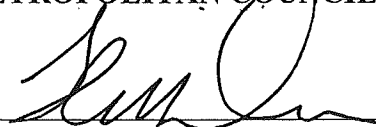
IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on or as of the date first above written.

Approved as to form



Office of General Counsel


METROPOLITAN COUNCIL

By 

Regional Administrator

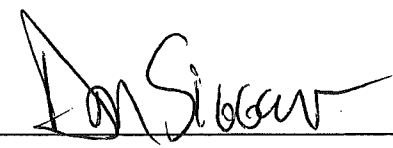
Date 10-23-06

THE CITY OF MINNEAPOLIS, ACTING BY AND THROUGH ITS PARK AND RECREATION BOARD

By: 

Its: President

Date 10/02/06

By: 

Its: Secretary

Date 9/29/06

LIST OF EXHIBITS

- A. Development Project**
- B. GO Bond Proceeds - Additional Provisions**
- C. Plan Travel Allowances**

Exhibit A
Development Project

Grant to the Minneapolis Park and Recreation Board to design, construct, furnish, and equip a new cultural and community center in the East Phillips neighborhood of Minneapolis.

EXHIBIT B
GO Bond Proceeds
Additional Provisions

GENERAL OBLIGATION BOND PROCEEDS

ADDITIONAL PROVISIONS
TO GRANT AGREEMENT

TABLE OF CONTENTS

ARTICLE I-DEFINITIONS

Section 1.01 - Defined Terms	1
------------------------------	---

ARTICLE II - GRANT

Section 2.01 - Use of Grant Proceeds	3
Section 2.02 - Operation of the Real Property and Facility	3
Section 2.03 - Public Entity Representations and Warranties	4
Section 2.04 - Event(s) of Default	6
Section 2.05 - Remedies	7
Section 2.06 - Notification of Event of Default	7
Section 2.07 - Termination/Modification of Grant	8
Section 2.08 - Effect of Event of Default	8

ARTICLE III - USE CONTRACT AND SALE

Section 3.01 - Use Contracts	9
Section 3.02 - Receipt of Monies Under a Use Contract	10
Section 3.03 - Sale	10
Section 3.04 - Proceeds of a Sale	11

ARTICLE IV - COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 4.01 - State Bond Financed Property	11
Section 4.02 - Preservation of Tax Exempt Status	12
Section 4.03 - Changes to G.O. Compliance Legislation or the Commissioner's Order	12

ARTICLE V- -DISBURSEMENT OF GRANT PROCEEDS

Section 5.01 - The Advances	12
Section 5.02 - Draw Requisitions	13
Section 5.03 - Additional Funds from Borrower	13
Section 5.04 - Condition Precedent to Any Advance	14
Section 5.05 - Construction Inspections	16

ARTICLE VI - MISCELLANEOUS

Section 6.01 - Insurance	16
Section 6.02 - Condemnation	17
Section 6.03 - Use, Maintenance, Repair and Alterations.	18
Section 6.04 - Records Keeping and Reporting	18
Section 6.05 - Inspection of Facility After Completion	19
Section 6.06 - Data Practices	19
Section 6.07 - Non-Discrimination	19
Section 6.08 - Worker's Compensation	19
Section 6.09 - Antitrust Claims	19
Section 6.10 - Review of Plans and Cost Estimates	20
Section 6.11 - Prevailing Wages	21
Section 6.12 - Liability	21
Section 6.13 - Indemnification by the Public Entity	21

Section 6.14 - Relationship of the Parties	22
Section 6.15 - Notices	22
Section 6.16 - Binding Effect and Assignment or Modification	23
Section 6.17 - Waiver	23
Section 6.18 - Entire Agreement	24
Section 6.19 - Choice of Law and Venue	24
Section 6.20 - Severability	24
Section 6.21 - Time of Essence	24
Section 6.22 - Counterparts	24
Section 6.23 - Matching Funds	24
Section 6.24 - Third-Party Beneficiary	24
Section 6.25 - Applicability to Real Property and Facility	24
Attachment I - DECLARATION	25
Attachment II - LEGAL DESCRIPTION	26

GENERAL OBLIGATION BOND PROCEEDS
ADDITIONAL GRANT AGREEMENT PROVISIONS

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 V hereof.

