

CITY OF FALCON HEIGHTS
Regular Meeting of the City Council
City Hall
2077 West Larpenteur Avenue
AGENDA
March 8, 2023 at 7:00 P.M.

A. CALL TO ORDER:

B. ROLL CALL: GUSTAFSON___ LEEHY___ MEYER___
WASSENBERG___ WEHYEE___

STAFF PRESENT: LINEHAN___

C. APPROVAL OF AGENDA

D. PRESENTATION

1. Saint Paul Fire Department - Annual Report

E. APPROVAL OF MINUTES:

1. February 22, 2023 City Council Regular Meeting Minutes

F. PUBLIC HEARINGS:

G. CONSENT AGENDA:

1. General Disbursements through: 3/3/23 \$75,645.95
Payroll through: 2/28/23 \$24,319.54
Wire Payments through: 2/28/23 \$16,148.38
2. City License(s)
3. Amendments to the Mounds Park Academy Revenue Refunding Note Series 2014
4. Commission Assignment Adjustment
5. Joint Powers Agreement & Court Subscriber Amendment with the Bureau of Criminal Apprehension
6. Met Council TBRA Grant Funds Release

H. POLICY ITEMS:

I. INFORMATION/ANNOUNCEMENTS:

J. COMMUNITY FORUM:

Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.

K. ADJOURNMENT:

BLANK PAGE

Meeting Date	March 8, 2023
Agenda Item	Presentation D1
Attachment	N/A
Submitted By	Jack Linehan, City Administrator

Item	Saint Paul Fire Department – Annual Report
Description	<p>The City of Falcon Heights began contracted fire services with the City of Saint Paul Fire Department (SPFD) on January 14, 2021. Our initial two-year contract is now in the automatic annual renewal phase.</p> <p>To recap the first two years of the services provided by the SPFD, Administrative Deputy Chief Stacy Hohertz will report on the services provided to the City of Falcon Heights.</p>
Budget Impact	
Attachment(s)	
Action(s) Requested	No action is requested from the Council for this informational item.

BLANK PAGE

CITY OF FALCON HEIGHTS
Regular Meeting of the City Council
City Hall
2077 West Larpenteur Avenue
MINUTES
February 22, 2023 at 7:00 P.M.

NOTE: THIS MEETING WAS HELD BY WEB CONFERENCE*

- A. CALL TO ORDER: 7:05 p.m.
- B. ROLL CALL: GUSTAFSON_X__ LEEHY_X__ MEYER_X__
WASSENBERG_X__ WEHYEE_X_(Zoom)

STAFF PRESENT: LINEHAN__

- C. APPROVAL OF AGENDA

Councilmember Leehy motions to
approve the amended agenda;

ROLL CALL TO APPROVE:
GUSTAFSON_X__ LEEHY_X__ MEYER_X__
WASSENBERG_X__ WEHYEE_X_(Zoom)
approved 5-0

- D. PRESENTATION

- E. APPROVAL OF MINUTES:
 - 1. February 1, 2023 City Council Workshop Meeting Minutes
 - 2. February 8, 2023 City Council Regular Meeting Minutes

Councilmember Meyer motions to
approve the minutes;

ROLL CALL TO APPROVE:
GUSTAFSON_X__ LEEHY_X__ MEYER_X__
WASSENBERG_X__ WEHYEE_X_(Zoom)
approved 5-0

- F. PUBLIC HEARINGS:

- G. CONSENT AGENDA:
 - 1. General Disbursements through: 2/15/23 \$314,899.99
Payroll through: 2/15/23 \$22,859.54
Wire Payments through: 2/15/23 \$15,577.74
 - 2. City License(s)
 - 3. Falcon Heights City Hall - Ramsey County Polling Place Agreement

4. Accept the Resignation of Scott Phillips from the Planning Commission
5. Accept the Resignation of Martin McCleery from the Environment Commission
6. Accept the Resignation of Laure Campbell from the Community Engagement Commission
7. Accept the Resignation of Matthew Chernugal as Public Works Maintenance Worker
8. Order Proposed Ruggles Pathway Easement Vacation Public Hearing
9. Pay Request: Center for Values-Based Initiatives Deliverable #2
10. Appointment of Jake Anderson to the Planning Commission
11. Appointment of Jared Mehlhaff to the Environment Commission

Councilmember Wassenberg motions to approve the consent agenda;

ROLL CALL TO APPROVE:

GUSTAFSON X LEEHY X MEYER X
 WASSENBERG X WEHYEE X (Zoom)
 approved 5-0

Councilmember Wassenberg worked with Scott Phillips on the Planning Commission and Martin McCleery on the Environment Commission. He enjoyed working with both and thanks them for their service.

Councilmember Leehy asks for clarification as to why City Hall is listed as a polling place on our agreement but we have not included Falcon Heights United Church.

Administrator Linehan says that the Council reaffirmed our two polling places back in January. City Hall is location #1, for those west of Snelling. And, location #2 is Falcon Heights church, for those east of Snelling. The church is required to approve this same agreement. It's basically our responsibility as a host site to open the doors at 5:00 AM and provide all the necessary services for the election workers; it's essentially reaffirming that we will take care of our responsibilities. This agreement does not preclude or remove the church as a voting location. Each location must approve the agreement. But, because we are a public body, we have to formally approve the agreement, where other locations may be able to just sign it.

Councilmember Leehy thanks Administrator Linehan for the clarification.

Mayor Gustafson thanks Laure Campbell and Matt Chernugal. The Mayor served with Laure Campbell on the Community Engagement Commission and appreciates her good ideas. Matt Chernugal has been with the City for a short time but the Mayor says he understands when places like St. Paul Water Works grab a good employee when they see one. We will look forward to new people joining us on the Planning, Environment and Community Engagement Commissions.

H: POLICY ITEMS:

1. Approval of Acquisition of Real Property from the University of Minnesota for Community Park - 2050 Roselawn Avenue

Administrator Linehan says this is one of the last steps in the purchase of the Community Park property. This has been a long process as the City has worked through and expressed their interest in purchasing the park. The City has leased the property from the University of Minnesota for \$1 per year since 1973. Our current lease started in 2008 and runs through 2024. As the lease is expiring and the City has expressed a desire to improve the building, both parties have expressed

interest in the property being purchased by the City. The final question was the price and how to go about it. Over the past two years, two appraisals were completed to determine the price. The University hired an appraiser and the City hired an appraiser in the summer of '22. The valuation range for the property was between \$1.25 and \$2.00 per square foot between the two appraisals. The City initially made an offer on the property that was rejected by the University of Minnesota. Both parties, through negotiations, came up with a mutually beneficial price that split the difference of the two appraisals and is right between the two at \$1.62 ½ per square foot. During the negotiation process, it was determined that the 14 ½ acre parcel was actually larger than that. Because of this, the estimated sale price is around \$1.1 million dollars. The final price will be determined by the plat of survey, which we just received today, which will determine the total square footage. The \$1.625 per square foot remains the price. The Board of Regents approved and authorized this sale on February 10, 2023. It now goes to the City for approval. This has been drafted by our attorney; this resolution comes from the attorneys directly, who have vast knowledge in this area of property acquisition and land negotiations. The resolution essentially allows Staff and attorneys, if Council agrees in principal, that overall these principals are good and agrees to the terms, it allows us to work with our attorney to finalize the document. There will be a lot of paperwork coming up and this allows total authority to Staff, Mayor and City Attorney to execute all necessary documents. This is all is contingent upon the successful subdivision of the property, the title of the property and the plat of survey. If all of those are agreeable and the subdivision goes through, then the next step would be to put the subdivision on a public hearing at the Planning Commission on Tuesday, February 28th. If the Planning Commission recommends a favorable approach to the subdivision, it will then go to the City Council for final approval on March 8th. If all of those steps go through, we're working towards a closing date of end of March or early April for the property. Administrator Linehan says he'll answer questions, if there are any.

Councilmember Wehyee asks about the final closing costs, as that figure has not been included in the figure. Does Administrator Linehan know the approximate closing costs?

Administrator Linehan says they're expecting about 3%, on average. Because they elected not to use a broker, we'll save on brokerage fees, but we'd likely cover the 3% of closing costs. We have already paid for some of that: ALTA survey and the title for the property. He says to expect approximately another \$30,000 added on to the total as an estimate.

Councilmember Leehy asks if we're hoping to close by the end of March so that the City would qualify for certain funds.

Administrator Linehan says both parties are working towards that. The City would like to apply for a grant, which closes at the end of March, and we have been in discussion with them. If we show that we are substantially in ownership of the property, if the sale is pending, then that would be good enough for them; that would show we are working towards it. But, we must understand that there's the realistic timeframe that we've been in, that would push that back a little further. Council Member Leehy thanks Administrator Linehan for his research into that.

Councilmember Wassenberg says he finds that the purchase price seems quite reasonable when looking at the comparable properties in a more urban area such as Roseville or St. Louis Park.

Mayor Gustafson says that he felt it was a fair deal for both. Even though this is a minor piece of land for such a large land grant institution, their bureaucracy and people worked well for us. Once things were in motion, Mayor states that Administrator Linehan and team did a good job and he thanks him for negotiating on behalf of the City and pulling this deal together with the University.

Councilmember Wehyee also wants to recognize and thank Administrator Linehan and team for leading the City in this process. He says that this is may be the Administrator's largest negotiation, but he did a stellar job. This is an opportunity for us to own the land says he's personally very

excited about this; that this is something to be proud of. This is probably one of those achievements that he and others will look back on and be proud of.

Administrator Linehan thanks the Council for their leadership. Since he started, it was clear this was a top priority to purchase and renovate the park. This gave clear guidance on how to work towards it. This took about nine months to get through the process; that's two agencies/ bureaucracies working in action.

All told, we moved quick and it was a pleasure working with the University on this. They worked in good faith and have a whole department, GIS staff and many attorneys on staff, which would have been difficult without their expertise. The goal of the two parties was never to win one over on the other party. It wasn't their goal to get as much money as possible; they know that this land, if it wasn't a park, would be worth over ten million dollars. They understand this is them giving the land back to the community. By them selling it to the City, it benefits their students and benefits their mission of being a good neighbor. He think it's a big accomplishment for the City and a good win for both parties; it's an exciting day!

Councilmember Meyer states he's looking forward to the next steps and all of the conversations we're going to have with consultants and the community about what our park is going to look like, what its current role serves and what it might serve in the future. It's going to be fun to dream up what that can be and to go out and accomplish that.

Councilmember Wassenberg adds that there's a very excited Parks and Rec Commission!

Mayor Gustafson says it's a very exciting time and an additional step on a long journey, when they purposefully began saving for this day to have the cash on hand to buy it, which has been a several year-long project.

Councilmembers Leehy and Wehyee motion to approve resolution 23-18, the Approval of Acquisition of Real Property from the University of Minnesota for Community Park;

ROLL CALL TO APPROVE:

GUSTAFSON_X__ LEEHY_X__ MEYER_X__
WASSENBERG_X__ WEHYEE_X (Zoom)
approved 5-0

I. INFORMATION/ANNOUNCEMENTS:

Councilmember Wehyee says there was an opportunity to meet with Mayor Hassan from Somalia. The plan to meet was derailed a bit due to weather but Administrator Linehan is working with him to reschedule that. Wehyee states it is a good opportunity to meet with someone that represents a significant portion of our community. He also says that the Planning Commission is meeting on Tuesday, 2/28, when there will be a public meeting at that hearing.

Councilmember Wassenberg says he has no announcements.

Councilmember Meyer says that the Environment Commission had a meeting on 2/13 and the chair of the commission, Beth Mercer-Taylor, brought in a guest from Germany to discuss their

community's push towards clean energy. The Environment Commission is still looking for one more commissioner and you can apply online.

Councilmember Leehy says she has no announcements.

Mayor Gustafson says that the Community Engagement met on 2/15 and they are looking forward to their Spring Together event on Saturday, May 20th at Curtiss Field. We will have ice cream and games. We will have a joint meeting with the Parks and Recreation Commission soon to further coordinate that event as well as the Ice Cream Social event, which is tentatively slated for Thursday, July 20, 2023; location TBD, depending on ground conditions at Community Park.

The Mayor reminds the community to get their cars off the streets as the City will be under a tough twenty-four hours for snow removal.

Administrator Linehan gives further details on the meeting with the Mayor of Galkayo, Somalia that Councilmember Wehyee mentioned earlier. Galkayo is the capital of the northern region and the population ranges between 80,000 and 350,000. This is due to it being a transient area that's constantly getting new people. He wanted to introduce that topic. Administrator Linehan reminds the Council that we have the Sister City in the budget and thought this might be a good first step of those discussions. City Hall will be closed on February 23 and Staff will be working remotely; residents can complete most City business online, including permits now, so he recommends they try that avenue, if possible. Public Works will be still be out and we'll be answering phones. As mentioned early, the Planning Commission will meet on 2/28 for a public hearing on the subdivision of Community Park. If that gets approved, that would come to the City Council meeting on March 8th for a vote. The City Council Workshop on March 1st will be cancelled. Instead, we'll do a City Council Retreat on a tentative date of March 18th from 9:00 AM - 3:00 PM. That date works for Matt Bostrom and The Center for Values-Based Initiatives, who would walk us through initial findings then. He could then share those with the public at the March 22nd City Council meeting.

If the date is a conflict for the Council, he asks that they let him know so that another date could be chosen.

J. COMMUNITY FORUM:

Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.

K. ADJOURNMENT: 7:33 p.m.

Councilmember Wassenberg motions to adjourn the meeting;

ROLL CALL TO APPROVE:

GUSTAFSON_X__ LEEHY_X__ MEYER_X__
WASSENBERG_X__ WEHYEE_X_(Zoom)
approved 5-0

Randall C. Gustafson, Mayor

Dated this 8th day of March, 2023

Jack Linehan, City Administrator

BLANK PAGE

Meeting Date	March 8, 2023
Agenda Item	Consent G1
Attachment	General Disbursements, Payroll, and Wire Payments
Submitted By	Roland Olson, Finance Director

Item	General Disbursements, Payroll and Wire Payments
Description	General Disbursements through: 3/3/23 \$75,645.95 Payroll through: 2/28/23 \$24,319.54 Wire Payments through: 2/28/23 16,148.38
Budget Impact	The general disbursements, payroll and wire payments are consistent with the budget.
Attachment(s)	<ul style="list-style-type: none"> • General Disbursements, Payroll and Wire Payments
Action(s) Requested	Staff recommends that the Falcon Heights City Council approve general disbursements, payroll and wire payments.

