

**LOAN AGREEMENT BETWEEN THE METROPOLITAN COUNCIL
AND THE CITY OF _____
FOR PROTECTIVE ACQUISITION OF HIGHWAY RIGHT-OF-WAY**

THIS AGREEMENT is entered into this ___ day of _____, 2017, by **THE METROPOLITAN COUNCIL** ("the Council"), and **THE CITY of _____** ("the Recipient").

WHEREAS, the Council is authorized by Minnesota Statutes section 473.167, subdivision 2, to make loans to counties, towns, and cities situated within the metropolitan area for the purpose of acquisition of property within a proposed state trunk highway right-of-way when acquisition is necessary to avert the imminent conversion of such property to a use which would jeopardize the property's availability for highway construction; and

WHEREAS, the Recipient is an eligible governmental unit and has applied for such a loan to accomplish the acquisition of threatened right-of-way within the officially-mapped area of I-35 and CSAH 5, and

WHEREAS, the Council has authorized that such a loan be made to the Recipient from the Metropolitan Right-of-Way Acquisition Loan Fund.

NOW, THEREFORE, in consideration of the mutual promises and covenants in this agreement, the Council and the Recipient agree as follows:

I. LOAN FUNDS

1.01 Total Loan Amount. The Council shall loan to the Recipient, in accordance with the loan schedule set forth in paragraph 1.02, a total loan amount not to exceed \$____,000.00. The total loan amount is reduced by a salvage value of \$0.00.

1.02 Loan Schedule. Upon execution of this loan agreement, the Council will advance \$ 000.00 to the Recipient for the purchase price of that real property described in Exhibit A, which is attached to and incorporated in this agreement. The purchase price of the real property includes any buildings or structures located on the parcel. Upon receipt by the Council of satisfactory and complete documentation describing the Recipient's actual appraisal, title evaluation, taxes and other acquisition costs, the Council will advance to the Recipient such actual costs, in an amount not to exceed \$,000.00.

1.03 Authorized Use of Loan Funds. The parties agree that loan funds may be used only for the purchase price of the property described in Exhibit A, and the acquisition costs actually incurred by the Recipient to acquire the property described in Exhibit A. The parties agree that loan proceeds shall not be used to clean up contaminated soil or other pollutants, if any are discovered on the site.

II. ACCOUNTING, AUDIT, AND RECORDS REQUIREMENTS

2.01 Separate Account. The Recipient agrees to establish and maintain a separate account for the loan and to maintain accurate and complete records and accounts relating to the receipt and expenditure of all loan funds. Such accounts and records shall be kept and maintained for a period of at least three (3) years following discharge of the loan.

2.02 Audit. The above accounts and records of the Recipient shall be audited in the same manner as all other accounts and records of the Recipient are audited, and may be audited and/or inspected on the Recipient's premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification, during the loan period, and for a period of six (6) years following discharge of the loan.

2.03 Acquisition Report. The Recipient agrees that upon completion of any acquisition, the Recipient will submit to the Council an acquisition report, in a format to be determined by the Council, summarizing the acquisition costs of the property, including all eligible expenses and moving costs.

2.04 Annual Report. The Recipient agrees to submit, on or before June 30 of each year during which this agreement is in effect, an annual report on the status of the loan, in a form to be determined by the Council.

III. INCOME FROM PURCHASED PROPERTY

3.01 Net Rents Defined. For purposes of this agreement, "net rents" means the total gross rent received by the Recipient from any and all tenants or users of the property, less the Recipient's actual costs for necessary maintenance, repairs, taxes, insurance, and operating expenses, and attorneys' fees associated with preparing or terminating any lease with respect to the property.

3.02 Transfer of Net Rents. The Recipient agrees to transfer to the Council, within forty-five (45) days of receipt, all net rents or other money received as a result of the Recipient's ownership of the property. For any given payment to the Council, the Recipient may estimate the actual costs to be deducted from gross rent.

3.03 Adjustment for Actual Costs. Twelve (12) months from the commencement of receipt of any rent by the Recipient from any property acquired with loan proceeds, the Recipient shall provide, in a form acceptable to the Council, documentation for all actual costs for necessary maintenance, repairs, taxes, insurance, and operating expenses, and attorneys' fees with respect to the property. Upon verification and acceptance of the documentation by the Council, the Recipient shall pay to the Council the amount, if any, determined by the Council to be necessary to adjust the estimated deduction from gross rent to reflect the actual costs.

IV. LOAN DISCHARGE

4.01 Discharge Due to Conveyance to Highway Authority. If any parcel purchased with the loan funds is conveyed to a highway authority for construction of a highway, the Recipient shall repay to the Council, within thirty (30) days of receipt, the amount received from the highway authority for the parcel, acquisition costs and relocation expenses. Upon payment of the specified amount, the Council will discharge the loan.

4.02 Discharge Due to Changes in Plan for Highway. If the Council notifies the Recipient that the plan to construct the highway has been abandoned or the anticipated location of the highway has changed, the Recipient shall seek the prior approval of the Council to sell the acquired property. The Recipient shall repay to the Council, within thirty (30) days of receipt, the fair market value of the property as determined by sale of the property in accordance with the Recipient's procedures required for the disposition of real property. Upon payment of the specified amount, the Council will discharge the loan.