"Agreement" - means this General Obligation Bond Proceeds Grant Agreement End Grant for the Grantee Project.

"Architect", if any - means _____, 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 Finance" - means the State of Minnesota acting through its Commissioner of Finance, and any designated representatives thereof.

"Commissioner's Order" - means that certain "Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" executed by the Commissioner of Finance on July 20, 1995.

"Completion Date" - means _____ the date of projected completion of the Project as specified in the Construction Contract Documents.

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

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

"Declaration" - means a declaration, or declarations, in the form as Attachment I to this Agreement and all amendments thereto, indicating that the Public Entity's interest in the Real Property and, if applicable, the 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, will submit to the State Entity when an Advance is requested, and which is referred to in Section 5.02.

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

"Facility", if applicable, - means _____, which is located, or will be constructed and located, on the Real Property.

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

"G.O. Bonds" - means 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 Grant or any bonds issued to refund or replace such bonds.

"G.O. Compliance Legislation" - means Minn. Stat. § 16A.695 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

"Grant" - means a grant of monies from the State Entity to the Public Entity in an amount of \$_____.

"Inspecting Engineer", if any - means the State Entity's construction inspector, or its designated consulting engineer.

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

"Public Entity" - means the Grantee.

"Real Property" - means the real property located in the County of _____, State of Minnesota, legally described in Attachment II to this Agreement.

"State Entity" - means the Grantor.

"Use Contract" - means a lease, management contract or other similar contract between Public Entity and any other entity, and which involves or relates to the Real Property and, if applicable, the Facility.

"Usee" - means any entity with which the Public Entity contracts under a Use Contract.

Article II
GRANT

Section 2.01 Use of Grant Proceeds. The Public Entity shall use the Grant solely to reimburse itself for expenditures it has already made, or will make, in the performance of the following activities:

(Check all appropriate boxes.)

- Acquisition of fee simple title to the Real Property;
- Acquisition of a leasehold interest in the Real Property;
- Acquisition of an easement on the Real Property;
- Improvement of the Real Property,
- Acquisition of the Facility,
- Improvement of the Facility,
- Renovation or rehabilitation of the Facility,
- Construction of the Facility, or
- _____ «15»

Section 2.02 Operation of the Real Property and Facility. The Public Entity shall operate the Real Property and, if applicable, the Facility, or cause it to be operated, as ____, or for such other use as the Minnesota legislature may from time to time designate, and may enter into Use Contracts with Uses to so operate the Real Property and, if applicable, the Facility; provided that such Use Contracts must have been approved, in writing, by the State Entity and the Commissioner of Finance and fully comply with all of the provisions contained in Section 3.01. The Public Entity shall also annually determine that the Real Property and, if applicable, the Facility are being so used, and shall annually supply a statement, sworn to before a notary public, to such effect to both the State Entity and the Commissioner of Finance.

For those programs, if any, that the Public Entity will directly operate on the Real Property and, if applicable, in the 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 will be equal to or greater than forecast program expenses for the next fiscal year, and will supply to the State Entity and the Department of Finance certified copies of such resolution and budget.

For those programs, if any, that will be operated on the Real Property and, if applicable, in the Facility, by a Usee 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 Usee has demonstrated that it has the ability and a plan to fund such program, (ii) it will require the Usee to provide an initial and annual program budgets that clearly show that forecast program revenues will be equal to or greater than forecast program expenses for the next 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 will be equal to or greater than forecast program expenses for the next 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 will be equal to or greater than forecast program expenses, and require the Usee 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 will be equal to or greater than forecast program expenses, it will approve such budget by resolution and supply to both the State Entity and the Commissioner of Finance certified copies of such resolution and budget.

Section 2.03 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. 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.

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

D. It will comply with all of the provisions and requirements contained in the G.O. Compliance Legislation and the Commissioner's Order.