PACKET: 02730 March 3 Payables
 VENDOR SET: 01 City of Falcon Heights
 SEQUENCE : ALPHABETIC
 DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----	POST DATE	BANK CODE	-----DESCRIPTION-----	GROSS DISCOUNT	P.O. # G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
01	8		ALLSTREAM				
I-19266843	3/03/2023	APBNK	Emergency Landline CH Feb DUE: 3/03/2023 DISC: 3/03/2023 Emergency Landline CH Feb	51.08	1099: N 101 4116-85010-000	TELEPHONE	51.08
=== VENDOR TOTALS ===				51.08			
01-05115	GOPHER STATE ONE CALL						
I-3020390	3/03/2023	APBNK	February Locates DUE: 3/03/2023 DISC: 3/03/2023 February Locates	21.60	1099: N 601 4601-88030-000	LOCATES	21.60
=== VENDOR TOTALS ===				21.60			
01-05886	KELLY & LEMMONS						
I-60232	3/03/2023	APBNK	February Prosecutions DUE: 3/03/2023 DISC: 3/03/2023 February Prosecutions	2,500.00	1099: N 101 4123-80200-000	LEGAL FEES	2,500.00
=== VENDOR TOTALS ===				2,500.00			
01-05665	METROPOLITAN COUNCIL						
I-1152876	3/03/2023	APBNK	April Waste Water Services DUE: 3/03/2023 DISC: 3/03/2023 April Waste Water Services	55,832.95	1099: N 601 4601-85060-000	METRO SEWER CHARGES	55,832.95
=== VENDOR TOTALS ===				55,832.95			
01-06002	NINENORTH						
I-23-024	3/03/2023	APBNK	NINENORTH DUE: 3/03/2023 DISC: 3/03/2023 3 Municipal Meetings - Feb	737.66	1099: N 101 4116-85050-000	CABLE TV	737.66
=== VENDOR TOTALS ===				737.66			
01-06185	RAMSEY COUNTY						
I-RISK-002221	3/03/2023	APBNK	Feb Insurance/HR Admin FEe DUE: 3/03/2023 DISC: 3/03/2023 Feb Insurance/HR Admin FEe	931.07	1099: N 101 4112-89000-000	MISCELLANEOUS	931.07
=== VENDOR TOTALS ===				931.07			

PACKET: 02730 March 3 Payables
 VENDOR SET: 01 City of Falcon Heights
 SEQUENCE : ALPHABETIC
 DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----	POST DATE	BANK CODE	-----DESCRIPTION-----	GROSS DISCOUNT	P.O. # G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
01	4		TENNIS SANITATION LLC				
I-3524946	3/03/2023	APBNK	Feb Recycling-SFD&MFD FH DUE: 3/03/2023 DISC: 3/03/2023 Feb Recycling-SFD&MFD FH	8,453.25	1099: N 206 4206-82030-000	RECYCLING CONTRACTS	8,453.25
I-3524947	3/03/2023	APBNK	Feb Recycling SWMT&CEC DUE: 3/03/2023 DISC: 3/03/2023 Feb Recycling SWMT&CEC	66.50	1099: N 101 4131-87010-000	CITY HALL MAINTENANCE	66.50
=== VENDOR TOTALS ===				8,519.75			
01-05737	VERIZON WIRELESS						
I-9928511253	3/03/2023	APBNK	Cell Phone to Feb 23 DUE: 3/03/2023 DISC: 3/03/2023 Cell Phone to Feb 23	53.22	1099: N 601 4601-85015-000	CELL PHONE	53.22
=== VENDOR TOTALS ===				53.22			
01-05870	XCEL ENERGY						
I-817106426	3/03/2023	APBNK	Elect DUE: 3/03/2023 DISC: 3/03/2023 Elect	33.19	1099: N 101 4141-85020-000	ELECTRIC/GAS	33.19
I-817130877	3/03/2023	APBNK	Elect DUE: 3/03/2023 DISC: 3/03/2023 Elect	13.25	1099: N 101 4121-85020-000	ELECTRIC	13.25
=== VENDOR TOTALS ===				46.44			
=== PACKET TOTALS ===				68,693.77			

PACKET: 02726 March 1 Payables
VENDOR SET: 01 City of Falcon Heights
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-00161	ANCHOR PAPER COMPANY					
I-10710708-00		Roll Towels & Bath Tissue	243.76			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Roll Towels & Bath Tissue		101 4131-70110-000	SUPPLIES	243.76
		=== VENDOR TOTALS ===	243.76			
=====						
01-03108	CERTIFIED LABORATORIES					
I-8100360		Shop & Street Supplies	662.90			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Shop & Street Supplies		101 4131-70110-000	SUPPLIES	331.45
		Shop & Street Supplies		101 4132-70120-000	SUPPLIES	331.45
I-8101602		Earplugs & Spray Paint Remove	279.16			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Earplugs & Spray Paint Remover		101 4131-70110-000	SUPPLIES	279.16
		=== VENDOR TOTALS ===	942.06			
=====						
01-01012	COREMARK METALS					
I-5358549		COREMARK METALS	62.53			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Cart for New JD Blower		101 4132-87000-000	REPAIR EQUIPMENT	62.53
I-5360424		Steel for Safety Ram	94.06			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Steel for Safety Ram		101 4132-87000-000	REPAIR EQUIPMENT	94.06
		=== VENDOR TOTALS ===	156.59			
=====						
01-	SHAILA CUNNINGHAM					
I-202303018431		Yoga Ending 3/6	857.60			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: Y		
		Yoga Ending 3/6		201 4201-87700-000	INSTRUCTOR-SPECIALTY CLA	857.60
		=== VENDOR TOTALS ===	857.60			
=====						
01-05884	LYNCH, HANNAH					
I-202303018432		Mileage Reimbursement Jan-Feb	56.34			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Mileage Reimbursement Jan-Feb		101 4117-86010-000	MILEAGE	56.34
		=== VENDOR TOTALS ===	56.34			

-----ID-----			GROSS	P.O. #		
P	DATE	BANK CODE	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-00000		OLSON,ROLAND				
I-202303018433		Flex Payment	30.00			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Flex Payment		101 21712-000	MEDICAL FLEX SAVINGS PAY	24.90
		Flex Payment		601 21712-000	MEDICAL FLEX SAVINGS PAY	4.50
		Flex Payment		602 21712-000	MEDICAL FLEX SAVINGS PAY	0.60
=====						
I-202303018434		Mileage Reimbursement Feb	43.82			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Mileage Reimbursement Feb		101 4113-86010-000	MILEAGE	43.82
		=== VENDOR TOTALS ===	73.82			
=====						
01-00935		ST PAUL REGIONAL WATER SERVICE				
I-202303018435		ST PAUL REGIONAL WATER SERVIC	147.02			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Community Park Water		101 4141-85040-000	WATER	35.63
		Community Park Sanitary Sewer		101 4141-85070-000	SEWER	12.33
		City Hall Water		101 4131-85040-000	WATER	77.02
		City Hall Sanitary Sewer		101 4131-85070-000	SEWER	22.04
		=== VENDOR TOTALS ===	147.02			
=====						
01-05195		TYLER TECHNOLOGIES				
I-202303018436		Server Migration Services	1,250.00			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Server Migration Services		101 4113-80600-000	SOFTWARE MAINTENANCE	1,250.00
		=== VENDOR TOTALS ===	1,250.00			
=====						
01-		VILLANUEVA, CRUZ				
I-202303018437		Refund of Permit	437.55			
3/01/2023	APBNK	DUE: 3/01/2023 DISC: 3/01/2023		1099: N		
		Refund of Permit		101 32210-000	BUILDING PERMITS	427.04
		Refund of State Surcharge		101 20801-000	DUE TO OTHER GOVERNMENTS	10.51
		=== VENDOR TOTALS ===	437.55			
		=== PACKET TOTALS ===	4,164.74			

PACKET: 02724 February 27 Payables
VENDOR SET: 01 City of Falcon Heights
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----				GROSS	P.O. #			
DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----			DISTRIBUTION
01-00255 AMERICAN OFFICE PRODUCTS								
I-6776		Envelopes		264.00				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023			1099: N			
		Envelopes			101 4112-70100-000	SUPPLIES		264.00
=== VENDOR TOTALS ===				264.00				
01-03103 CANON FINANCIAL SERVICES								
I-29994186		Copier Charges Feb		122.39				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023			1099: N			
		Copier Charges Feb			101 4131-87010-000	CITY HALL MAINTENANCE		122.39
=== VENDOR TOTALS ===				122.39				
01-03110 CENTURY LINK								
I-202302278428		CENTURY LINK		63.87				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023			1099: N			
		Landline Svc			101 4141-85011-000	TELEPHONE - LANDLINE		63.87
=== VENDOR TOTALS ===				63.87				
01-05166 GRAINGER, W. W., INC.								
I-9602605686		GRAINGER, W. W., INC.		102.17				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023			1099: N			
		Eye Wash Saline			101 4131-70110-000	SUPPLIES		102.17
I-9611022055		GRAINGER, W. W., INC.		69.51				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023			1099: N			
		Wet/Dry Vac Filter			101 4131-70110-000	SUPPLIES		69.51
=== VENDOR TOTALS ===				171.68				
01-05153 HOME DEPOT CRC/GECF								
I-202302278429		HOME DEPOT CRC/GECF		287.47				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023			1099: N			
		Rubber Hose and Air Acc Kit			101 4132-70120-000	SUPPLIES		60.96
		Rubber Hose			101 4132-70120-000	SUPPLIES		54.98
		Reflective Tape & Paint			101 4131-87010-000	CITY HALL MAINTENANCE		67.84
		Door Stop			101 4131-87010-000	CITY HALL MAINTENANCE		7.93
		Black Top Patch x 8			101 4132-75000-000	BITUMINOUS PATCHING		95.76
=== VENDOR TOTALS ===				287.47				

PACKET: 02724 February 27 Payables
VENDOR SET: 01 City of Falcon Heights
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----	DATE	BANK CODE	-----DESCRIPTION-----	GROSS DISCOUNT	P.O. # G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
01-0005			LANDFORM				
I-34106	2/27/2023	APBNK	General City Planning Jan DUE: 2/27/2023 DISC: 2/27/2023 General City Planning Jan	76.50	1099: N 101 4117-80400-000	CONSULTING PLANNER	76.50
=== VENDOR TOTALS ===				76.50			
01-05843			MN NCPERS LIFE INSURANCE				
I-458800032023	2/27/2023	APBNK	March 2023 Life Insurance DUE: 2/27/2023 DISC: 2/27/2023 March 2023 Life Insurance March 2023 Life Insurance March 2023 Life Insurance March 2023 Life Insurance	80.00	1099: N 101 21709-000 204 21709-000 601 21709-000 602 21709-000	OTHER PAYABLE OTHER PAYABLE OTHER PAYABLE OTHER PAYABLE	44.32 1.60 23.36 10.72
=== VENDOR TOTALS ===				80.00			
01-06030			OLSON,ROLAND				
I-202302278430	2/27/2023	APBNK	Flex Payment DUE: 2/27/2023 DISC: 2/27/2023 Flex Payment Flex Payment Flex Payment	280.00	1099: N 101 21712-000 601 21712-000 602 21712-000	MEDICAL FLEX SAVINGS PAY MEDICAL FLEX SAVINGS PAY MEDICAL FLEX SAVINGS PAY	232.40 42.00 5.60
=== VENDOR TOTALS ===				280.00			
01-06024			ON SITE SANITATION				
I-1490180	2/27/2023	APBNK	Portable Toilets/Sanitizers DUE: 2/27/2023 DISC: 2/27/2023 Portable Toilets/Sanitizers	87.00	1099: N 601 4601-85080-000	PORTABLE TOILET PARKS	87.00
I-1490181	2/27/2023	APBNK	Portable Toilets/Sanitizers DUE: 2/27/2023 DISC: 2/27/2023 Portable Toilets/Sanitizers	260.00	1099: N 601 4601-85080-000	PORTABLE TOILET PARKS	260.00
=== VENDOR TOTALS ===				347.00			
01-06185			RAMSEY COUNTY				
I-FLEET-000792	2/27/2023	APBNK	Repairs on Dump Truck DUE: 2/27/2023 DISC: 2/27/2023 Repairs on Dump Truck	616.42	1099: N 101 4132-87000-000	REPAIR EQUIPMENT	616.42
=== VENDOR TOTALS ===				616.42			

PACKET: 02724 February 27 Payables
VENDOR SET: 01 City of Falcon Heights
SEQUENCE : ALPHABETIC
DUE TO/FROM ACCOUNTS SUPPRESSED

POST DATE	BANK CODE	-----DESCRIPTION-----	GROSS DISCOUNT	P.O. # G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
01-07-20		XCEL ENERGY				
I-815726444		Elect	33.86			
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023		1099: N		
		Elect		101 4141-85020-000	ELECTRIC/GAS	33.86
=== VENDOR TOTALS ===			33.86			
=== PACKET TOTALS ===			2,343.19			

PACKET: 02722 February 27th Payables

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----				GROSS	P.O. #		
DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION	
=====							
01-06185		CITY OF ST PAUL					

I-IN52909		Elect Usage July - Dec	393.90				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023		1099: N			
		Elect Usage July - Dec		209 20200-000	ACCOUNTS PAYABLE	393.90	
		=== VENDOR TOTALS ===	393.90				
=====							
01-06185		RAMSEY COUNTY					

I-PUBW-020085		July-Dec Emerg Street Light S	50.35				
2/27/2023	APBNK	DUE: 2/27/2023 DISC: 2/27/2023		1099: N			
		July-Dec Emerg Street Light Sv		209 20200-000	ACCOUNTS PAYABLE	50.35	
		=== VENDOR TOTALS ===	50.35				
		=== PACKET TOTALS ===	444.25				

EMP #	NAME	AMOUNT
01-022	RANDALL C GUSTAFSON	293.07
01-0023	MELANIE M LEEHY	262.05
01-0025	YAKASAH WEHYEE	262.05
01-0027	ERIC G MEYER	262.05
01-1006	JACK LINEHAN	3,406.04
01-1026	BRENNAN J SORENSEN	2,927.13
01-1027	KELLY A NELSON	2,017.64
01-1136	ROLAND O OLSON	3,060.44
01-1028	HANNAH B LYNCH	2,581.40
01-2268	MATTHEW CHERNUGAL	1,485.31
01-1030	TIMOTHY J PITTMAN	2,562.57
01-1033	DAVE TRETSEVEN	1,946.63
01-1143	COLIN B CALLAHAN	2,220.14

TOTAL PRINTED: 13 23,286.52

2-21-2023 9:59 AM PAYROLL CHECK REGISTER
PAYROLL NO: 01 City of Falcon Heights

PAGE: 1
PAYROLL DATE: 2/21/2023

EMP NO	EMPLOYEE NAME	TYPE	CHECK DATE	CHECK AMOUNT	CHECK NO.
002	WASSENBERG, JAMES J	R	2/21/2023	262.05	092035
1162	LANDBERG, ALYSSA	R	2/21/2023	590.89	092036
2265	WILLIAMS, TOM L	R	2/21/2023	152.38	092037
2274	WASSENBERG, ANJA E	R	2/21/2023	27.70	092038

2-21-2023 9:59 AM PAYROLL CHECK REGISTER
PAYROLL NO: 01 City of Falcon Heights

PAGE: 2
PAYROLL DATE: 2/21/2023

*** REGISTER TOTALS ***

REGULAR CHECKS:	4	1,033.02
DIRECT DEPOSIT REGULAR CHECKS:	13	23,286.52
MANUAL CHECKS:		
PRINTED MANUAL CHECKS:		
DIRECT DEPOSIT MANUAL CHECKS:		
VOIDED CHECKS:		
NON CHECKS:		
TOTAL CHECKS:	17	24,319.54

*** NO ERRORS FOUND ***

** END OF REPORT **

February 28th Payroll

Federal W/h	8,676.31
State W/h	1,557.11
PERA	4,594.52
ICMA	1,283.34
CHILD SUPPORT	37.10
	<hr/>
	16,148.38

BLANK PAGE

Meeting Date	March 8, 2023
Agenda Item	Consent G2
Attachment	N/A
Submitted By	Kelly Nelson Assistant to the City Administrator

Item	Approval of City License(s)
Description	The following individuals/entities have applied for a <u>Municipal Business License</u> for 2023. Staff have received the necessary documents for licensure. <ol style="list-style-type: none"> 1. Young Spa 2. Jackson Hewitt Tax Service 3. Premier Health of Saint Paul / Roseville
Budget Impact	N/A
Attachment(s)	N/A
Action(s) Requested	Staff recommends approval of the City license applications contingent on background checks and fire inspections as required.

BLANK PAGE

Meeting Date	March 8, 2023
Agenda Item	G3
Attachment	Notice, Allonge, Resolution
Submitted By	Jack Linehan, City Administrator

Item	Amendments to the Mounds Park Academy Revenue Refunding Note, Series 2014
Description	<p>On May 15, 2014, the City Council passed a resolution calling for a public hearing and authorizing the publication of notice of hearing for on the issuance of educational facilities revenue refunding notes for Mounds Park Academy.</p> <p>The City of Falcon Heights may issue up to \$10,000,000 of its own 501(c) (3) bonds each year as bank-qualified bonds. Under the federal tax law, alternative issuers are permitted, but a “nexus” between the jurisdictional city and the issuers is preferred. In this case, the City of Falcon Heights currently have residents who are students attending the Borrower.</p> <p>The Bonds will not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Issuers, except the interests of the Issuers in payments to be made by the Borrower under the Loan Agreements. The Bonds are not moral obligations on the part of the State or its political subdivisions, including the Issuers, and the Bonds will not constitute a debt of the Issuers within the meaning of any constitutional or statutory limitation.</p> <p>The City’s Bond Counsel, Taft, has noted that a new amendment is necessary by the LIBOR rate index, which was used for the note, will be ceasing to be available after June 30, 2023. A debt that has a variable rate based on LIBOR needs to be amended to provide for a new rate index. The new rate that will be approved is the Federal Home Loan Bank (FHLB) rate.</p> <p>Bremer Bank holds the Mounds Park Academy note and its counsel has prepared a draft amendment, called an allonge, which we will need to be approved. The City is being requested to adopt the resolution that approves the amendment.</p>
Budget Impact	The City receives ¼ of 1% of the principal amount that such Issuer issues.

Attachment(s)	<ul style="list-style-type: none">• Notice of LIBOR Change• Allonge Amendment Request• Resolution 23-19 Amendments to the City's Educational Facilities Revenue Refunding Note, Series 2014 (Mounds Park Academy Project).
Action(s) Requested	Motion to approve attached resolution and authorize Mayor and City Administrator to sign all necessary documents.

NOTICE OF INTEREST RATE CHANGE

March 1, 2023

Mounds Park Academy
2051 Larpenteur Avenue East
St. Paul, MN 55109
Attn: Head of School

City of Falcon Heights, Minnesota
City Hall
2077 Larpenteur Avenue West
Falcon Heights, MN 55113-5551
Attn: City Administrator

Taft Stettinius & Hollister LLP
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Attn: Catherine Courtney, Esq.