4.03 Discharge Due to Breach or Other Circumstances. If the property for any other reason is sold, or if the Recipient materially breaches any term of this agreement, the Recipient shall repay the amount specified in paragraph 1.02 for the purchase price of the property and the amount actually disbursed pursuant to paragraph 1.02 for acquisition costs. The Council agrees to notify the Recipient of any material breach of the agreement and to provide a reasonable opportunity for the Recipient to cure the breach. If the Recipient fails to cure the breach, the Recipient will repay the amount specified within thirty (30) days. Upon payment of the specified amount, the Council will discharge the loan.

V. GENERAL CONDITIONS

5.01 Duration of Agreement. The agreement is effective on the execution of this agreement and remains in force and effect until the loan is discharged.

5.02 Interest. The loan made in this agreement shall bear no interest.

5.03 Declaration of Restrictive Covenants. The Recipient agrees that it will execute, and cause to be recorded at its own expense, a declaration of restrictive covenants with reference to each parcel of land in which an interest is acquired in whole or in part from loan proceeds. The declaration of restrictive covenants shall be substantially in the form contained as a sample in Exhibit B, which is attached to and made a part of this agreement. It is the purpose of such declaration of restrictive covenants to limit the right of the Recipient to convey or encumber land or interests in land acquired with loan proceeds without the consent of the Council, and to insure that such lands and interests therein be devoted exclusively to the state highway purposes for which they were acquired.

5.04 Agreement to Convey. The Recipient agrees that upon the request of the authority authorized to construct the highway for which this right-of-way has been reserved, the Recipient will convey the property to the authority at the same price the Recipient paid for the property, including costs identified in paragraph 1.02 for acquisition costs.

5.05 Rights Reserved. If the Council finds that there has been a failure to comply with the provisions of this agreement, the Council reserves the right to take any and all actions as it deems necessary or appropriate to protect the Council's interest, provided that the Council agrees to notify the Recipient of any such failure to comply and to provide a reasonable opportunity to comply. The Recipient agrees that discharge of the loan does not invalidate continuing obligations imposed on the Recipient by this agreement. Termination of this agreement does not alter the Council's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the Recipient's obligation to return any funds due to the Council as a result of later audits or corrections.

5.06 Amendments. The terms of this agreement may be changed by mutual agreement of the parties. Such changes shall be effective only upon the execution of written amendments signed by authorized representatives of the Council and the Recipient.

5.07 Compliance with Law. The Recipient agrees to conduct the activities contemplated by this agreement in compliance with all applicable provisions of Federal, state, and local laws. The Recipient further agrees to comply with all applicable laws relating to nondiscrimination, affirmative action, and public purchase, contracting, and employment. In particular, the Recipient 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 that applicants and employees are treated equally with respect to all areas of employment, rates of pay and other forms of compensation, and selection for training.

5.08 Insurance. The recipient shall list Council as an additional named insured on Recipient's liability insurance policy, and Recipient represents to Council that Recipient carries liability insurance with the League of Minnesota Cities Insurance Trust (LMCIT) in an amount up to Recipient's statutory immunity.

5.09 Property Maintenance. The Recipient agrees to make reasonable efforts to maintain the property acquired with loan funds provided under this agreement in a manner compatible with the surrounding environment, as appropriate.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on the day and year first above written.

METROPOLITAN COUNCIL

Approved as to form:

Office of General Counsel

By _____

Nick Thompson
Director, Metropolitan Transportation Services

Approved as to form:

City Attorney

CITY OF _____

By _____

Mayor

By _____

City Manager

EXHIBIT A

LEGAL DESCRIPTION

AGREEMENT AND RESTRICTIVE COVENANT

THIS AGREEMENT is made and entered into this _____ day of _____, 2017, between the City of _____, a Minnesota municipal corporation, ("the City"), and the Metropolitan Council, a political subdivision of the State of Minnesota, ("the Council").

WHEREAS, the City has acquired [describe nature of interest] in the real property described in Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Council has contributed funds toward the acquisition of the City's interest in the real property pursuant to the Council's Loan Program and a Loan Agreement between the Council and the City as authorized by Minnesota Statutes section 473.167; and

WHEREAS, the Loan Program was established to provide for the acquisition of property within the right-of way of a state trunk highway shown on an official map when necessary to avoid conversion of such property to a use which would jeopardize the property's availability for highway construction.

NOW, THEREFORE, in consideration of the loan made by the Council to the City and in consideration of the mutual agreements and covenants, the Council and City agree as follows:

1. No sale, lease, mortgage, or other conveyance, nor the creation of any easement, restriction or other encumbrance against the real property described in Exhibit A shall be valid for any purpose unless the written approval of the Council, or its successors, is duly filed and recorded at the time of the filing and recording of the instrument to which such approval pertains.

2. The real property described in Exhibit A shall not be used for any purpose except the construction of I-35 and its exit ramp connection to CSAH 5 unless the Council, or its successors, shall consent to such other use or uses by instrument in writing duly filed and recorded and designating the nature, extent and duration of the use for which such consent is given.

This Agreement and Restrictive Covenant may be enforced by the Council, its successors, or by any citizen residing within the metropolitan area as defined by appropriate action in the courts of the State of Minnesota.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in their respective names all as of the above date.

METROPOLITAN COUNCIL

By _____
Regional Administrator

CITY OF _____

By _____
Mayor

By _____
City Manager

NOTE: THIS FORM IS PROVIDED AS AN EXAMPLE. THE RECIPIENT SHOULD PREPARE A PROPER INSTRUMENT AND SUBMIT IT FOR SIGNATURE BY THE COUNCIL.

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