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

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

G. 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.

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

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

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

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

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

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

(Check the appropriate box.)

- Fee simple title to the Real Property, and if applicable, the Facility;
- A lease on the Real Property, in form and substance acceptable to the State Entity, for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity, and, if applicable, either fee simple title to the Facility or a lease therefore for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity; or
- An easement on the Real Property, in form and substance acceptable to the

— State Entity, for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity, and, if applicable, either fee simple title to the Facility or a lease therefore for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity;

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

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

O. It has complied with the matching funds requirement, if any, contained in Section 6.23.

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

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

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

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

T. It will furnish to the State Entity as soon as possible and in any event within 7 calendar days after the Public Entity 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.

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

Section 2.04 Event(s) of Default. The following events shall, unless waived in writing by both the State Entity and the Commissioner of Finance, constitute an Event of Default under this Agreement upon either the State

Entity or the Commissioner of Finance giving the Public Entity 30 days written notice of such event, and 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. Notwithstanding the foregoing, any of the following events that cannot be cured shall, unless waived in writing by both the State Entity and the Commissioner of Finance, constitute an Event of Default under this Agreement immediately upon either the State Entity or the Commissioner of Finance giving the Public Entity written notice of such event.

A. If any representation, covenant, or warranty made by the Public Entity herein, in any Draw Requisition, or in any other document furnished pursuant to this Agreement, or in order to induce the State Entity to make any Advance, 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 or the Commissioner's Order.

Section 2.05 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 Finance may enforce any or all of the following remedies.

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

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

C. Either the State Entity or the Commissioner of Finance, 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 Finance would otherwise possess.

If the Public Entity does not repay any portion of the amount specified in Section 2.06.B within 30 days of demand by either the State Entity or the Commissioner of Finance, 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 2.06 Notification of Event of Default. The Public Entity shall furnish to both the State Entity and the Commissioner of Finance, as soon as possible and in any event within 7 calendar days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Public Entity proposes to take with respect thereto.

Section 2.07 Termination/Modification of Grant. If the Project is not started on or before _____, __, or such later date to which the Grant Recipient and the State Entity may agree in writing, then, the State Entity's obligation to fund the Grant shall terminate, and, in such event, (i) if none of the Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (ii) if some but not all of the Grant has been disbursed by such date then the State shall have no further obligation to provide any additional funding for the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date.

In addition, if all of the Grant has not been disbursed on or before the date that is 5 years from the effective date of this Agreement, or such later date as the Public Entity and the State Entity may agree to in writing, then the State Entity's obligation to continue to fund the Grant shall terminate, and, in such event, (y) if none of the Grant has been disbursed by such date then the State Entity's obligation to fund any portion of the Grant shall terminate and this Agreement shall also terminate and no longer be of any force or effect, and (z) if some but not all of the Grant has been disbursed by such date then the State Entity shall have no further obligation to provide any additional funding under the Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the Grant that was actually disbursed as of such date.

This Agreement shall also terminate and no longer be of any force or effect upon (a) the termination of the Public Entity's leasehold or easement interest in the Real Property in accordance with the terms of such lease or easement, or (b) the sale of the Public Entity's interest in the Real Property and, if applicable, the Facility in accordance with the provisions contained in Section 3.03 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of Finance in compliance with the provisions contained in Section 3.04. Upon such termination the State Entity shall execute and deliver to the Public Entity such documents as are required to release the Real Property and, if applicable, the Facility, from the effect of the Declaration.

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

Section 2.08 Effect of Event of Default. If an Event of Default occurs and the Public Entity is required to and does return the amount specified in

Section 2.05.B to the Commissioner of Finance, then the following shall occur.

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

B. The amount returned by the Public Entity shall be credited against any amount that shall be due to the Commissioner of Finance under Section 3.04 and against any amount that becomes due and payable because of any other Event of Default.

Article III USE CONTRACTS AND SALE

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

A. The purpose for which the Use Contract was entered into must be a governmental purpose.

B. It must contain a provision setting forth the statutory authority under which the Public Entity is entering the Use Contract, and must comply with the substantive and procedural provisions of such statute.