Re: Educational Facilities Revenue Refunding Note (Mounds Park Academy Project), Series 2014, issued by the City of Falcon Heights, Minnesota (the "Issuer"), to Bremer Bank, National Association ("Lender") in the original principal amount of \$7,707,444.00 ("Note")

Ladies and Gentlemen:

As you are aware, under the terms of the Note, the interest rate commencing June 1, 2024, is the 5-year LIBOR Swap Rate (as defined in the Note) on that date, plus 2.25% (the "Existing Indexed Rate"). The 5-year LIBOR Swap Rate will no longer be available commencing July 1, 2023. The terms of the Note provide, in part, as follows:

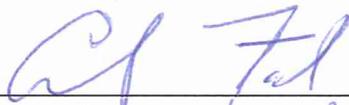
"If on any Adjustment Date the applicable LIBOR Swap Rate is no longer used by Lender as its index for adjustment, or is no longer available, the Lender will select a new index for adjustment which is based upon comparable information and give City and the Borrower written notice of the selected new index."

The Lender hereby notifies you that effective July 1, 2023, the Existing Indexed Rate shall be replaced with the 5 Year Federal Home Loan Bank Rate as published by The Federal Home Loan Bank of Des Moines as of the date of determination, plus 2.09% (the "Replacement Indexed Rate") for purposes of the interest rate adjustment on each Adjustment Date (as defined in the Note). The Replacement Indexed Rate is a rate that is comparable to the Existing Indexed Rate.

Enclosed herewith is an Allonge to Note which evidences the Replacement Indexed Rate for the Note. We request that the City of Falcon Heights, as Issuer of the Note, and Mounds Park Academy, as the Borrower, execute the enclosed Allonge to Note and return it to the undersigned at the following address:

Bremer Bank, National Association
225 South Sixth Street, Suite 300
Minneapolis, MN 55402
Attn: Chad Faul

Bremer Bank, National Association

By: 
Its: Senior Vice President

/enclosure

ALLONGE TO NOTE

This Allonge is dated and effective as of _____, 2023 (the "Effective Date"), and is attached to and made a part of that certain Educational Facilities Revenue Refunding Note (Mounds Park Academy Project), Series 2014, dated May 15, 2014, issued by the City of Falcon Heights in the original principal amount of \$7,707,444.00 in favor of Bremer Bank, National Association, a national banking association ("Note").

Due to the unavailability of the 5-year LIBOR Swap Rate as defined in the Note after June 30, 2023, and as contemplated by the terms of the Note in the event of such unavailability, Section 1(b) of the Note is hereby deleted and replaced in its entirety with the following:

"(b) On the First Adjustment Date through May 31, 2024, the interest rate on this Note shall be 2.919%. On June 1, 2024, and every fifth anniversary thereafter (each, an "Adjustment Date"), the interest rate on this Note shall be adjusted to an interest rate per annum equal to 70% of the sum of the then-current 5 Year FHLB (as defined below) on such date plus 2.09% (the "Adjusted Rate"). However, the interest rate on this Note shall never increase or decrease on any Adjustment Date by more than 1.50%. The adjustment to the interest rate shall be made and become effective as of each Adjustment Date and the interest rate as adjusted shall remain in effect until the next Adjustment Date or May 15, 2034 (the "Final Maturity Date"). For all periods after the Final Maturity Date, this Note shall bear interest at a rate equal to the sum of the rate in effect on the Final Maturity Date plus three percent (3%) per annum. As used herein, the term "5 Year FHLB" shall mean the interest rate subject to change from time to time based on changes in an independent index which is the 5 Year Federal Home Loan Bank (FHLB) Rate as published by The Federal Home Loan Bank of Des Moines as of the date of determination (the "FHLB Index"), or such equivalent successor publication as is selected by the Lender. The FHLB Index is not necessarily the lowest rate charged by Lender on its loans. If the FHLB Index becomes unavailable during the term of this loan, Lender may designate a substitute Index for adjustment which is based upon comparable information and will give the City and the Borrower written notice of the selected new index."

(signature page to follow)

(signature page to Allonge)

IN WITNESS WHEREOF, the undersigned representatives of the Issuer, the Lender and the Borrower have executed this Allonge to Note as of the Effective Date.

ISSUER: City of Falcon Heights, Minnesota

By _____
Its _____

By _____
Its _____

(signature page to Allonge)

Agreed to and accepted as of the Effective Date.

LENDER:

Bremer Bank, National Association

By _____
Its _____

(signature page to Allonge)

Agreed to and accepted as of the Effective Date.

BORROWER:

Mounds Park Academy

By _____
Its _____

1218.470-allonge to bond note

76614709v1

(signature page to Allonge)

IN WITNESS WHEREOF, the undersigned representatives of the Issuer, the Lender and the Borrower have executed this Allonge to Note as of the Effective Date.

ISSUER: City of Falcon Heights, Minnesota

By _____
Its _____

By _____
Its _____

(signature page to Allonge)

IN WITNESS WHEREOF, the undersigned representatives of the Issuer, the Lender and the Borrower have executed this Allonge to Note as of the Effective Date.

ISSUER: City of Falcon Heights, Minnesota

By _____
Its _____

By _____
Its _____

(signature page to Allonge)

IN WITNESS WHEREOF, the undersigned representatives of the Issuer, the Lender and the Borrower have executed this Allonge to Note as of the Effective Date.

ISSUER: City of Falcon Heights, Minnesota

By _____
Its _____

By _____
Its _____

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

March 8, 2023

No. 23-19

**A RESOLUTION CONSENTING TO AMENDMENTS TO THE
CITY'S EDUCATIONAL FACILITIES REVENUE REFUNDING NOTE (MOUNDS
PARK ACADEMY PROJECT), SERIES 2014**

WHEREAS, pursuant to a resolution of the City adopted on April 9, 2014, the City of Falcon Heights, Minnesota (the "City"), issued its Educational Facilities Revenue Refunding Note (Mounds Park Academy Project), Series 2014 (the "Note"), in the original aggregate principal amount of \$7,707,444 to Bremer Bank, National Association, a national banking association (the "Lender"); and

WHEREAS, pursuant to a Loan Agreement dated as of May 15, 2014 (the "Loan Agreement"), between the City and Mounds Park Academy, a Minnesota nonprofit corporation (the "Borrower"), the City loaned the proceeds of the Note to the Borrower for the purpose of refinancing (i) an approximately 33,000-square-foot addition to be used as kindergarten classrooms, office and classroom space, and a combination gymnasium–auditorium facility and miscellaneous improvements to the existing facilities located at 2051 Larpenteur Avenue East in the City of Maplewood, Minnesota (the "Host City"), including code compliance, handicapped accessibility improvements, sprinkler systems, asbestos removal, parking lot improvements and interior renovation, (ii) the installation of various capital improvements to the Borrower's facilities located at 2051 Larpenteur Avenue East in the Host City, (iii) the acquisition of real property located at 2025 Larpenteur Avenue East in the Host City, and (iv) the acquisition, construction and equipping of an athletic field house, a two-story classroom addition linking the field house to the upper school, an early childhood classroom, new parking and driveway improvements and other capital improvements to the Borrower's existing facilities located at 2051 and 2025 Larpenteur Avenue East in the Host City (collectively, the "Project"), and the Borrower agreed to repay the Note in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Note; and

WHEREAS, pursuant to a Pledge Agreement (the "Pledge Agreement") dated as of the date of the Loan Agreement, between the City and the Lender, the City pledged and granted a security interest in all of its rights, title, and interest in the Loan Agreement to the Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses); and

WHEREAS, the Note is currently owned by the Lender; and

WHEREAS, the City has been advised by the Lender that the interest rate on the Note is currently a variable rate to be adjusted on June 1, 2024, based upon the 5-year London inter-bank offered rate ("LIBOR") swap rate (the "Existing Index"), plus a spread, and that the Existing Index is being phased out effective June 30, 2023, and will no longer be available after that date; and

WHEREAS, the Borrower and the Lender have agreed to replace the Existing Index with the 5 Year Federal Home Loan Bank Rate as published by The Federal Home Loan Bank of Des Moines as of the date of determination (the "Replacement Index"), as further described in the Allonge to Note (the "Allonge"), a substantially final form of which has been provided to the City (the "Modification"); and

WHEREAS, the Lender has advised the City that the Replacement Index, as modified by the proposed spread, is a rate comparable to the Existing Index, as modified by the existing spread;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FALCON HEIGHTS, MINNESOTA, as follows:

1. The City approves the Modification and authorizes the execution of the Allonge.
2. The Allonge is hereby in all respects approved, subject to modifications that do not alter the substance of the transaction and that are approved by Taft Stettinius & Hollister LLP as bond counsel to the City; provided that delivery of the Allonge shall be conclusive evidence of approval.
3. The Mayor and the City Administrator are hereby authorized to execute and deliver the Allonge and any other related documents on behalf of the City.
4. This Resolution shall be in full force and effect from and after its passage.

Adopted by the City Council of the City of Falcon Heights, Minnesota, this 8th day of March, 2023.

Moved by:

Approved by: _____
Randall C. Gustafson
Mayor

GUSTAFSON ___ In Favor
MEYER
LEEHY ___
WASSENBERG Against
WEHYEE

Attested by: _____
Jack Linehan
City Administrator

BLANK PAGE

Meeting Date	March 8, 2023
Agenda Item	Consent G4
Attachment	N/A
Submitted By	Randall Gustafson, Mayor

Item	Council/City Commission Liaison Updated Assignments
Description	<p>Council Members are each assigned to serve as a liaison between City Council and various commissions each year. Due to a schedule conflict, I propose the following re-assignment:</p> <ul style="list-style-type: none"> • Planning Commission - Yakasah Wehyee Randall Gustafson • Community Engagement Commission - Randall Gustafson Yakasah Wehyee
Budget Impact	N/A
Attachment(s)	N/A
Action(s) Requested	Motion to approve the above updated appointments for 2023.

BLANK PAGE

Meeting Date	March 8, 2023
Agenda Item	Consent G5
Attachment	Resolution 23-20, Joint Powers Agreement, Court Subscriber Amendment
Submitted By	Jack Linehan, City Administrator

Item	Bureau of Criminal Apprehension (BCA) Joint Powers Agreement & Court Subscriber Amendment
Description	<p>The Minnesota Bureau of Criminal Apprehension (BCA) has requested that the City of Falcon Heights adopt a new Joint Powers Agreement (JPA). These agreements are for five-year periods and are required by state statute.</p> <p>For the most part, this agreement is simply to meet statutory requirements since all of our dealings with the BCA are conducted through the Ramsey County Sheriff's Office, which has their own JPA. Additionally, the BCA has asked the City to update our Court Subscriber Agreement with our recently appointed city prosecutor, Joseph Kelly.</p>
Budget Impact	N/A
Attachment(s)	<ul style="list-style-type: none"> • Resolution 23-20 Approving the State of MN Joint Powers Agreements with the City of Falcon Heights on Behalf of its City Attorney • Court Data Services Subscriber Amendment to CJDN Subscriber Agreement <ul style="list-style-type: none"> ○ CJDN Fee Structure • State of MN Joint Powers Agreement Authorized Agency
Action(s) Requested	Staff recommends that the Falcon Heights City Council adopt the attached resolution approving a Joint Powers Agreement with the Bureau of Criminal Apprehension and authorize the City Administrator and Mayor to sign all necessary documents.

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

March 8, 2023

Resolution No. 23-20

**RESOLUTION APPROVING STATE OF MINNESOTA JOINT POWERS
AGREEMENTS WITH THE CITY OF FALCON HEIGHTS ON BEHALF OF ITS CITY
PROSECUTOR**

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

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

1. That the State of Minnesota Joint Powers Agreements by and between the State of Minnesota acting through its Department of Public Safety, Bureau of Criminal Apprehension and the City of Falcon Heights on behalf of its Prosecuting Attorney, are hereby approved. Copies of the Joint Powers Agreement are attached to this Resolution and made a part of it.
2. That the Prosecuting Attorney, Joseph Kelly, or his or her successor, is designated the Authorized Representative for the Prosecuting Attorney. The Authorized Representative is also authorized to sign any subsequent amendment or agreement that may be required by the State of Minnesota to maintain the City’s connection to the systems and tools offered by the State.
3. To assist the Authorized Representative with the administration of the agreement, Jack Linehan, City Administrator is appointed as the Authorized Representative’s designee.
4. That Randall C. Gustafson, the Mayor for the City of Falcon Heights, and Jack Linehan, the City Administrator/ City Clerk, are authorized to sign the State of Minnesota Joint Powers Agreements.

PASSED AND ADOPTED by the Falcon Heights City Council on this 8th day of March, 2023

City of Falcon Heights

Moved by:

Approved by: _____
Randall C. Gustafson
Mayor

GUSTAFSON ___ In Favor
MEYER
LEEHY ___ Against
WEHYEE
WASSENBERG

Attested by: _____
Jack Linehan
City Administrator / City Clerk



State of Minnesota Joint Powers Agreement

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

Recitals

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

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

Agreement

1 Term of Agreement

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

2 Agreement Between the Parties

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

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

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

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

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

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

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

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

particular transaction.

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

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

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

2.12 Court Information Access. Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Governmental Unit if the Governmental Unit completes the Court Data Services Subscriber Amendment, which upon execution will be incorporated into this Agreement by reference. These BCA systems and tools are identified in the written request made by the Governmental Unit under Clause 2.6 above. The Court Data Services Subscriber Amendment provides important additional terms, including but not limited to privacy (see Clause 8.2, below), fees (see Clause 3 below), and transaction records or logs, that govern Governmental Unit's access to and/or submission of the Court Records delivered through the BCA systems and tools.

2.13 Vendor Personnel Screening. The BCA will conduct all vendor personnel screening on behalf of Governmental Unit as is required by the FBI CJIS Security Policy. The BCA will maintain records of the federal, fingerprint-based background check on each vendor employee as well as records of the completion of the security awareness training that may be relied on by the Governmental Unit.

3 Payment

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

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

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

4 Authorized Representatives

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

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

Telephone: Saint Paul, MN 55106
651.793.1007
Email Address: Dana.Gotz@state.mn.us

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

Name: Joe Kelly, Attorney
Address: 2350 Wycliff St, Ste 200
St Paul, MN 55114
Telephone: 651.224.3781
Email Address: jkelly@kellyandlemmons.com

5 Assignment, Amendments, Waiver, and Agreement Complete

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

6 Liability

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

7 Audits

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

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

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

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

8 Government Data Practices

8.1 **BCA and Governmental Unit.** The Governmental Unit and BCA must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data accessible under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Governmental Unit under this Agreement. The remedies of Minn. Stat. §§ 13.08 and 13.09 apply to the release of the data referred to in this clause by either the Governmental Unit or the BCA.

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

9 Investigation of Alleged Violations; Sanctions

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

9.1 **Investigation.** The Governmental Unit and BCA agree to cooperate in the investigation and possible prosecution of suspected violations of federal and state law referenced in this Agreement. Governmental Unit and BCA agree to cooperate in the investigation of suspected violations of the policies and procedures referenced in this Agreement. When BCA becomes aware that a violation may have occurred, BCA will inform Governmental Unit of the suspected violation, subject to any restrictions in applicable law. When Governmental Unit becomes aware that a violation has occurred, Governmental Unit will inform BCA subject to any restrictions in applicable law.

9.2 Sanctions Involving Only BCA Systems and Tools.

The following provisions apply to BCA systems and tools not covered by the Court Data Services Subscriber Amendment. None of these provisions alter the Governmental Unit internal discipline processes, including those governed by a collective bargaining agreement.

9.2.1 For BCA systems and tools that are not covered by the Court Data Services Subscriber Amendment, Governmental Unit must determine if and when an involved Individual User's access to systems or tools is to be temporarily or permanently eliminated. The decision to suspend or terminate access may be made as soon as alleged violation is discovered, after notice of an alleged violation is received, or after an investigation has occurred. Governmental Unit must report the status of the Individual User's access to BCA without delay. BCA reserves the right to make a different determination concerning an Individual User's access to systems or tools than that made by Governmental Unit and BCA's determination controls.

9.2.2 If BCA determines that Governmental Unit has jeopardized the integrity of the systems or tools covered in this Clause 9.2, BCA may temporarily stop providing some or all the systems or tools under this Agreement until the failure is remedied to the BCA's satisfaction. If Governmental Unit's failure is continuing or repeated, Clause 11.1 does not apply and BCA may terminate this Agreement immediately.

9.3 Sanctions Involving Only Court Data Services

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

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

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

10 Venue

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

11 Termination

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

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

12 Continuing Obligations

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

THE BALANCE OF THIS PAGE INTENTIONALLY LEFT BLANK

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

1. GOVERNMENTAL UNIT

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

2. DEPARTMENT OF PUBLIC SAFETY, BUREAU OF CRIMINAL APPREHENSION

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION

As delegated to the Office of State Procurement

By: _____

Date: _____

COURT DATA SERVICES SUBSCRIBER AMENDMENT TO CJDN SUBSCRIBER AGREEMENT

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

Recitals

This Subscriber Amendment modifies and supplements the Agreement between the BCA and Agency, SWIFT Contract number 225456, of even or prior date, for Agency use of BCA systems and tools (referred to herein as “the CJDN Subscriber Agreement”). Certain BCA systems and tools that include access to and/or submission of Court Records may only be utilized by the Agency if the Agency completes this Subscriber Amendment. The Agency desires to use one or more BCA systems and tools to access and/or submit Court Records to assist the Agency in the efficient performance of its duties as required or authorized by law or court rule. Court desires to permit such access and/or submission. This Subscriber Amendment is intended to add Court as a party to the CJDN Subscriber Agreement and to create obligations by the Agency to the Court that can be enforced by the Court. It is also understood that, pursuant to the Master Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA, the BCA is authorized to sign this Subscriber Amendment on behalf of Court. Upon execution the Subscriber Amendment will be incorporated into the CJDN Subscriber Agreement by reference. The BCA, the Agency and the Court desire to amend the CJDN Subscriber Agreement as stated below.