C. It must contain a provision stating that the Use Contract is being entered into in order to carry out the purpose for which the Grant was allocated, and must recite the purpose.

D. It must be for a term, including any renewals that are solely at the option of the Usee, that is, if applicable, substantially less than the useful life of the structures and improvements that make up the Facility, but may allow for renewals beyond the original term upon a determination by the Public Entity that the use continues to carry out the specific purpose for which the Grant was allocated. A term that is equal to or shorter than 50% of the useful life of the structures and improvements that make up the Facility will meet the requirement that it be for a time period that is substantially shorter than the useful life of such structures and improvements.

E. It must 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 Usee to provide to the Public Entity; (i) an initial program evaluation report, and (ii) a program budget, at least annually, showing forecast program revenues and expenses for the next fiscal year.

F. It must allow for termination by the Public Entity in the event of a default thereunder by the Usee, or in the event that the specific purpose for which the Grant was allocated is terminated or changed.

G. It must require the Usee to pay all costs of operation and maintenance of the Real Property and, if applicable, the Facility, unless the Public Entity is authorized by law to pay such costs and agrees to pay such costs.

H. If any monies are to be paid to the Public Entity under the Use Contract, then it must contain a provision requiring that each and every

party thereto shall, upon direction by the Commissioner of Finance, take such actions and furnish such documents to the Commissioner of Finance as the commissioner determines to be necessary to ensure that the interest to be paid on the G.O. Bonds is exempt from federal income taxation.

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

J. If the amount of the Grant exceeds \$200,000.00, then it must contain a provision requiring the Usee to list any vacant or new positions it may have with job services of the Commissioner of Employment and Economic Development for the State of Minnesota, or the local service units, as required by Minn. Stat. § 268.66 Subd. 1 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the term of the Use Contract.

Section 3.02 Receipt of Monies Under a Use Contract. If the Public Entity receives any monies under a Use Contract, then a portion of such monies in excess of the amount the Public Entity needs and is authorized to use to pay the operating expenses of the Real Property and, if applicable, the Facility, or to pay the principal, interest, redemption premiums, and other expenses on debt related to the Real Property and, if applicable, the Facility, other than the debt on the G.O. Bonds and debt for which the Public Entity has no financial liability, must be paid by the Public Entity to the Commissioner of Finance. The portion of such excess monies that the Public Entity shall pay to the Commissioner of Finance shall be determined by the Commissioner of Finance and absent circumstances which would indicate otherwise such portion shall be determined by multiplying such excess amount by a fraction the numerator of which is the amount of G.O. Bonds and the denominator of which is the total principal amount of all public debt financing incurred with respect to the Real Property and, if applicable, the Facility other than public debt issued by a public entity for which it has no financial liability.

Section 3.03 Sale. The Public Entity shall not sell its interest in the Real Property or, if applicable, the Facility unless all of the following provisions have been complied with fully.

- A. The Public Entity determines, by official action, that it is no longer usable or needed as _____.
- 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 Finance has been obtained.

The acquisition of the Public Entity's interest in the Real Property and, if applicable, the Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation of thereof, by a lender that has provided monies for the acquisition of the Public Entity's interest in or betterment of the Real Property and, if applicable, the Facility shall not be considered a sale for the purposes of this Agreement if after such

acquisition the lender operates the Real Property and, if applicable, the Facility in a manner which is not inconsistent with the program specified in Section 2.03 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and, if applicable, the Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 3.04.

Section 3.04 Proceeds of a Sale. Upon the sale of the Public Entity's interest in the Real Property and, if applicable, the Facility the net proceeds thereof shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of Finance in an amount equal to the amount of the Grant actually disbursed, and if the amount of such net proceeds shall be less than the amount of the Grant actually disbursed then all of such net proceeds shall be distributed to the Commissioner of Finance.

B. The remaining portion, after the distribution specified in Section 3.04.A, shall be distributed to pay in full any outstanding public or private debt incurred to acquire the Public Entity's interest in or for the betterment of the Real Property and, if applicable, the Facility in the order of priority of such debt.

C. The remaining portion, after the distributions specified in Sections 3.04.A and B, shall be divided and distributed in proportion to the shares contributed to the acquisition of the Public Entity's interest in or for the betterment of the Real Property and, if applicable, the Facilities by public and private entities, including the State Entity but not including any private entity that has been paid in full, that supplied funds in either real monies or like kind contributions for such acquisition and betterment, and the State Entity's distribution shall be made to the Commissioner of Finance. Such public and private entities may agree amongst themselves as to any redistribution of such distributed funds.

The Public Entity shall not be required to pay or reimburse the State Entity 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 Grant actually disbursed.

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

Section 4.01 State Bond Financed Property. The Public Entity and the State Entity acknowledge and agree that the Public Entity's interest in the Real Property and, if applicable, the Facility is "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 to the Public Entity's interest in the Real Property and, if applicable, the Facility and any Use Contracts relating thereto.

Section 4.02 Preservation of Tax Exempt Status. In order to preserve the tax-exempt status of the G.O. Bonds, the Public Entity agrees that during the time period that any G.O. Bonds are outstanding and unpaid:

A. It will not use the Real Property and, if applicable, the Facility, or use or invest the 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 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 Finance all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof.

D. It will, upon direction from the Commissioner of Finance, take such actions and furnish such documents as the Commissioner of Finance 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 Procedures 93-19 and 97-13, or (iii) compliance with Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

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

Section 4.03 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 which reduces any requirement imposed against the Public Entity, or if the Public Entity's interest in the Real Property and, if applicable, the 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 interest in the Real Property and, if applicable, the Facility from the G.O. Compliance Legislation or the Commissioner's Order.

Article V DISBURSEMENT OF GRANT PROCEEDS

Section 5.01 The Advances. The State Entity agrees, on the terms and subject to the conditions set forth herein, to make Advances from the Grant to the Public Entity from time to time in an aggregate total amount equal to the amount of the Grant. Provided, however, in accordance with the provisions contained in Section 2.08, the State Entity's obligation to make

Advances shall terminate as of the date which occurs 5 years from the effective date of this Agreement even if all of the Grant has not been disbursed by such date.

Section 5.02 Draw Requisitions. Whenever the Public Entity desires a disbursement of a portion of the Grant, which shall be no more often than once each calendar month, the Public Entity shall submit to the State Entity a Draw Requisition duly executed on behalf of the Public Entity or its designee. Each Draw Requisition shall be submitted on or between the 1st day and the 15th day of the month in which an Advance is requested, and shall be submitted at least 7 calendar days before the date the Advance is desired. Each Draw Requisition with respect to construction items shall be limited to amounts equal to; (i) the total value of the classes of the work by percentage of completion as approved by the Public Entity and the State Entity, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Project site 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 Project site 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 substantial completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Project 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 5.03 Additional Funds from Borrower. If the State Entity shall at any time in good faith determine that the sum of the undisbursed amount of the Grant plus the amount of all other funds committed to the completion of the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, then the 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 5.04 Condition Precedent to Any Advance. The obligation of the State Entity to make any Advance hereunder (including the initial Advance) shall be subject to the following conditions precedent:

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

B. The State Entity shall have received a duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed thereon.

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 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 6.23.

F. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, showing that the Public Entity currently possesses or will use the Grant to acquire either; (i) fee simple title to the Real Property and, if applicable, fee simple title to the Facility, (ii) a lease of the Real Property, in form and substance acceptable to the State Entity, for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity, and, if applicable, either fee simple title to the Facility or a lease thereof for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity, or (iii) an easement on the Real Property, in form and substance acceptable to the State Entity, for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity, and, if applicable, either fee simple title to the Facility or a lease thereof for a term of at least 50 years which cannot be prematurely cancelled or terminated without the prior written consent of the State Entity.

G. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that the Real Property and, if applicable, the Facility and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and

requirements imposed by applicable zoning ordinances or regulations, and have been duly approved by the applicable municipal or governmental authorities having jurisdiction.