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

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

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

a. **“Authorized Court Data Services”** means Court Data Services that have been authorized for delivery to CJDN Subscribers via BCA systems and tools pursuant to an Authorization Amendment to the Joint Powers Agreement for Delivery of Court Data Services to CJDN Subscribers (“Master Authorization Agreement”) between the Court and the BCA.

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

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

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

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

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

f. “**Rules of Public Access**” means the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court, as the same may be amended from time to time, including without limitation lists or tables published from time to time by the Court entitled *Limits on Public Access to Case Records or Limits on Public Access to Administrative Records*, all of which by this reference are made a part of this Subscriber Amendment. It is the obligation of Subscriber to check from time to time for updated rules, lists, and tables and be familiar with the contents thereof. It is contemplated that such rules, lists, and tables will be posted on the Minnesota Judicial Branch website, for which the current address is www.courts.state.mn.us.

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

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

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

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

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

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

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

4. SCOPE OF ACCESS TO COURT RECORDS LIMITED. Subscriber’s access to and/or submission of the Court Records shall be limited to Authorized Court Data Services identified in an approved request form under section 3, above, and other Court Records necessary for Subscriber to use Authorized Court Data Services. Authorized Court Data Services shall only be used according to the instructions provided in corresponding Policies & Notices or other materials and only as necessary to assist Subscriber in the efficient performance of Subscriber’s duties

required or authorized by law or court rule in connection with any civil, criminal, administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body. Subscriber's access to the Court Records for personal or non-official use is prohibited. Subscriber will not use or attempt to use Authorized Court Data Services in any manner not set forth in this Subscriber Amendment, Policies & Notices, or other Authorized Court Data Services documentation, and upon any such unauthorized use or attempted use the Court may immediately terminate this Subscriber Amendment without prior notice to Subscriber.

5. GUARANTEES OF CONFIDENTIALITY. Subscriber agrees:

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

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

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

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

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

6. APPLICABILITY TO PREVIOUSLY DISCLOSED COURT RECORDS.

Subscriber acknowledges and agrees that all Authorized Court Data Services and related Court Records disclosed to Subscriber prior to the effective date of this Subscriber Amendment shall be subject to the provisions of this Subscriber Amendment.

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

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

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

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

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

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

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

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

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

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

11. [reserved]

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

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

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

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

d. Minnesota Data Practices Act Applicability. If Subscriber is a Minnesota Government entity that is subject to the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, Subscriber acknowledges and agrees that: (1) the Court is not subject to Minn. Stat. Ch. 13 (see section 13.90) but is subject to the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court; (2) Minn. Stat. section 13.03, subdivision 4(e) requires that Subscriber comply with the Rules of Public Access and other rules promulgated by the Minnesota Supreme Court for access to Court Records provided via the

BCA systems and tools under this Subscriber Amendment; (3) the use of and access to Court Records may be restricted by rules promulgated by the Minnesota Supreme Court, applicable state statute or federal law; and (4) these applicable restrictions must be followed in the appropriate circumstances.

13. FEES; INVOICES. Unless the Subscriber is an office, officer, department, division, agency, or bureau of the state of Minnesota, Subscriber shall pay the fees, if any, set forth in applicable Policies & Notices, together with applicable sales, use or other taxes. Applicable monthly fees commence ten (10) days after notice of approval of the request pursuant to section 3 of this Subscriber Amendment or upon the initial Subscriber transaction as defined in the Policies & Notices, whichever occurs earlier. When fees apply, the Court shall invoice Subscriber on a monthly basis for charges incurred in the preceding month and applicable taxes, if any, and payment of all amounts shall be due upon receipt of invoice. If all amounts are not paid within 30 days of the date of the invoice, the Court may immediately cancel this Subscriber Amendment without notice to Subscriber and pursue all available legal remedies. Subscriber certifies that funds have been appropriated for the payment of charges under this Subscriber Amendment for the current fiscal year, if applicable.

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

15. WARRANTY DISCLAIMERS.

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

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

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

17. NOTICE. Except as provided in section 2 regarding notices of or modifications to Authorized Court Data Services and Policies & Notices, any notice to Court or Subscriber

hereunder shall be deemed to have been received when personally delivered in writing or seventy-two (72) hours after it has been deposited in the United States mail, first class, proper postage prepaid, addressed to the party to whom it is intended at the address set forth on page one of this Agreement or at such other address of which notice has been given in accordance herewith.

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

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

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

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

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

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

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

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

1. SUBSCRIBER (AGENCY)

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

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

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

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with delegated authority)

Date: _____

3. COMMISSIONER OF ADMINISTRATION
delegated to Materials Management Division

By: _____

Date: _____

4. COURTS

Authority granted to Bureau of Criminal Apprehension

Name: _____
(PRINTED)

Signed: _____

Title: _____
(with authorized authority)

Date: _____

BLANK PAGE

Meeting Date	March 8, 2023
Agenda Item	Consent G6
Attachment	Grant, TBRA Loan, Remediation Documentation
Submitted By	Jack Linehan, City Administrator

Item	Motion to reimburse Buhl GTA, LP from the Metropolitan Council's Tax Base Revitalization Account for Affordable Housing and grant authority to the City Administrator to sign all documents related to release of the grant.
Description	<p>The City of Falcon Heights and Buhl GTA, LP received a grant from the Metropolitan Council's Tax Base Revitalization Account for the Amber Union project at 1667 Snelling Avenue.</p> <p>City Council approved Resolution 20-45 on October 14, 2020 which allowed staff to apply for the grant. The City of Falcon Heights applied for the application in shortly thereafter, and accepted the grant on March 24, 2021.</p> <p>The City and Buhl GTA, LP (the developer of the Amber Union project) were awarded a grant for environmental cleanup at the Amber Union property (1667 Snelling Ave). These grant funds were dedicated to remediate asbestos and other contamination associated with seventy-plus years of use at the site.</p> <p>In May 2021, the City approved Resolution 21-26, which established a mortgage agreement with Buhl GTA, LP. This was at the request of Buhl to maximize their funding strategy for the Amber Union project. In the terms of the loan, Buhl is required to pay back the \$962,200 to the City after 41.5 years (2063), interest free. These funds are then returned to the Met Council.</p> <p>With abatement completed, the City received a check from the Met Council for \$962,200. As part of the subgrant agreement, the City reimburses this amount to Buhl GTA, LP under the terms of our mortgage. It is the opinion of all parties that all requirements have been met by the developer.</p>
Budget Impact	The grant is in the amount of \$962,200. This grant and related activity is not forecasted to have direct impact on the budget.
Attachment(s)	<ul style="list-style-type: none"> • Amber Union Agreement for Tax Base Revitalization Account Grant • TBRA Loan Executed Documents • Remediation Documentation

Action(s) Requested	Staff recommends a motion to reimburse Buhl GTA, LLC from the Metropolitan Council's Tax Base Revitalization Account for Affordable Housing and grant authority to the City Administrator to sign all documents related to release of the grant funds.
--------------------------------	--

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

GRANTEE: City of Falcon Heights		GRANT NO. SG-14966	
PROJECT: Amber Union			
GRANT AMOUNT: \$962,200		FUNDING CYCLE: Fall 2020	
COUNCIL ACTION: January 13, 2020		EXPIRATION DATE: December 31, 2023	
COUNCIL AUTHORIZED AGENT: Josiah Waderich josiah.waderich@metc.state.mn.us			

**METROPOLITAN LIVABLE COMMUNITIES ACT
GRANT AGREEMENT**

THIS GRANT AGREEMENT (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the Municipality or Development Authority identified above as “Grantee.”

WHEREAS, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act (“LCA”) and the policies of the Council’s Metropolitan Development Guide; and

WHEREAS, Minnesota Statutes sections 473.251 and 473.252 establish within the Metropolitan Livable Communities Fund a Tax Base Revitalization Account and require the Council to use the funds in the account to make grants to Municipalities or Development Authorities for the cleanup of polluted land in the seven-county metropolitan area; and

WHEREAS, the Grantee is a Municipality or a Development Authority as defined in Minnesota Statutes section 473.252, subdivisions 1 and 1a; and

WHEREAS, the Grantee seeks funding in connection with an application for Tax Base Revitalization Account funds submitted in response to the Council’s notice of availability of grant funds for the “Funding Cycle” identified above and will use the grant funds made available under this Agreement to help fund the “Project” identified in the application; and

WHEREAS, the Council awarded Tax Base Revitalization Account grant funds to the Grantee subject to any terms, conditions or clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner, all grant funds will be expended prior to the “Expiration Date” identified above, and Project development or redevelopment construction will have “commenced” before the Expiration Date.

NOW THEREFORE, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

I. DEFINITIONS

1.01. Definition of Terms. The terms defined in this section have the meanings given them in this section unless otherwise provided or indicated by the context.

(a) **Cleanup Costs or Costs.** “Cleanup Costs” or “Costs” means:

- (1) For hazardous waste or substance contamination, the cost of implementing a voluntary response action plan approved by the Minnesota Pollution Control Agency under Minnesota Statutes section 115B.175, subdivision 3.
- (2) For asbestos contamination, the cost of implementing a project-specific asbestos project plan for the Site and performing asbestos-related work which is carried out by contractors or subcontractors licensed or certified by the Commissioner of Health under the Minnesota Asbestos Abatement Act, Minnesota Statutes sections 326.70 to 326.81, in accordance with rules prescribed by the Commissioner of Health related to asbestos abatement and asbestos management activity, and meeting the federal Asbestos Hazard Emergency Response Act (“AHERA”) standards for asbestos.
- (3) For petroleum contamination, the cost of implementing a corrective action plan for the Site approved by the Minnesota Pollution Control Agency under Minnesota Statutes chapter 115C.
- (4) For lead abatement, the cost of lead abatement work performed by certified contractors consistent with all applicable federal and state laws, rules and standards governing lead abatement or regulated lead work on residential or commercial properties.

(b) **Commenced.** For the purposes of Sections 2.08 and 5.03, “commenced” means significant physical improvements have occurred in furtherance of the Project (e.g., a foundation is being constructed or other tangible work on a structure has been initiated). In the absence of significant physical improvements, visible staking, engineering, land surveying, soil testing, cleanup site investigation, or pollution cleanup activities are not evidence of Project commencement for the purposes of this Agreement.

(c) **Council Action.** “Council Action” means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Tax Base Revitalization Account grant funds.

(d) **Development Authority.** “Development Authority” means a statutory or home rule charter city, housing and redevelopment authority, an economic development authority, or a port authority in the “metropolitan area” as defined by Minnesota Statutes section 473.121, subdivision 2.

(e) **Municipality.** “Municipality” means a statutory or home rule charter city or town participating in the Local Housing Incentives Program under Minnesota Statutes section 473.254, or a county in the metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.

(f) **Participating Municipality.** “Participating Municipality” means a statutory or home rule charter city or town that has elected to participate in the Local Housing Incentive Account program and

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254.

- (g) **Project.** Unless clearly indicated otherwise by the context of a specific provision of this Agreement, “Project” means the development or redevelopment project identified in the application for Tax Base Revitalization Account funds for which grant funds were requested. Grant-funded activities typically are components of the Project.
- (h) **Project Costs.** “Project Costs” means all costs as defined in Minnesota Statutes section 116J.552, subdivision 7.
- (i) **Site.** “Site” means the polluted land proposed by the Grantee to be cleaned up and located both within the metropolitan area and within a Participating Municipality.

II. GRANT FUNDS

2.01. Source of Funds. The grant funds made available to the Grantee under this Agreement are from the Tax Base Revitalization Account of the Metropolitan Livable Communities Fund. The grant funds are derived from the area-wide tax imposed under Minnesota Statutes chapter 473F and are not from federal sources.

2.02. Grant Amount. The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement. The Council’s obligation to reimburse the Grantee for eligible grant-funded expenditures shall not exceed the Grant Amount. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Tax Base Revitalization Account funds made available to the Council may result in a like reduction in the Grant Amount made available to the Grantee.

2.03. Authorized Use of Grant Funds. The Grant Amount made available to the Grantee under this Agreement shall be used only for Cleanup Costs for the cleanup of the Site described in the application for Tax Base Revitalization Account funds. A Project Summary that identifies eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Aerial photography or drawings that identify the specific location(s) within the Project boundaries or the Site(s) for which cleanup grant funds must be used is attached to and incorporated into this Agreement as Attachment B. Grant funds must be used for cleanup of the Site which must be located in a Participating Municipality. If consistent with the application and subject to the limitations in Minnesota Statutes section 116J.556, the Grantee may use the grant funds to provide a portion of the local match requirement for Project Costs that qualify for a grant under Minnesota Statutes sections 116J.551 to 116J.557.

2.04. Ineligible Uses. Grant funds must be used for costs directly associated with the specific proposed Project activities for which the grant funds were awarded and shall not be used for “soft costs” such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses or authorization fees; costs associated with preparing grant proposals or applications; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Grant funds may not be used for costs of Project activities that occurred prior to the Council Action, unless the pre-award costs were for:

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

- (a) Site investigation work that occurred within 180 days of the Funding Cycle application due date and is identified as a grant-funded activity in Attachment A; or
- (b) Project cleanup activities that occurred within 180 days of the Funding Cycle application due date that were expressly approved by the Council Action and are described or identified in Attachments A and B.

A detailed list of ineligible and eligible costs is available from the Council's Livable Communities program office. Grant funds also shall not be used by the Grantee or others to supplant or replace: (a) grant or loan funds obtained for the Project from other sources; or (b) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (c) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any "business subsidy" requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee's expenditures or uses of the grant funds.

2.05. Loans for Low-Income Housing Tax Credit Projects. If consistent with the application and the Project activities described in Attachment A or if requested in writing by the Grantee, the Grantee may structure the grant assistance to the Project as a loan so the Project Owner can take advantage of federal and state low-income housing tax credit programs. The Grantee may use the grant funds as a loan for a low-income housing tax credit Project, subject to the terms and conditions stated in Sections 2.03 and 2.04 and the following additional terms and conditions:

- (a) The Grantee covenants and represents to the Council that the Project is a rental housing project that received or will receive an award of low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, as amended, and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the metropolitan area.
- (b) The Grantee will execute a loan agreement with the Project Owner. Prior to disbursing any grant funds for the Project, the Grantee will provide to the Council a copy of the loan agreement between the Grantee and the Project Owner.
- (c) The Grantee will submit annual written reports to the Council that certify: (1) the grant funds continue to be used for the Project for which the grant funds were awarded; and (2) the Project is a "qualified low-income housing project" under section 42 of the Internal Revenue Code of 1986, as amended. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual certification reports during the initial "compliance period" and any "extended use period," or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee.
- (d) The grant funds made available to the Grantee and disbursed to the Project Owner by the Grantee in the form of a loan may be used only for the grant-eligible activities and Project

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

components for which the Grantee was awarded the grant funds. For the purposes of this Agreement, the term "Project Owner" means the current Project Owner and any Project Owner successor(s).

- (e) Pursuant to Section 2.04, the grant funds made available to the Grantee and disbursed to the Project Owner in the form of a loan shall not be used by the Grantee, the Project Owner or others to supplant or replace: (1) grant or loan funds obtained for the Project from other sources; or (2) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (3) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council will not make the grant funds available to the Grantee in a lump sum payment, but will disburse the grant funds to the Grantee on a reimbursement basis pursuant to Section 2.10.
- (f) By executing this Agreement, the Grantee: (1) acknowledges that the Council expects the loan will be repaid so the grant funds may be used to help fund other activities consistent with the requirements of the Metropolitan Livable Communities Act; (2) covenants, represents and warrants to the Council that the Grantee's loan to the Project Owner will meet all applicable low-income housing tax credit program requirements under section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the metropolitan area; and (3) agrees to administer its loan to the Project Owner consistent with federal and state low-income housing tax credit program requirements.
- (g) The Grantee will, at its own expense, use diligent efforts to recover loan proceeds: (1) when the Project Owner becomes obligated to repay the Grantee's loan or defaults on the Grantee's loan; (2) when the initial thirty-year "compliance period" expires, unless the Council agrees in writing that the Grantee may make the grant funds available as a loan to the Project Owner for an "extended use period"; and (3) if noncompliance with low-income housing tax credit program requirements or some other event triggers the Project Owner's repayment obligations under its loan agreement with the Grantee. The Grantee must repay to the Council all loan repayment amounts the Grantee receives from the Project Owner. The Grantee shall not be obligated to repay the grant funds to the Council except to the extent the Project Owner repays its loan to the Grantee, provided the Grantee has exercised the reasonable degree of diligence and used administrative and legal remedies a reasonable and prudent housing finance agency would use to obtain payment on a loan, taking into consideration (if applicable) the subordinated nature of the loan. At its discretion, the Council may: (1) permit the Grantee to use the loan repayment from the Project Owner to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.
- (h) If the Grantee earns any interest or other income from its loan agreement with the Project Owner, the Grantee will: (1) use the interest earnings or income only for the purposes of implementing the Project activities for which the grant was awarded; or (2) remit the interest earnings or income to the Council. The Grantee is not obligated to earn any interest or other income from its loan agreement with the Project Owner, except to the extent required by any applicable law.

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

2.06. Deferred Loans. If consistent with the application and the Project Summary, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments) for the purposes of implementing the Project activities described or identified in Attachments A and B. The Grantee will submit annual written reports to the Council that report on the uses of the grant funds. The form and content of the report will be determined by the Council. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual reports until the deferred loan is repaid, or until such time as the Council terminates this annual reporting requirement by written notice from the Council. At its discretion, the Council may: (a) permit the Grantee to use loan repayments to continue supporting affordable housing components of the Project; or (b) require the Grantee to remit the grant funds to the Council.

2.07. Restrictions on Loans or Grants by Subgrantees. The Grantee shall not permit any subgrantee or subrecipient to use the grant funds for loans or grants to any subrecipient at any tier unless the Grantee obtains the prior written consent of the Council. The requirements of this Section 2.07 shall be included in all subgrants.

2.08. Project Commencement and Changes. The Project for which grant funds were requested must be “commenced” prior to the Expiration Date. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to grant-funded activities described or identified in Attachments A and B. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee’s eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described or identified in Attachments A and B.

2.09. Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; and any interest earnings described in Section 2.11 that are not used for the purposes of implementing the grant-funded Project activities described or identified in Attachments A and B. For the purposes of this Agreement, grant funds are “expended” prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible grant-funded Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council’s Tax Base Revitalization Account for distribution through application processes in future Funding Cycles or as otherwise permitted by law.

2.10. Payment Request Forms, Documentation, and Disbursements. The Council will disburse grant funds in response to payment requests submitted by the Grantee through the Council’s online grant management system and reviewed and approved by the Council’s authorized agent. Payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms will be provided to the Grantee by the Council. The Council will disburse grant funds on a reimbursement basis or a “cost incurred” basis. To obtain reimbursement under this Agreement, the Grantee shall provide the Council with evidence

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

that eligible grant-funded activities, (or a portion thereof) for which reimbursement is requested, have been satisfactorily completed. The Grantee shall describe the grant-eligible activities for which reimbursement is requested and shall provide sufficient documentation of grant-eligible expenditures, invoices and payment documents, and such other information as the Council reasonably requests. The Council will make the final determination whether the expenditures are eligible for reimbursement under this Agreement, and verify the total amount requested from the Council. Reimbursement of any cost does not constitute a waiver by the Council of any Grantee noncompliance with this Agreement. Payment requests must also include the following documentation:

- (a) Contaminated fill disposal documentation (showing unit rates, one manifest per truck per load, and weight/load tickets); and
- (b) A spreadsheet matching manifest, load tickets and final weights.
- (c) Consultant/contractor invoices showing the time period covered by the invoice; the specific grant-funded Project activities conducted or completed during the authorized time period within which eligible costs may be incurred; and documentation supporting expenses including subcontractor and consultant invoices showing unit rates and quantities. Subcontractor markups shall not exceed ten percent (10%).

The Council shall disburse grant funds for all grant-eligible expenditures within thirty-five (35) days of the receipt of satisfactory documentation from the Grantee. **NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 2.10, THE COUNCIL WILL NOT DISBURSE ANY GRANT FUNDS TO THE GRANTEE UNLESS THE GRANTEE HAS ADOPTED A FAIR HOUSING POLICY AS REQUIRED BY SECTION 6.04.**

2.11. Interest Earnings. If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described or identified in Attachments A and B.

2.12. Effect of Grant. Issuance of this grant neither implies any Council responsibility for the contamination at the Site nor imposes any obligation on the Council to participate in the cleanup of the Site contamination or in the Cleanup Costs beyond the Grant Amount of this Agreement. By awarding grant funds to the Grantee for the Project and executing this Agreement, the Council assumes no responsibility for: (a) any damage to persons, property, or the environment caused by Site cleanup activities or implementation of the Project; or (b) determining whether intended uses of the Site identified in the grant application or potential future uses of the Site, including any residential uses, are suitable for the Site.

III. ACCOUNTING, AUDIT AND REPORT REQUIREMENTS

3.01. Accounting and Records. The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Sections 5.01 and 5.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described or identified in Attachments A and B or

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

six (6) years following the expenditure of the grant funds, whichever occurs earlier. Accounting methods shall be in accordance with generally accepted accounting principles.

3.02. Audits. The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee's premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

3.03. Report Requirements. The Grantee will report to the Council written progress reports on a semi-annual basis by January 31 (for the period July 1 through December 31) and July 31 (for the period January 1 through June 30) of each calendar year during the term of this Agreement. The Grantee reports shall describe the status of the Project activities described or identified in Attachments A and B. The report shall also describe the project spending for the current reporting period and projected spending for future reporting periods. The Grantee must complete and submit to the Council a Final Report before the final disbursement of grant funds will be approved. The form and content of the progress reports and the Final Report will be determined by the Council. In addition to the required status reports and the Final Report, the Grantee must submit to the Council by April 15 of the year following the expiration of this Agreement and by April 15 of each of the succeeding three (3) years, an annual written report that includes information about redevelopment activities, net tax capacity of the Site, and jobs resulting from Site cleanup. The form and content of the annual written report will be determined by the Council. The reporting requirements of Sections 3.03 and 3.04 shall survive the expiration or termination of this Agreement.

3.04. Certificate of Completion. Upon completion of the Site cleanup, the Grantee will provide to the Council:

- (a) For hazardous waste or substance contamination, a copy of a certificate of completion for the Site issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes section 115B.175, or a letter from the Agency indicating that the approved voluntary response action plan for the Site has been implemented to the satisfaction of the Agency and that the Agency is issuing a determination that no further action is required under Minnesota Statutes sections 115B.01 to 115B.08 to address the identified release; or
- (b) For asbestos contamination, either: (1) a copy of a statement from the Grantee's licensed asbestos abatement contractor that the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health; or (2) a final asbestos abatement implementation report that shows the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health; or
- (c) For petroleum contamination, a copy of a site closure letter issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes chapter 115C; or

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

- (d) For lead abatement or regulated lead work: (1) a copy of the contractor firm certification to conduct lead-based paint activities in residential or child-occupied facilities per Code of Federal Regulations, Title 40, section 745.89 and Minnesota Statutes section 144.9505; and (2) a statement or other documentation from the certified contractor that the lead abatement or regulated work at the Site has been completed in accordance with applicable provisions of Code of Federal Regulations, Title 40, part 745 and state laws, rules and standards governing lead abatement according to the Lead Poisoning Prevention Act, Minnesota Statutes sections 144.9501 to 144.9512 and Minnesota Rules parts 4761.2000 to 4761.2700.

IV. RECOVERY AND REPAYMENT

4.01. Recovery of Funds. If the Grantee recovers funds pursuant to an action under Minnesota Statutes section 115B.04, or other law, to recover the reasonable and necessary Project Costs incurred to clean up the Site, the Grantee shall repay to the Council that portion of the grant as provided in Section 4.04.

4.02. Assignment of Rights. Upon request of the Council, the Grantee shall assign to the Council the Grantee's right to recover the funds described in Section 4.01, shall prepare and submit a certification of the Project Costs incurred, and shall cooperate in any cost recovery action brought by the Council.

4.03. Expenses of Recovery. The reasonable litigation expenses or other costs of legal or technical assistance incurred by the Grantee, the Council, or both, may be deducted from recovery obtained in accordance with Sections 4.01 or 4.02 and reimbursed to the entity incurring such costs before proceeds of the recovery are distributed in accordance with Section 4.04.

4.04. Reimbursement. Subject to the deduction provided in Section 4.03, amounts recovered either by the Grantee or the Council from responsible persons and all other amounts otherwise received by the Grantee or the Council for cleanup of the Site shall be used to reimburse the Grantee, the Council, or any other nonresponsible party who contributed funds for cleanup of the Site in proportion to their respective payments for response costs.

4.05. Survival of Recovery and Repayment Provisions. The provisions of Sections 4.01 through 4.04 shall survive the expiration or termination of this Agreement.

V. AGREEMENT TERM

5.01. Term. This Agreement is effective upon execution of this Agreement by the Council. Unless terminated pursuant to Section 5.02, this Agreement expires on the Expiration Date identified at Page 1 of this Agreement. **ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.**

5.02. Termination. This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days' written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described or identified in Attachments A and B that have been completed prior to the termination. Termination of this Agreement does not alter the Council's authority to recover grant funds on the

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

basis of a later audit or other review, and does not alter the Grantee's obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council's interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

5.03. Amendments and Extension. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or an extension of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. If the Grantee needs a change to the Project, additional time within which to complete the grant-funded activities and commence the Project, a change in the budget, or a change in grant-funded activities the Grantee must submit to the Council **AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, a complete, written amendment request. All requirements must be met for a request to be considered complete. **THE EXPIRATION DATE MAY BE EXTENDED, BUT THE PERIOD OF ANY EXTENSION(S) SHALL NOT EXCEED TWO (2) YEARS BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.**

VI. AFFORDABILITY; AFFIRMATIVE FAIR HOUSING

6.01. Affordability Term. If the Project for which the grant funds were awarded includes affordable housing units, the Grantee shall, through written instruments or otherwise, ensure the affordable units will remain affordable for a minimum period of fifteen (15) years. The Grantee's obligation under this section may be satisfied if other Project funding sources (*e.g.*, the Minnesota Housing Finance Agency or HUD) or state or federal laws (*e.g.*, low-income housing tax credit programs) require an affordability term of at least fifteen (15) years. For the purposes of this section, "affordable housing unit" means a unit that is affordable to households at 80 percent or less of the Area Median Income ("AMI"), as established by HUD, unless the Grantee's application stated an affordability standard lower than 80 percent of AMI, in which case the Grantee's lower affordability standard shall apply. The affordability requirements of this section shall survive the expiration or termination of this Agreement.

6.02. Affirmative Fair Housing Marketing Plans. If the Project for which the grant funds were awarded is a housing project, or includes housing units (whether market rate or affordable), the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements an affirmative fair housing marketing plan for Project housing units. For the purposes of this section, "affirmative fair housing marketing plan" means an affirmative fair housing marketing plan that substantially conforms to affirmative fair housing marketing plans published by the U.S. Department of Housing and Urban Development ("HUD") or sample affirmative fair housing marketing plans published by the Minnesota Housing Finance Agency. The affirmative fair housing marketing plan requirement under this section shall continue for the minimum affordability term specified in Section 6.01 and shall survive the expiration or termination of this Agreement.

6.03. Section 8 Housing Choice Vouchers. If the Project is a housing project, or includes housing units (whether market rate or affordable) and the Grantee stated in its application that the Project housing units would be made available to households participating in the federal Housing Choice

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

Voucher program, the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements a policy under which the Project owner will not refuse to lease Project units to households or individuals participating in the Housing Choice Voucher program because those households or individuals are Housing Choice Voucher program participants. The Housing Choice Voucher requirement under this section shall continue for the minimum affordability term specified in Section 6.01 and shall survive the expiration or termination of this Agreement.

6.04. Fair Housing Policy. If the Project will include a housing component, the Grantee must adopt a Fair Housing Policy. For the purposes of this section, the term “Fair Housing Policy” means a written statement regarding the Grantee’s commitment to fair housing that contains at least the following elements: a purpose statement; procedures for complaint identification and referral; a designated fair housing officer; and an outline of the internal and external actions the Grantee will undertake to advance fair housing. A best practices guide, as well as a copy of a model local fair housing policy is available at: <https://metro council.org/Handbook/Files/Resources/Best-Practices/Fair-Housing-Policy-Guide.aspx>

VII. GENERAL PROVISIONS

7.01. Equal Opportunity. The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

7.02. Conflict of Interest. The members, officers and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

7.03. Liability. Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Council and its members, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this grant, except to the extent the claims, damages, losses and expenses arise from the Council’s own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, Title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, Title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this section shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466 or other applicable state or federal law.

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

7.04. Acknowledgments and Signage. The Grantee will acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports and publications relating to the Project activities described or identified in Attachments A and B which are funded in whole or in part with the grant funds. The acknowledgment will contain the following or comparable language:

Financing for this project was provided by the Metropolitan Council Metropolitan Livable Communities Fund.

Until the Project activities funded by this Agreement are completed, the Grantee will ensure the above acknowledgment language, or alternative language approved by the Council's authorized agent, is included on all signs (if any) located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project. The acknowledgments and signage should refer to the "Metropolitan Council" (not "Met Council" or "Metro Council").

7.05. Permits, Bonds, and Approvals. The Council assumes no responsibility for obtaining any applicable local, state or federal licenses, permits, bonds, authorizations or approvals necessary to perform or complete the Project activities described or identified in Attachments A and B. The Grantee and its developer(s), if any, must comply with all applicable licensing, permitting, bonding, authorization, and approval requirements of federal, state and local governmental and regulatory agencies, including conservation districts.

7.06. Subgrantees, Contractors and Subcontractors. The Grantee shall include in any subgrant, contract or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor, and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this grant obtain all required permits, licenses and certifications, and comply with all applicable state and federal Occupational Safety and Health Act regulations, especially the federal Hazardous Waste Operations and Emergency Response standards under Code of Federal Regulations, Title 29, sections 1910.120 and 1926.65. If the Project for which the grants were awarded includes affordable units, the Grantee's subgrant agreement(s) shall expressly include the applicable affordability and affirmative fair housing requirements of Sections 6.01, 6.02, and 6.03.

7.07. Stormwater Discharge and Water Management Plan Requirements. If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, Title 40, parts 122 and 123; and
- (b) The Council's *2040 Water Resources Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

7.08. Authorized Agent. Payment request forms, written reports and correspondence submitted to the Council pursuant to this Agreement shall be directed to:

Metropolitan Council
Attn: LCA Grants Administration
390 Robert Street North
Saint Paul, Minnesota 55101-1805

7.09. Non-Assignment. Minnesota Statutes section 473.252, subdivision 3 requires the Council to distribute grant funds to eligible “municipalities,” metropolitan-area counties or “development authorities” for projects in municipalities participating in the Local Housing Incentives Account program. Accordingly, this Agreement is not assignable and shall not be assigned by the Grantee.

7.10. Authorization to Reproduce Images. The Grantee certifies that the Grantee: (a) is the owner of any renderings, images, perspectives, sections, diagrams, photographs or other copyrightable materials (collectively, “copyrightable materials”) that are in the Grantee’s application, or are submitted to the Council as part of the grant application renew process or after grand award, or that the Grantee is fully authorized to grant permissions regarding the copyrightable materials; and (b) the copyrightable materials do not infringe upon the copyrights of others. The Grantee agrees the Council has a nonexclusive royalty-free license and all necessary permissions to reproduce and publish the copyrightable materials for noncommercial purposes, including but not limited to press releases, presentations, reports, and on the internet. The Grantee also agrees the Grantee will not hold the Council responsible for the unauthorized use of the copyrightable materials by third parties.

7.11 Warranty of Legal Capacity. The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee’s and the Council’s behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee’s and the Council’s behalf respectively and that this Agreement constitutes the Grantee’s and the Council’s valid, binding and enforceable agreements.

7.12. Counterparts. This Agreement may be executed in counterpart, each of which counterpart constitutes an original, but both of which together constitute one instrument.

7.13. Electronic Signatures. The electronic signatures of the Council’s and the Grantee’s authorized representatives shall be valid as an original signature of the authorized representatives and shall be effective to bind the Council and the Grantee under this Agreement. This Agreement containing, or to which there is affixed, an electronic signature shall be deemed to: (a) be “written” or “in writing”; (b) have been signed; and (c) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. “Electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (e.g., via PDF) of an original signature. The Council’s or the Grantee’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

IN WITNESS WHEREOF, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

CITY OF FALCON HEIGHTS

METROPOLITAN COUNCIL

By: _____

By: _____

Title: _____

LisaBeth Barajas, Director
Community Development Division

Date: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

ATTACHMENT A
PROJECT SUMMARY

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Tax Base Revitalization Account grant funds submitted in response to the Council's notice of availability of Tax Base Revitalization Account grant funds for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision in the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project Summary contained in this Attachment A, the terms, descriptions and dollar amounts reflected in the Council Action or contained in this Agreement and the Project Summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project Summary and Cleanup Site Locations; and (4) the grant application.