H. The 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 completion of the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The 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, the Facility in the manner specified in Section 2.03 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The 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, the Facility to be operated in the manner specified in Section 2.03.

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

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

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

N. The State Entity shall have received evidence, in form and substance acceptable to the State Entity, that that the policies of insurance required under Section 6.01 are in full force and effect.

O. 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 6.10 and all additional applicable provisions and requirements contained in Minn. Stat. § 16B.335

that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time. Such evidence shall include, but not be limited to, evidence that; (i) the predesign package referred to in Section 6.10.B has 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 6.10.C have received a recommendation by the Chairs of the Minnesota State Senate Finance Committee and Minnesota House of Representatives Ways and Means Committee, and (iii) the Chair of the Minnesota House of Representatives Capital Investment Committee has been notified pursuant to Section 6.10.G.

P. No determination shall have been made by the State Entity that the amount of funds committed to the completion of the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Project, or if such a determination has been made and notice thereof sent to the Public Entity then the Public Entity has supplied or has caused some other entity to supply the necessary funds in accordance with Section 5.03, or to provide evidence acceptable to the State Entity that sufficient funds are available.

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

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

Section 5.05 Construction Inspections. The Public Entity and the Architect, if any, shall be responsible for making their own inspections and observations of the Project, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the applicable contracts with such Contractors. If any work done or materials supplied by a Contractor are not satisfactory to the 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 may conduct such inspections of the Project 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 are made and all certificates issued by the Inspecting Engineer will be issued solely for the benefit and protection of the State Entity, and the Public Entity will not rely thereon.

Article VI MISCELLANEOUS

Section 6.01 Insurance. The Public Entity shall maintain or cause to be maintained builders risk insurance and fire and extended coverage insurance on the Facility, if such exists, in an amount equal to the full insurable value thereof, and shall name the State Entity as loss payee thereunder. If damages which are covered by such required insurance occurs to the Facility, if such exists, then the Public Entity shall, at its sole option and discretion, either; (i) use or cause the insurance proceeds to be used to

fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (ii) sell its interest in the Real Property and the damaged Facility, if such exists, in accordance with the provisions contained in Section 3.03. If the Public Entity elects to only partially repair such damage, then the portion of the insurance proceeds which are not used for such repair shall be applied in accordance with the provisions contained in Section 3.04 as if the Public Entity's interest in the Real Property and Facility, if such exists, had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.04 upon the ultimate sale of the Public Entity's interest in the Real Property and Facility, if such exists. If the Public Entity elects to sell its interest in the Real Property and the damaged Facility, if such exists, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 3.04, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Public Entity.

As loss payee under the insurance required herein 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 6.01 imposes upon the Public Entity as to the use of such insurance proceeds.

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

At the written request of either the State Entity or the Commissioner of Finance, 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.

Section 6.02 Condemnation. If all or any portion of the Real Property and, if applicable, the Facility is condemned to an extent that the Public Entity can no longer comply with the provisions contained in Section 2.03, 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 2.03 and, if applicable, to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its interest in the Real Property and, if applicable, the Facility in accordance with the provisions contained in Section 3.03. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore, if applicable, the Facility shall be applied in accordance with the provisions contained in Section 3.04 as if the Public Entity's interest in the Real Property and, if applicable, the Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 3.04 upon the ultimate sale of the Public Entity's interest in the Real Property and, if applicable, the Facility. If the Public Entity elects to sell its interest in the portion of the Real Property and, if applicable, the Facility that remains after the condemnation, then such sale must occur within a reasonable time period from

the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 3.04, 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 which this Section 6.02 imposes upon the Public Entity as to the use of such condemnation awards or proceeds.