Project Summary

Grant # SG-14966
Grant Type Contamination Cleanup
Applicant City of Falcon Heights
Project Name Amber Union
Project Location 1667 Snelling Avenue North, Falcon Heights
Council District 10 – Peter Lindstrom

Project Detail

Contaminant history	The 3.7-acre site currently includes two vacant office buildings. Contaminants of concern include asbestos and lead-based paint within the existing buildings. (Petroleum impacts in the fill soil and related impacts to groundwater; and the soil vapor will be addressed by other grantors.)
Redevelopment project to start construction by the end of the grant term	Expected benefits include 125 affordable apartments and 930 square feet of retail space.
Jobs (FTEs)	6 FTE
Net tax capacity increase	\$130,843
Acres cleaned	3.7
Total housing units	125
Affordable units	125 at 51%-60% AMI

Funding

Requested amount	\$962,200
Funding partner requests	\$200,000 additional funding from Ramsey County (\$65,366 from Ramsey County and \$151,744 from DEED for soil and soil vapor cleanup was awarded in Jan 2020)
Previous LCA funding	\$0

Use of Funds

Amount	Uses to be completed by the end of the grant term
\$962,200	For asbestos and lead-based paint abatement and related environmental oversight.
Comments	Costs related to soil remediation, soil vapor abatement, radon sampling and/or radon mitigation are not eligible for grant funding.

ATTACHMENT B

CLEANUP SITE LOCATION(S)

This attachment comprises this page and the succeeding page(s) which contain aerial photography or drawings that identify the specific location(s) within the Project boundaries or the Site(s) for which the Grantee must use the grant funds. The attached photography or drawings also may identify the types of eligible cleanup activities for which the grant funds must be used at specific locations within the Project boundaries or within the Site(s).

LOAN AGREEMENT

(TBRA Loan)

This Loan Agreement (“Agreement”) is made this 8th day of July 2021, between BUHL GTA, LP, a Minnesota limited partnership (“Borrower”) and the City of Falcon Heights, a Minnesota municipal corporation (“Lender”).

RECITALS

A. The Lender and the Metropolitan Council (the “Council”) have entered into a Metropolitan Livable Communities Act Grant Agreement approved by the Council on January 13, 2020 (the “Grant Agreement”), committing grant funds from the Council’s Tax Base Revitalization Account (the “Grant”) to the Lender, to be used by the Lender to assist the Borrower with the costs of asbestos and lead-based paint abatement, and related environmental oversight (the “Project Costs”) on certain property located in the City of Falcon Heights described in Exhibit A (the “Property”).

B. In order to facilitate the use of low income tax credits for affordable multifamily rental housing on the Property (the “Affordable Housing”), the Borrower has requested that the Grant by the Lender to the Borrower be structured as a loan.

C. Lender agrees to loan to Borrower the proceeds of the Grant to finance a portion of the Project Costs on the Property, pursuant to the terms and conditions of this Agreement.

D. In consideration for the loan contemplated by this Agreement, Borrower is executing and delivering to Lender this Agreement.

ACCORDINGLY, to induce Lender to make the Loan (as defined hereinafter) to Borrower, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Loan Amount. Subject to and upon the terms and conditions of this Agreement and the Grant Agreement, Lender agrees to loan to Borrower the sum of Nine Hundred Sixty-Two Thousand Two Hundred and no/100 Dollars (\$962,200.00), or so much thereof as may have been advanced to Borrower (the “Loan”). The Loan shall be evidenced by a promissory note (“Note”) payable by Borrower to Lender and substantially in the form of Exhibit B attached to this Agreement, which shall be dated as of the date of closing on the Loan (the “Loan Closing Date”). Proceeds of the Loan shall be disbursed in accordance with Section 3 hereof.

2. Repayment of Loan. The Loan shall be repaid without interest as follows:

(a) No interest shall accrue on the Note.

(b) The entire amount of principal of the Loan shall be due and payable on February 1, 2063. The Borrower may prepay the Loan, in whole or in part, on any date, subject to the terms provided in the Note.

3. Disbursement of Loan Proceeds.

(a) The proceeds of the Loan shall be disbursed by the Lender to the Borrower in accordance with the terms and conditions of the Grant Agreement and the terms of this Agreement. Notwithstanding anything to the contrary contained herein, the Lender shall only be obligated to make the disbursements hereunder to pay proceeds of the Loan in an amount up to or equal to the lesser of the amount of the Loan or the amount actually disbursed by the Council to the Lender under the Grant Agreement. Notwithstanding anything to the contrary herein, any excess of the Project Costs over the principal amount of the Loan shall be the sole responsibility of the Borrower.

(b) Disbursement of the proceeds of the Loan will be made subject to the conditions precedent that on or prior to the Loan Closing Date:

(i) The Lender has received from Borrower, without expense to Lender, executed copies of this Agreement and the Note, and Borrower further having caused to be executed and delivered to Lender a mortgage in substantially the form set forth hereto at Exhibit C (the "Mortgage");

(ii) The Borrower has presented the Lender with evidence that the Loan funds are being allocated solely to the Affordable Housing on the Property; and

(iii) No Event of Default under this Agreement or the Grant Agreement shall have occurred and be continuing.

4. No Business Subsidy. The parties agree and acknowledge that the Loan is not a business subsidy as defined in Minnesota Statutes, Section 116J.993, because the assistance is for housing.

5. Covenants, Representations, Warranties, and Agreements. Borrower covenants, represents, warrants to Lender, and agrees that:

(a) Borrower is duly authorized and empowered to execute, deliver, and perform this Agreement and to borrow money from Lender.

(b) The execution and delivery of this Agreement, and the performance by Borrower of its obligations hereunder, do not and will not violate or conflict with any provision of law and do not and will not violate or conflict with, or cause any default or event of default to occur under, any agreement binding upon Borrower.

(c) The execution and delivery of this Agreement has been duly approved by all necessary action of Borrower, and this Agreement has in fact been duly executed and delivered by Borrower and constitutes its lawful and binding obligation, legally enforceable against it.

(d) Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the receipt and disbursements of Loan proceeds and that any duly authorized representative of Lender shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of Borrower pertaining to the Loan disbursements until the completion of all closeout procedures and the final settlement and conclusion of all issues arising out of this Loan.

(e) Borrower warrants that it has fully complied with all applicable state and federal laws pertaining to its business and will continue to comply throughout the terms of this Agreement. If at any time Borrower receives notice of noncompliance from any governmental entity, Borrower agrees to take any necessary action to comply with the state or federal law in question.

(f) Borrower warrants that it will use the proceeds of the Loan made by Lender solely for the Project Costs.

(g) Borrower warrants that it will not create, permit to be created, or allow to exist any liens, charges, or encumbrances prior to the obligation created by this Loan Agreement, except as otherwise authorized in writing by Lender and except as may be allowed pursuant to the Mortgage.

(h) Borrower shall obey and comply with all federal, state and local laws, rules and regulations in connection with the Project.

(i) Borrower is bound by all the terms and conditions of the Grant Agreement to the same extent as the Lender, subject to Section 10 hereof.

(j) Borrower shall comply with all requirements of the Grant Agreement applicable to the Lender, subject to Section 10 hereof.

6. Event of Default by Borrower. The following shall be Events of Default under this Agreement, subject to any cure or grace periods contained in the Loan Documents:

(a) failure to pay any principal or interest on the Loan when due;

(b) any material representation or warranty made by Borrower herein or in any document, instrument, or certificate given in connection with this Agreement, the Note, or the Mortgage (the "Loan Documents") which is materially false when made;

(c) Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within thirty (30) days after its commencement or convert the

case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within thirty (30) days of the appointment;

(d) a garnishment summons or writ of attachment is issued against or served upon Lender for the attachment of any property of Borrower in Lender's possession or any indebtedness owing to Borrower, unless appropriate papers are filed by Borrower contesting the same within thirty (30) days after the date of such service or such shorter period of time as may be reasonable in the circumstances;

(e) Borrower breaches or fails to perform any other term or condition of this Agreement not specifically described as an Event of Default in this Agreement and such breach or failure continues for a period of thirty (30) days after Lender has given written notice to Borrower specifying such default or breach, unless Lender agrees in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Borrower within the applicable period and is being diligently pursued until the Default is corrected, but no such extension shall be given for an Event of Default that can be cured by the payment of money (i.e., payment of taxes, insurance premiums, or other amounts required to be paid hereunder); or

(f) any breach by Borrower of any other agreement between Borrower and Lender.

Notwithstanding anything to the contrary in the Loan Documents, the limited partner of the Borrower ("Investor") shall have the right, but not the obligation, to cure any default of Borrower, and Lender agrees to accept cures tendered by Investor as follows: (i) with respect to any monetary default, Lender shall notify Investor in writing of such monetary default, and Investor shall have ten (10) days after the receipt of such notice of such monetary default to cure such monetary default; and (ii) with respect to any non-monetary default, Lender shall notify Investor in writing of such non-monetary default, and Investor shall have thirty (30) days after the receipt of such notice of such non-monetary default to cure such non-monetary default; provided, however, that if such non-monetary default cannot be cured within such thirty- (30-) day cure period, then Lender shall permit additional time to cure such non-monetary default as long as Investor is diligently pursuing such cure.

Notwithstanding anything to the contrary contained in the Loan Documents, the following transfers of interests in Borrower (or in the interests of the partners or members of Borrower or its general partner) shall be expressly permitted under the Loan Documents, and shall not be deemed an Event of Default or trigger any due on sale or other similar provisions in the Loan Documents: (a) the sale, transfer, conveyance or pledge of the Investor's or of any limited partner of the Borrower's ("Special Limited Partner") interest in Borrower; (b) the sale, transfer, conveyance or pledge of any interests within the Investor or Special Limited

Partner; (c) the removal of the general partner of Borrower for cause under the terms of the Borrower's then current partnership agreement and the admission of a new or additional substitute general partner; (d) the sale, transfer, conveyance or pledge of the state tax credit investor member's interest in the general partner; (e) the pledge or transfer of the general partner's interest in the Borrower in connection with a tax credit equity bridge loan to the Borrower; and (f) any amendment to the limited partnership agreement or operating agreement evidencing the transfers described above.

7. Lender's Remedies upon Borrower's Default. Upon an Event of Default by Borrower and after provision by Lender of written notice, and subject to any cure or grace periods contained in the Loan Documents, Lender shall have the right to exercise any or all of the following remedies (and any other rights and remedies available to it):

- (a) declare the principal amount of the Loan and any accrued interest thereon to be immediately due and payable upon providing written notice to Borrower;
- (b) suspend its performance under this Loan Agreement;
- (c) take any action provided for at law or in equity to enforce compliance by Borrower with the terms of this Agreement and the Note or to seek repayment or reimbursement of the Loan funds disbursed to Borrower, or to otherwise compensate the Lender for any damages on account of such Event of Default;
- (d) exercise its rights under the Mortgage;
- (e) terminate this Agreement.

In addition to any other amounts due on the Loan, and without waiving any other right of Lender under any this Agreement or any other instrument securing the Loan applicable documents, Borrower shall pay to Lender a late fee of \$250 for any payment not received in full by Lender within 30 calendar days of the date on which it is due. Furthermore, interest will continue to accrue on any amount due until the date on which it is paid to Lender, and all such interest will be due and payable at the same time as the amount on which it has accrued.

No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right and power provided herein, nor shall it be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

8. Lender's Costs of Enforcement of Agreement. If an Event of Default has occurred as provided herein, then upon demand by Lender, Borrower shall pay or reimburse Lender for all expenses, including all reasonable attorneys' fees and expenses incurred by Lender in connection with the enforcement of this Agreement and the Note, or in connection with the protection or enforcement of the interests and collateral security of Lender in any litigation or bankruptcy or insolvency proceeding or in any action or proceeding relating in any way to the transactions contemplated by this Agreement.

9. Indemnification.

(a) Except for any claims, lawsuits, or damages arising or related to the gross negligence or willful misconduct of the Lender, Borrower shall and does hereby agree to indemnify against and to hold Lender, and its officers, agents, and employees, harmless of and from any and all liability, loss, or damage that it may incur under or by reason of this Agreement, and of and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained herein.

(b) Should Lender, or its officers, agents, or employees incur any such liability or be required to defend against any claims or demands pursuant to this Section, or should a judgment be entered against Lender, the amount thereof, including costs, expenses, and attorneys' fees, shall bear interest thereon at the rate then in effect on the Note, shall be secured hereby, shall be added to the Loan, and Borrower shall reimburse Lender for the same immediately upon demand, and upon the failure of Borrower to do so, Lender may declare the Loan immediately due and payable.

(c) This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the creation and payment of any indebtedness to Lender. Borrower waives notice of the acceptance of this Agreement by Lender.

(d) Nothing in this Agreement shall constitute a waiver of or limitation on any immunity from or limitation on liability to which Borrower is entitled under law.

(e) Notwithstanding the foregoing, for so long as HUD is the insurer or holder of a mortgage on the Property, any indemnification obligation of Borrower shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Borrower and HUD.

10. Incorporation of Grant Agreement. Borrower acknowledges and agrees that all terms, conditions and obligations in the Grant Agreement are incorporated herein, and made a part of this Agreement. In addition to the terms, conditions and obligations described herein, the Borrower further acknowledges, accepts and assumes all of the Lender's obligations described in the Grant Agreement, unless such obligation can only be reasonably performed by the Lender.

11. Costs. Borrower shall be responsible for payment of all costs and expenses incurred by Lender in connection with the Grant Agreement, Loan Agreement and all related documents, including consultant costs. Borrower will reimburse the Lender for such costs within 30 days of invoicing by the Lender.

12. Miscellaneous.

(a) Waiver. The performance or observance of any promise or condition set forth in this Agreement may be waived, amended, or modified only by a writing signed by Borrower and Lender. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any

single or partial exercise of any other power, right, or remedy.

(b) Assignment. This Agreement shall be binding upon Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns. All rights and powers specifically conferred upon Lender may be transferred or delegated by Lender to any of its successors and assigns. Borrower's rights and obligations under this Agreement may be assigned only when such assignment is approved in writing by Lender, except as provided in Section 6 hereof.

(c) Governing Law. This Agreement is made and shall be governed in all respects by the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

(d) Severability. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications that can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

(e) Notice. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, certified mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To Lender: City of Falcon Heights, Minnesota
Attention: City Administrator
2077 Larpenteur Avenue West
Falcon Heights, MN 55113

To Borrower: Buhl GTA, LP
Attention: Peter Deanovic
5100 Eden Avenue, Suite 317
Edina, MN 55436

With a copy to: Winthrop & Weinstine, P.A.
Attn: Kevin McLain
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402

With a copy to: RBC Community Investments, LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio 44114
Attention: President and General Counsel

With a copy to: Nixon Peabody LLP

Exchange Place
53 State Street
Boston, MA 02109
Attention: Roger W. Holmes

(f) Termination. Subject to extensions agreed to by the Lender and Borrower and approved by the Council, if the Loan is not disbursed pursuant to this Agreement and the Grant Agreement by December 31, 2023, this Agreement shall terminate and neither party shall have any further obligation to the other, except that if the Loan is not disbursed because Borrower has failed to use its best efforts to comply with the conditions set forth in Section 3 of this Agreement then Borrower shall pay to Lender all reasonable attorneys' fees, costs, and expenses incurred by Lender in connection with this Agreement and the Note.

(g) Entire Agreement. This Agreement, together with the Exhibits hereto, which are incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning the Loan.

(h) Headings. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

(i) Survival of Agreements, Representations and Warranties. All agreements, representations and warranties made in this Agreement by the Borrower shall survive termination.

(j) Joint Venture. The relationship between the Borrower and Lender is solely that of creditor and debtor and the relationship by and between the Borrower and Lender is not, nor shall it be deemed to create a partnership or joint venture in the Project.

(k) Land Use Restriction. Notwithstanding any provision to the contrary in the Loan Documents, Lender acknowledges and agrees that (a) the Property is or will be subject to a Land Use Restriction Agreement (as defined below); (b) the recordation of the Land Use Restriction Agreement against the Property is permitted under the terms of the Loan Documents; and (c) the lien of any Loan Documents, and the terms and provision thereof, shall be subordinate to the Land Use Restriction Agreement, regardless of the order of recording of either document. "Land Use Restriction Agreement" means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Borrower, as may be amended, setting forth certain terms and conditions under which the Property is to be operated and which shall meet the requirements of Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the proper officers thereunto duly authorized on the day and year first written above.

CITY OF FALCON HEIGHTS, MINNESOTA

By 
Its Mayor

By 
Its City Administrator

[SIGNATURE PAGE TO LOAN AGREEMENT – CITY OF FALCON HEIGHTS]

BUHL GTA, LP, a Minnesota limited partnership

By: Buhl GTA GP, LLC, a Minnesota limited liability company

Its: General Partner

By: _____



Name: Peter Deanovic

Title: Chief Executive Officer

[SIGNATURE PAGE TO LOAN AGREEMENT – BUHL GTA, LP]

EXHIBIT A
PROPERTY

Real property in the City of Falcon Heights, County of Ramsey, State of Minnesota, described as follows:

Parcel 1:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

(Torrens Property-Certificate of Title No. _____)

Parcel 2:

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

(Abstract Property)

Parcel 3:

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

(Abstract Property)

INFORMATIONAL NOTE ONLY: Tax Parcel Nos. _____

Parcel 4:

Parking easements and ingress/egress easements as described in that Easement Agreement (Parking and Ingress/Egress) dated _____, 2021 by and between Buhl Larpenteur West, LLC and Buhl GTA, LP, recorded _____ as Document No. _____.

Parcel 5:

Encroachment, Use, and Maintenance Agreement (Parking Improvements) dated _____, 2021 by and between the City of Falcon Heights, Buhl GTA, LP, Buhl GTA GP, LLC, and Peter Deanovic, recorded _____ as Document No. _____.

Parcel 6:

Green space easement in Encroachment, Use, and Maintenance Agreement (Green Space) dated _____, 2021 by and between the City of Falcon Heights, Buhl GTA, LP, Buhl GTA GP, LLC, and Peter Deanovic, recorded _____, as Document No. _____.

EXHIBIT B

PROMISSORY NOTE

(Attached.)

EXHIBIT C
MORTGAGE
(Attached.)

21941331v2

MORTGAGE
(\$962,200 TBRA Loan)

THIS MORTGAGE IS EXEMPT FROM MORTGAGE REGISTRATION TAX PURSUANT TO MINN STAT SECTION 287.04 (f) BECAUSE THIS MORTGAGE WAS MADE UNDER THE MORTGAGEE’S LOW AND MODERATE INCOME OR OTHER AFFORDABLE HOUSING PROGRAM THAT PROVIDES FOR LOANS THAT MEET THE INCOME LIMITS AND SALES PRICE LIMITS AS DETERMINED UNDER FEDERAL AND STATE LAW.

THIS MORTGAGE is made this 8th day of July 2021 by **BUHL GTA, LP**, a Minnesota limited partnership (the “Mortgagor”) in favor of the **CITY OF FALCON HEIGHTS**, a municipal corporation under the laws of Minnesota (the “Mortgagee”).

WHEREAS, pursuant to that Loan Agreement between the Mortgagor and Mortgagee dated as of July 8, 2021 (the “Loan Agreement”), Mortgagor executed that certain Promissory Note of even date herewith (the “Note”) in the amount of Nine Hundred Sixty-Two Thousand Two Hundred and no/100 Dollars (\$962,200.00) evidencing the loan described in the Loan Agreement (the “Loan”); and

WHEREAS, pursuant to the Loan Agreement and the Note, the entire indebtedness of Mortgagor to Mortgagee of the Loan is due and payable in full on February 1, 2063; and

WHEREAS, this Mortgage is given to secure repayment of all amounts due by Mortgagor to Mortgagee under the Loan Agreement and the Note, as well as other amounts due by Mortgagor to Mortgagee under the terms of this Mortgage.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, Mortgagor hereby grants, bargains, sells and conveys to Mortgagee the following real property in Ramsey County, Minnesota (the “Premises”) legally described on Exhibit A attached hereto and incorporated herein to have and to hold the same, together with all the hereditaments and appurtenances thereto belonging or in anywhere appertaining, forever.

PROVIDED NEVERTHELESS that if Mortgagor, or Mortgagor’s successors or permitted assigns, shall (i) pay, or cause to be paid, to Mortgagee the principal amount of the Loan heretofore and hereafter advanced by Mortgagee to Mortgagor under the Note; (ii) pay all taxes and special assessments that are now or may be hereafter levied and assessed on and against the Premises as they shall be due and before they become delinquent; (iii) keep the improvements on the Premises continuously insured as hereinafter provided; (iv) pay the principal and interest installments on any prior mortgage or mortgages as the same or any part thereof become due; and (v) keep and perform each and every covenant herein, then this Mortgage shall be null and void;

otherwise it shall be and remain in full force and effect.

MORTGAGOR WARRANTS AND COVENANTS to and with Mortgagee as follows:

1. Mortgagor is lawfully seized of a fee simple interest in the Premises and has good right to sell and convey the same. The Premises are free from all liens and encumbrances, except any prior mortgage or mortgages of record and other matters listed in the Mortgagor's title policy. Mortgagor shall warrant and defend the title of the Premises against all lawful claims except such prior mortgage or mortgages and encumbrances of record. The foregoing covenants and warranties shall survive foreclosure of this Mortgage and shall run with the land.
2. Mortgagor shall pay the principal and interest (if any) as the same become due on any prior mortgage or mortgages on the Premises.
3. Mortgagor shall procure at Mortgagor's own expense fire and extended coverage insurance on the improvements on the Premises, payable in case of loss to Mortgagee, its successors and assigns, as its interest may appear, such insurance to be written by a reliable insurance company approved by Mortgagee in an amount at least equal to the full insurable value of such improvements.
4. Mortgagor shall pay all taxes and special assessments now and hereafter levied and assessed on the Premises before the same become delinquent, provided, however, that Mortgagor is permitted to contest the same in good faith.
5. Mortgagor shall keep the Premises in good repair, shall not remove the improvements from the Premises, unless promptly replaced with substantially similar improvements, and shall not commit waste or permit impairment or deterioration of the Premises.
6. Mortgagor shall comply with and perform all of the Mortgagor's obligations under the Loan Agreement, this Mortgage and the Note.
7. In the case of failure of Mortgagor to pay such taxes or special assessments or to keep said improvements insured as provided herein, or to pay the principal or interest (if any) on the prior mortgage or mortgages on the Premises, Mortgagee may at its option, after ten (10) days' written notice to Mortgagor, pay and discharge such taxes and assessments, effect such insurance on said improvements and pay the premiums thereon and pay the principal and interest (if any) that become due and remain unpaid on the prior mortgage or mortgages on the Premises, and the sum or sums that may be so paid by Mortgagee shall bear interest from the time of such payment at the rate of 8% per annum or the highest rate allowed by law, whichever is lower, and shall be deemed and is hereby declared to be an additional lien upon the Premises in the amount that shall be so paid, with interest thereon, as aforesaid, and shall be added to and be collectable as part of and in the same manner as the original debt which this Mortgage is given to secure.
8. Reserved.
9. The following shall be Events of Default by Mortgagor; provided, however, that

Mortgagee shall have given the Mortgagor, and the limited partner of Mortgagor (as identified in the Loan Agreement) notice of such Event of Default hereunder and at least thirty (30) days within which to cure such Event of Default, and that if such Event of Default cannot reasonably be cured within such thirty (30) days, Mortgagor or its limited partner shall have such additional time as may be reasonably necessary if Mortgagor commences to cure such Event of Default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion:

- a) The failure to pay the indebtedness hereby secured, as it becomes due;
- b) The failure to pay, when due, the taxes or special assessments on the Premises;
- c) The failure to keep the improvements on the Premises insured as herein provided;
- d) The failure to keep and perform any of the covenants and agreements herein contained to be kept and performed by Mortgagor;
- e) Except as otherwise permitted in the Loan Agreement, the sale, assignment, conveyance or other transfer (whether by deed, contract for deed, lease or otherwise) of the Premises, except for leases for one year or less, not approved in advance by Mortgagee; or
- f) The failure to comply with and perform all of the requirements of the TBRA Grant Agreement (as defined in Section 18 below, and as such requirements are more specifically set forth in Section 18 below) related to the Premises, which failure results in the Mortgagee being obligated to indemnify or repay all or any portion of the TBRA grant funds to the Metropolitan Council.

Upon the occurrence of any Event of Default, Mortgagor hereby authorizes and empowers Mortgagee to declare the entire indebtedness hereby secured to be immediately due and payable, at Mortgagee's option, and to enforce the payment thereof and to foreclose this Mortgage by judicial proceedings or by sale of the Premises at public auction and convey the same to the purchaser in fee simple, pursuant to the statutes of the State of Minnesota, and out of the monies arising from said sale to retain (i) the principal which shall then be due on the indebtedness secured hereby, and interest, if any, accrued thereon, (ii) an amount equal to all taxes and special assessments paid by Mortgagee upon the Premises, or then levied and unpaid, (iii) any sum paid by Mortgagee for principal or interest on any prior mortgage or mortgages on the Premises, (iv) an amount equal to any insurance premiums paid by Mortgagee upon the Premises, (v) any other amounts payable by the Mortgagee to the Metropolitan Council as a result of the failure of the Mortgagor to comply with and perform all of the requirements of the TBRA Grant Agreement related to the Premises, and (vi) costs and disbursements of such foreclosure, including statutory attorney's fees; and to pay the surplus, if any, to Mortgagor. In the event of any default hereunder the Mortgagor agrees to pay the costs of collection including reasonable attorneys' fees.

10. So long as this Mortgage and the Note evidencing the indebtedness secured hereby are held by Mortgagee, Mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Premises on the basis of race, color, religion, or sex.

11. No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singularly or serially (in any order) or concurrently, and as often as the occasion therefore arises.

12. Mortgagee may at any time and from time to time, without notice, release any person liable for the payment of any indebtedness under the Note, release any property securing any indebtedness, consent to the creation of any easement on the Premises, or agree to alter or amend the terms of this Mortgage in any way, all without in any way affecting the liability of any person (other than the person so released, if any) or the validity or priority of this Mortgage (except as it covers property so released, if any).

13. The covenants and agreements contained in this Mortgage shall bind, and the rights conferred hereby shall inure to, the respective, legal representatives, successors and assigns of Mortgagor and Mortgagee. Wherever used, the singular number shall include the plural, and the plural the singular. All covenants and agreements of Mortgagor shall be joint and several.

14. Mortgagee shall furnish to Mortgagor a conformed and fully completed copy of the Note and this Mortgage at the time that this Mortgage is executed or at a reasonable time after this Mortgage is recorded.

15. The Mortgagee, for itself and its successors and assigns, covenants and agrees that it will not commence procedures to foreclose on this Mortgage without the prior written consent of any of the senior lenders.

16. The Loan is a non-recourse obligation of the Mortgagor. Neither Mortgagor nor any of its members or officers, nor any other party, shall have any personal liability for repayment of the Loan. The sole recourse of Mortgagee for repayment of the Loan shall be the exercise of its rights against the Premises and related security under this Mortgage.

17. Except for willful misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under the Loan Agreement, this Mortgage or the Note, the Mortgagor agrees to protect and defend the Mortgagee and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties"), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the Loan Agreement, this Mortgage, the Note, or the transactions contemplated hereby or the acquisition, construction, improvement, ownership, and operation of the Premises. Notwithstanding the foregoing, for so long as HUD is the insurer or holder of a mortgage on

the Premises, any indemnification obligation of Mortgagor shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Mortgagor and HUD.

18. Mortgagee has been awarded a \$962,200.00 TBRA grant from the Metropolitan Council pursuant to the Metropolitan Livable Communities Act Grant Agreement approved by the Council on January 13, 2020, committing grant funds from the Council's Tax Base Revitalization Account to the Mortgagee (the "TBRA Grant Agreement"), and has agreed to loan such funds to finance certain costs of the Mortgagor's development of the Premises. Mortgagee is loaning the funds to Mortgagor pursuant to the Loan Agreement, this Mortgage and the Note subject to the following conditions:

(a) Loan funds can be used to finance only the costs of asbestos and lead-based paint abatement, and related environmental oversight on the Premises, as more fully described in the TBRA Grant Agreement, and

(b) Loan funds may only be drawn down upon the Mortgagee's receipt of documentation demonstrating that the work for which the funds are being requested has been completed.

The Mortgagor shall comply with the foregoing and all other requirements of the TBRA Grant Agreement related to the Premises and if it fails to do so and the Mortgagee is obligated to repay all or any portion of the TBRA grant funds to the Metropolitan Council, the Mortgagor shall be liable to and shall pay to the Mortgagee the amount required to be repaid. The Mortgagor shall provide the Mortgagee all reports, certificates, information and documents which are necessary for the Mortgagee to comply with its obligations under the TBRA Grant Agreement.

19. Mortgagor will permit Mortgagee and its agents to enter and to authorize others to enter upon any or all of the Premises, or inspect Mortgagor's records regarding the Premises at reasonable times, to perform or observe any covenants, conditions, or terms which Mortgagor shall fail to perform, meet or comply with and which Mortgagee is authorized to perform under the terms of this Mortgage, or for any other purpose in connection with the protection or preservation of Mortgagee's security, without thereby becoming liable to Mortgagor or any person in possession under Mortgagor.

20. Mortgagee acknowledges that Mortgagor has entered into and delivered or intends to enter into and deliver concurrently with the execution and delivery of this Mortgage, a first lien mortgage ("Senior Mortgage") in favor of Colliers Mortgage LLC, a Delaware limited liability company, its successors and assigns ("Senior Lender") securing indebtedness evidenced by that certain senior Note (Multistate) ("Senior Note") payable to Senior Lender. Mortgagee agrees to subordinate the lien of this Mortgage to the Senior Mortgage and Senior Mortgage loan documents, and that this Mortgage is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage as more fully set forth in that certain Subordination Agreement – Public (HUD Form 92420M) of even date herewith between the Mortgagor, Senior Lender, and the Mortgagee.

(Execution page follows.)

EXHIBIT A

LEGAL DESCRIPTION

Real property in the City of Falcon Heights, County of Ramsey, State of Minnesota, described as follows:

Parcel 1:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

(Torrens Property-Certificate of Title No. _____)

Parcel 2:

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

(Abstract Property)

Parcel 3:

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

(Abstract Property)

INFORMATIONAL NOTE ONLY: Tax Parcel Nos. _____

Parcel 4:

Parking easements and ingress/egress easements as described in that Easement Agreement (Parking and Ingress/Egress) dated _____, 2021 by and between Buhl Larpenteur West, LLC and Buhl GTA, LP, recorded _____ as Document No. _____.

Parcel 5:

Encroachment, Use, and Maintenance Agreement (Parking Improvements) dated _____, 2021 by and between the City of Falcon Heights, Buhl GTA, LP, Buhl GTA GP, LLC, and Peter Deanovic, recorded _____, as Document No. _____.

Parcel 6:

Green space easement in Encroachment, Use, and Maintenance Agreement (Green Space) dated _____, 2021 by and between the City of Falcon Heights, Buhl GTA, LP, Buhl GTA GP, LLC, and Peter Deanovic, recorded _____, as Document No. _____.

21941333v3

\$962,200.00
PROMISSORY NOTE
given by

**BUHL GTA, LP,
a Minnesota limited partnership to**

**THE CITY OF FALCON HEIGHTS
a municipal corporation under
the laws of the State of Minnesota**

Dated: July 8, 2021 At: Falcon Heights, Minnesota

FOR VALUE RECEIVED, the undersigned, **BUHL GTA, LP**, a Minnesota limited partnership (the “Borrower”), hereby promises to pay to the order of the **CITY OF FALCON HEIGHTS**, a municipal corporation under the laws of Minnesota (“Holder”) at the offices of the Holder or such other place as the Holder may, from time to time, designate in writing, the principal sum of Nine Hundred Sixty-Two Thousand Two Hundred and no/100 Dollars (\$962,200.00), or so much thereof as may be advanced to Borrower (the “Loan”). This Note is secured by, among other things, a Loan Agreement between Holder and Borrower dated as of the date hereof (the “Loan Agreement”) and a Mortgage dated the date hereof from Borrower, as Borrower, to the Holder, as Holder (the “Mortgage”), on property owned by Borrower (the “Project”). This Note shall not bear interest.

The entire principal balance of this Note is due and payable on the earlier of: (a) February 1, 2063, (b) upon the sale of fee title to any portion of the Property identified in the Loan Agreement without the Holder’s prior consent, or (c) upon the Borrower’s default under the Loan Agreement or Mortgage, subject to all applicable notice and cure periods. The Borrower may prepay the Loan, in whole or in part, on any date, subject to the terms provided in the Note.

This Note is issued pursuant to that certain TBRA Grant Agreement between the Metropolitan Council and Holder and defined in the Loan Agreement and Mortgage. All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement and Mortgage are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. Time is of the essence hereof. In the event of any default in the payment of any principal or other indebtedness due hereunder, or if the Borrower defaults on any of its other obligations under this Note, the Loan Agreement, or the Mortgage, the Holder may, at its right and option, declare immediately due and payable the principal balance of this Note, together with any attorneys’ fees incurred by the Holder in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided in any document securing this Note, including any Mortgage.

The Borrower hereby waives demand, presentment, notice of nonpayment, protest, notice of protest, notice of dishonor and diligence in collection and agree that without any notice the Holder hereof may take and/or release additional security herefor or the Holder hereof may, from time to time, release any part or parts of security interests from Borrower in favor of Holder with

or without consideration and that in any such case the Borrower and any guarantor, surety or endorser shall remain liable to pay the unpaid balance of the indebtedness evidenced hereby as so additionally secured, extended, renewed or modified and notwithstanding any such release.