Section 6.03. Use, Maintenance, Repair and Alterations. The Public Entity shall not, without the written consent of both the State Entity and the Commissioner of Finance, permit or suffer the use of any of the Real Property and, if applicable, the Facility, for any purpose other than the use for which the same is intended as of the effective date of this Agreement. In addition, the Public Entity; (i) shall keep the Real Property and, if applicable, the Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) shall not, without the written consent of both the State Entity and the Commissioner of Finance, remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the Facility, if applicable, (iii) shall not do any act or thing which would unduly impair or depreciate the value of the Real Property and, if applicable, the Facility, (iv) shall not abandon the Real Property and, if applicable, the Facility, (v) shall complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility, if applicable, which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (vi) shall comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real Property and, if applicable, the Facility, or any part thereof, or requiring any alterations or improvements thereto, (vii) shall not commit or permit any waste or deterioration of the Real Property and, if applicable, the Facility, (viii) shall keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (ix) shall comply with the provisions of any lease if the Public Entity's interest in the Real Property and, if applicable, the Facility, is a leasehold interest, (x) shall comply with the provisions of any condominium documents if the Real Property and, if applicable, the Facility, is part of a condominium regime, (xi) shall not remove any fixtures or personal property from the Real Property and, if applicable, the Facility, that was paid for with the proceeds of the Grant unless the same are immediately replaced with like property of at least equal value and utility, and (xii) shall not commit, suffer or permit any act to be done in or upon the Real Property and, if applicable, the Facility, in violation of any law, ordinance or regulation.

Section 6.04 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 completion of the Project and operation of the Real Property and, if applicable, the Facility, and compliance with the requirements contained in this Agreement, the G.O. Compliance Legislation, and the Commissioner's Order, 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 its books, records, papers, or other documents relevant to the Grant. The Public Entity shall use or cause the entity which is maintaining such books and records to use generally accepted accounting principles in the maintenance of such books and records, and shall retain or cause to be retained all of such books, records, documents and other evidence for a period of 6 years from the date that the Project is fully completed and placed into operation.

Section 6.05 Inspection of Facility After Completion. Upon reasonable request by the State Entity 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, the Facility to allow, the State Entity to inspect the Real Property and, if applicable, the Facility.

Section 6.06 Data Practices. The Public Entity agrees with respect to any data that it possesses regarding the Grant, the Project, or the Real Property and, if applicable, the Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 6.07 Non-Discrimination. The Public Entity agrees to not engage in discriminatory employment practices in the completion of the Project, or operation or management of the Real Property and, if applicable, the Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Minn. Stat. §§ 363.03 & 181.59 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 6.08 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 & 176.182 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, with respect to the completion of the Project, and the operation or management of the Real Property and, if applicable, the Facility.

Section 6.09 Antitrust Claims. The Public Entity hereby assigns to the State Entity and the Commissioner of Finance all claims it may have for over charges as to goods or services provided in its completion of the Project, and operation or management of the Real Property and, if applicable, the Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 6.10 Review of Plans and Cost Estimates. The Public Entity agrees to comply with all applicable provisions and requirements contained in Minn. Stat. § 16B.335 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, for the Project, and in accordance therewith the Public Entity and the State Entity agree 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 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

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

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

D. The Public Entity must notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee of any significant changes to the program plan and cost estimates referred to in Section 6.10.C.

E. The program plan and cost estimates referred to in Section 6.10.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 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, and all rules adopted thereunder.

F. If any of the Grant is to be used for the construction or remodeling of the Facility, then both the predesign package referred to in Section 6.10.B and the program plan and cost estimates referred to in Section 6.10.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 where such provisions are deemed necessary by the Information Policy Office of the Department of Administration for the State of Minnesota.

G. If the Project does not involve the construction of a new building, substantial addition to an existing building, substantial

change to the interior configuration of an existing building, or the acquisition of an interest in land, then prior to beginning work on the Project the Public Entity shall just notify the Chairs of the Minnesota State Senate Finance Committee, the Minnesota House of Representatives Capital Investment Committee and the Minnesota House of Representatives Ways and Means Committee that the work to be performed is ready to begin.

H. The Project must be; (i) completed in accordance with the program plan and cost estimates referred to in Section 6.10.C, (ii) completed in accordance with the time schedule contained in the program plan referred to in Section 6.10.C, and (iii) completed within the budgets contained in the cost estimates referred to in Section 6.10.C.

Provided, however, the provisions and requirements contained in this Section 6.10 only apply to public lands or buildings or other public improvements of a capital nature, and shall not apply to the demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, rails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the Commissioner of Transportation for the State of Minnesota has entered into an assistance agreement under Minn. Stat. § 457A.04 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, ice arenas, local government projects with a construction cost of less than \$1,500,000.00, or any other capital project with a construction cost of less than \$750,000.00.

Section 6.11 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 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 6.12 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 both the State Entity and the Commissioner of Finance is governed by the provisions contained in Minn. Stat. § 3.736 that exists as of the date of this Agreement and as such may subsequently 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 is governed by the provisions contained in such Chapter 466.

Section 6.13 Indemnification by the Public Entity. The Public Entity shall bear all loss, expense (including attorneys' fees), and damage in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, and agrees to indemnify and hold harmless the State Entity, its agents, servants and employees from all claims, demands and judgments made or recovered against the State Entity, its 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 or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the completion of the Project or operation of the Real Property and, if applicable, the Facility, whether or not due to any act of omission or commission, including negligence of the 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, its employees, servants or agents.

The Public Entity further agrees to indemnify, save, and hold the State Entity, the Commissioner of Finance, 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 Usee, 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 6.06.

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 6.14 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 Finance, nor shall the Public Entity be considered or deemed to be an agent, representative, or employee of either the State Entity, the Commissioner of Finance, or the State of Minnesota in the performance of this Agreement, the completion of the Project, or operation of the Real Property and, if applicable, the Facility.

The 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 completion of the Project and the operation and maintenance of the Real Property and, if applicable, the Facility. All personnel of the Public Entity or other persons while engaging in the performance of this Agreement, the completion of the Project, or the operation and maintenance of the Real Property and, if applicable, the Facility shall not have any contractual relationship with either the State Entity, the Commissioner of Finance, 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 either the State Entity, the Commissioner of Finance, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from either the State Entity, the Commissioner of Finance, 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 6.15 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:

_____, MN
Attention: _____

To the State Entity at:

_____, MN
Attention: _____

To the Commissioner of Finance at:

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

Section 6.16 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 6.17 Waiver. Neither the failure by the Public Entity, the State Entity, or the Commissioner of Finance, 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 Finance, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of either the Public Entity, the State Entity, or the Commissioner of Finance, 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 6.18 **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 6.19 **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 6.20 **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 6.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 6.22 **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 6.23 **Matching Funds.** The Public Entity must obtain and supply the following matching funds, if any, for the completion of the Project:

NONE

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

Any matching funds which are intended to meet the above requirements must either be in the form of (i) cash monies, (ii) legally binding commitments for money, or (iii) equivalent funds or contributions, including equity, which have been or will be used to complete or pay for the Project.

Section 6.24 **Third-Party Beneficiary.** The public program to be operated in conjunction with the Real Property and, if applicable, the Facility will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the State Entity and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of Finance, is and shall be a third-party beneficiary of this Agreement.

Section 6.25 **Applicability to Real Property and Facility.** This Agreement applies to the Public Entity's interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing before the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Public Entity's interest in the Real Property.

Attachment I
DECLARATION

The undersigned has the following interest in the real property legally described in **Exhibit A** attached and all facilities situated thereon (cumulatively referred to as the "Restricted Property"):

(Check the appropriate box.)

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

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

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the date of this Declaration and as such may subsequently be amended, modified or replaced from time to time, is subject to the encumbrance created and requirements imposed thereby, and cannot be sold or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Minnesota Commissioner of Finance, which approval must be evidenced by a written statement signed by the Commissioner of Finance and attached to the deed 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 General Obligation Bond Proceeds Grant Agreement Construction Grant for the _____
_____ Project between _____ and the _____
_____, dated _____, ____.

The Restricted Property shall remain subject to such restrictions and encumbrances until it is released therefrom by way of a written release in recordable form signed by both the _____
and the Minnesota Commissioner of Finance, and such written release is recorded in the real estate records relating to the Restricted Property.

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

Attachment II
LEGAL DESCRIPTION