The remedies of the Holder, as provided herein and in any document securing this Note shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Holder, and may be exercised as often as occasion therefor shall occur. The Holder may, in its discretion, waive any default hereunder and its consequences and rescind any declaration of acceleration of principal; provided, however, that no action or inaction by the Holder shall be deemed a waiver of any of the Holder's rights or remedies unless the Holder specifically agrees in writing that such action or inaction shall constitute a waiver of its rights or remedies. Any waiver shall only apply to the particular instance for which it was agreed. No delay in exercising and no failure in exercising any right or remedy hereunder or afforded by law shall be a waiver of or preclude the exercise of any right or remedy hereunder or provided by law, whether on such occasion or any future occasion, nor shall such delay be construed as a waiver of any default or acquiescence therein. The exercise or the beginning of the exercise of one right or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

In the event of any default hereunder the Borrower agrees to pay the costs of collection including reasonable attorneys' fees and court costs. If this Note is reduced to judgment, such judgment shall bear the lawful interest rate pertaining to judgments, but not to exceed 6% per annum.

This Note may be prepaid in whole or in part without penalty.

The obligations of the Borrower hereunder are unconditional except as otherwise stated herein, irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Holder or any governmental body or other person.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note (Multistate) (the "Senior Note") payable to Colliers Mortgage LLC, a Delaware limited liability company ("Senior Lender") to the extent and in the manner provided in that certain Subordination Agreement – Public (HUD Form 92420M) ("Subordination Agreement") of even date herewith between the payee of this Note, the Senior Lender, and the Holder. The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Lender mortgage securing the Senior Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Holder under the Subordination Agreement.

The Loan is a non-recourse obligation of the Borrower. Neither the Borrower nor any of its partners or officers, nor any other party, shall have any personal liability for repayment of the Loan. The sole recourse of Holder for repayment of the Loan shall be the exercise of its rights against the Project pursuant to the Mortgage, and related security thereunder.

This Note may not be sold, transferred, assigned or pledged without the prior written

approval of the Senior Lender and of the Investor or Special Limited Partner (as such terms are defined in the Loan Agreement) of the Borrower.

This Note shall be governed by and construed in accordance with the laws of the State of Minnesota.

If any of the terms of this Note, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each of the terms of this Note shall be valid and enforceable to the fullest extent permitted by law.

Notwithstanding anything to the contrary herein, as long as the U.S. Department of Housing and Urban Development (“HUD”) is the insurer or holder of the Senior Note on FHA Project No. 092-35853, the following provisions (“HUD Provisions”) shall be in full force and effect:

- (1) any payments due under this Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Borrower cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;
- (2) no prepayment of this Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD.
- (3) this Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except with the prior written approval of HUD;
- (4) interest on this Note (if any) shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;
- (5) Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note;
- (6) the terms and provisions of this Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Note may not be modified or amended without the written consent of HUD; and
- (7) in the event of any conflict between the terms of this Note and the HUD Provisions, the terms of the HUD Provisions shall control.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts and things required to exist, to happen and to be performed precedent to or in the issuance of this Note do exist, have happened and have been performed in regular and due form as required by law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed by its authorized representative, all on the date and year first above written.

BORROWER:

BUHL GTA, LP, a Minnesota limited partnership

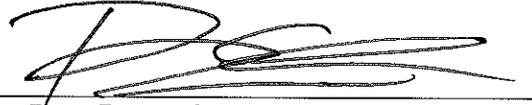
By: Buhl GTA GP, LLC, a Minnesota limited liability company

Its: General Partner

By: _____

Name: Peter Deanovic

Title: Chief Executive Officer



21941332v2

Subordination Agreement - Public

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 9/30/2021)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

{Required with secondary financing funded by public lender and secured with a lien on the Project. Such a secured lien is only permitted pursuant to Program Obligations and must be approved by HUD.}

Project Name: Amber Union
HUD Project No: 092-35853

THIS **SUBORDINATION AGREEMENT** ("**Agreement**") is entered into this 8th day of July, 2021 by and among (i) Colliers Mortgage LLC, a Delaware limited liability company ("**Senior Lender**"), (ii) the City of Falcon Heights, a municipal corporation under the laws of Minnesota ("**Subordinate Lender**"), and (iii) Buhl GTA, LP, a Minnesota limited partnership ("**Borrower**").

Recitals

WHEREAS, Borrower is the owner of that certain 125-unit residential rental development known as "Amber Union" ("**Project**"), located at 1667 Snelling Avenue North in Falcon Heights, Minnesota, 55108. Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto to Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the Note described in Schedule A ("**Senior Note**"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, "**Senior Security Instrument**"), covering the property described in Exhibit A attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior Security Instrument ("**Mortgaged Property**").

WHEREAS, Borrower has requested Senior Lender to permit Subordinate Lender to make a subordinate loan to Borrower in the amount of \$ 962,200.00 ("**Subordinate Loan**"), pursuant to the Subordinate Loan Documents as defined below, and secured by, among other things, a mortgage lien against the Mortgaged Property.

WHEREAS, Senior Lender, with the approval of the U.S. Department of Housing and Urban Development ("**HUD**"), has agreed to permit Subordinate Lender to make the

Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement and in accordance with Program Obligations. **“Program Obligations”** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: Handbooks, guides, notices, and mortgagee letters are available on “HUDCLIPS,” at www.hud.gov.

NOW, THEREFORE, in order to induce Senior Lender to permit Subordinate Lender to make the Subordinate Loan to Borrower and to place a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

(a) "Affiliate" is any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

(b) "Bankruptcy Proceeding" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(c) "Borrower" means all entities identified as "Borrower" in the first paragraph of this Agreement, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property, whether or not such entity assumes the Senior Note, provided that the term "Borrower" shall not include Senior Lender in the event that Senior Lender may acquire title to the Mortgaged Property. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Senior Security Instrument.

(d) "Business Day" means any day other than Saturday, Sunday or any other day on which Senior Lender or HUD is not open for business.

(e) "**Covenant Event of Default**" is defined in the Senior Security Instrument.

(f) "**Entity**" means an estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

(g) "**Monetary Event of Default**" is defined in the Senior Security Instrument.

(h) "**Non-Project Sources**" means any funds that are not derived from Project Sources.

(i) "**Project Sources**" means the Mortgaged Property (as defined in the Senior Security Instrument), any proceeds of the Senior -Indebtedness, and any reserve or deposit made with Senior Lender or any other party as required by HUD in connection with the Senior Indebtedness.

(j) "**Senior Indebtedness**" means all present and future indebtedness, obligations, and liabilities of Borrower to Senior Lender under or in connection with the Senior Loan Documents.

(k) "**Senior Lender**" means the Entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns.

(l) "**Senior Loan Documents**" means the Senior Note, the Senior Security Instrument, and the Regulatory Agreement between Borrower and HUD, as such documents may be amended from time to time and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness, as identified in Schedule A.

(m) "**Senior Security Instrument Default**" means a "Monetary Event of Default" or a "Covenant Event of Default" as defined in the Senior Security Instrument.

(n) "**Subordinate Indebtedness**" means all present and future indebtedness, obligations, and liabilities of Borrower to Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan Documents.

(o) "**Subordinate Lender**" means the Entity named as such in the first paragraph on page 1 of this Agreement.

(p) "**Subordinate Loan Documents**" means the Subordinate Note, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as identified in Schedule B. The terms Subordinate Note and Subordinate Mortgage are defined in Schedule B.

(q) "**Subordinate Loan Enforcement Action**" means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a

receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

(r) "Subordinate Mortgage Default" means any act, failure to act, event, conditions, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take a Subordinate Loan Enforcement Action.

(s) "Surplus Cash" is defined herein to mean the same as that term is defined in the Regulatory Agreement between Borrower and HUD.

2. Permission to Place Mortgage Lien Against Mortgaged Property.

Senior Lender agrees, subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects to the lien of the Senior Security Instrument) to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan. Senior Lender agrees that the existence of the Subordinate Loan does not create a basis for default of the Senior Indebtedness. Such permission is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to Borrower. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on both of those dates, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

Borrower and, with respect to subsections (a) through (d) below, Subordinate Lender each make the following representations and warranties to Senior Lender:

(a) Subordinate Loan Documents. The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

(b) Terms of the Subordinate Loan. The original principal amount of the Subordinate Note is \$962,200. Interest on the Subordinate Note accrues monthly at the rate of 0% per annum. The Subordinate Note is due and payable in full on February 1, 2063, ("Maturity"). The Maturity term of the Subordinate Note does not end before the maturity term of the Senior Note, unless the Subordinate Note is forgivable as set forth below and Borrower satisfies all requirements in the Subordinate Loan Documents to result in the Subordinate

Note being eligible for forgiveness. The principal of the Subordinate Note will have a balloon principal payment of \$962,200 due at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make payments as follows: all payments are deferred until Maturity, subject to Section 3(c) immediately below.

(c) Required HUD Language in Subordinate Note. The Subordinate Note contains the following provisions:

“As long as HUD is the insurer or holder of the Senior Note on FHA Project No. 092-35853, the following provisions (**“HUD Provisions”**) shall be in full force and effect:

(1) any payments due under the Subordinate Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Maker cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;

(2) no prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD.

(3) this Subordinate Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except with the prior written approval of HUD;

(4) interest on the Subordinate Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;

(5) Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Subordinate Note;

(6) the terms and provisions of this Subordinate Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Subordinate Note may not be modified or amended without the written consent of HUD; and

(7) in the event of any conflict between the terms of the Subordinate Note and the HUD Provisions, the terms of the HUD Provisions shall control.”

(d) Relationship of Borrower to Subordinate Lender. Subordinate Lender is not an Affiliate of Borrower.

(e) Subordinate Loan Documents. Borrower certifies that the executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, HUD prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(f) Senior Loan Documents. The executed Senior Loan Documents are the same forms as approved by HUD prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. Deliveries.

Borrower shall submit the following items to Senior Lender and HUD at closing or not later than ten (10) Business Days after the date of the initial disbursement of proceeds of the Subordinate Loan:

(a) Title Evidence. Evidence of title (title policy or title policy endorsement, as appropriate) insuring the lien of the Senior Security Instrument which insures that (i) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Mortgage, and (ii) this Agreement has been recorded among the applicable land records.

(b) Loan Documents. A complete set of the Subordinate Loan Documents, including this Subordination Agreement.

5. Terms of Subordination.

(a) Agreement to Subordinate. Senior Lender and Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the

Mortgaged Property).

(b) Subordination of Subrogation Rights. Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Security Instrument Default. Until Subordinate Lender receives a default notice of a Senior Security Instrument Default from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

(d) Payments After Senior Security Instrument Default. Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Project Sources on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) unless either (i) such payment is being made solely from Non-Project Sources or (ii) such payment is made with Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Security Instrument Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 5 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new default notice from Senior Lender in accordance with the provisions of this Section 5(d).

(e) Remitting Subordinate Loan Payments to Senior Lender. If, after Subordinate Lender receives a default notice from Senior Lender in accordance with subsection (d) above, Subordinate Lender receives any payments under the Subordinate Loan Documents (other than payments permitted under subsection (d) above), Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of,

interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Mortgage Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any Bankruptcy Proceeding with respect to Borrower, without Senior Lender's prior written consent.

6. Default Under Subordinate Loan Documents.

(a) Notice of Default and Cure Rights. Subordinate Lender shall deliver to Senior Lender a default notice within five Business Days in each case where Subordinate Lender has given a default notice to Borrower. Failure of Subordinate Lender to send a default notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the limitations set forth in Section 6(b) below.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender. If a Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that it will not, for a period of one hundred eighty (180) days after giving notice of such Subordinate Mortgage Default to Senior Lender and HUD (the "**Standstill Period**"), commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without Senior Lender's prior written consent. During the Standstill Period, Subordinate Lender agrees to use best efforts to resolve the Subordinate Mortgage Default, in an effort to avoid the pursuit of available remedies by the Subordinate Lender. However, the preceding sentence shall not (i) limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources or (ii) preclude Subordinate Lender from exercising or enforcing all the rights available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable law to enforce

covenants and agreements of Borrower relating to income, rent or affordability restrictions. After the expiration of the Standstill Period and in the event Subordinate Lender forecloses on the Mortgaged Property, the purchaser must comply with HUD's Previous Participation regulations and processes, Transfer of Physical Asset requirements, and Program Obligations before it can take title to the Mortgaged Property.

7. Default Under Senior Loan Documents.

(a) Notice of Default and Cure Rights. Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has given a default notice to Borrower (provided that Senior Lender shall have no liability to Borrower, Subordinate Lender or to any other Entity for failure to timely give such notice). Failure of Senior Lender to send a default notice to Subordinate Lender shall not prevent the exercise of Senior Lender's right and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Borrower agrees that Subordinate Lender shall have the opportunity, but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD, whichever date is later. Subordinate Lender acknowledges that Senior Lender shall be entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender shall have the opportunity to cure a Covenant Event of Default during such period described above so long as there is no Monetary Event of Default under the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any default under the Senior Loan Documents shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) Cross Default. Subordinate Lender certifies that the Subordinate Loan Documents do not contain a cross default provision. Notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Security Instrument Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents.

8. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; and (b) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Security Instrument Default or

Subordinate Mortgage Default, as the case may be; give Borrower the right to notice of any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents, as applicable; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

9. Rights and Obligations of Subordinate Lender under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest. Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Security Instrument Defaults pursuant to Section 7(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Mortgaged Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(1) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by or with the written consent of Senior Lender; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (to payment of the costs and expenses of repair and restoration and/or to payment of the Senior Security Instrument) in the manner determined by Senior Lender in its sole discretion consistent with the Senior Loan Documents; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Security Instrument, any proceeds remaining after the satisfaction in full of the principal of,

interest on and other amounts payable under the Senior Security Instrument shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower.

(c) No Modification of Subordinate Loan Documents. Borrower and Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness; Transfer of Physical Assets.

(a) Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, provided however, there shall be no modification of the Senior Loan Documents without the consent of the Subordinate Lender if such modification would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

(b) Subordinate Lender agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness in accordance with Program Obligations (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Indebtedness, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the indebtedness related to the refinance loan, the refinance note, the security instrument securing the refinance note, all documents evidencing, securing or otherwise pertaining to the refinance note and the holder of the refinance note, provided however, there shall be no refinancing of the Senior Indebtedness without the consent of the Subordinate Lender if such refinancing would increase the principal amount of the Senior Indebtedness beyond the

- original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.
- (c) Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if HUD grants a deferment of amortization or forbearance that results in an extended maturity of the Senior Indebtedness.
 - (d) Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if the Subordinate Note is due, and there are no Surplus Cash funds or Residual Receipts (if applicable) available for repayment, and the Senior Indebtedness has not been repaid in full. (The parties agree that distributions of Residual Receipts must be approved by HUD and can only be approved by the terms of a written agreement between HUD and the Borrower).
 - (e) Subordinate Lender agrees that it will approve any transfer of ownership of the Project if approved by HUD in writing. Subordinate Lender further agrees that the Subordinate Indebtedness is assumable when a sale or transfer of physical assets occurs and the Senior Indebtedness remains in place, as set forth below in subparagraph (f).
 - (f) The Subordinate Lender cannot require that more than seventy-five percent (75%) of the net proceeds of the sale or transfer be applied to the reduction of the Subordinate Indebtedness. For these instructions, net proceeds are the funds available to the original borrower after:
 - (1) correcting any default on the Senior Indebtedness;
 - (2) making required contributions to any reserve funds; and
 - (3) making needed improvements to the Property as evidenced by HUD's annual inspection reports.

11. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief.

12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which Senior Lender or Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two Business Days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Colliers Mortgage LLC
 90 South 7th Street, Ste. 4300
 Minneapolis, MN 55402
 Attn: FHA Servicing

With a copy to:

U.S. Department of Housing and Urban Development
 Director - Office of Multifamily Asset Management
 Room 6160
 451 Seventh Street, S.W.
 Washington, DC 20410

SUBORDINATE LENDER:

City of Falcon Heights, Minnesota
 Attention: City Administrator
 2077 Larpenteur Avenue West
 Falcon Heights, MN 55113

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

13. General.

(a) Assignment/Successors. This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of Senior Lender and Subordinate Lender.

(b) No Partnership or Joint Venture. Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of any other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent. Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances; UCC Financing Statements. Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

(e) Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Mortgaged Property is located, except, so long as the Senior Indebtedness is insured or held by HUD, and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts, and with respect to HUD's rights and remedies, federal courts, and governmental authorities in the State in which the Mortgaged Property is located, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Subordinate Loan Documents. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted

by law.

(h) Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 5 hereof; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure; or (iv) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement. Notwithstanding the foregoing, in the event the Senior Indebtedness is refinanced or a transfer of physical assets occurs, the term of this Agreement shall continue and the Subordinate Indebtedness and Subordinate Loan Documents shall be subordinate to any such indebtedness related to the refinanced or transferred loan as provided in Section 10 above.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

14. Anti-Indemnity.

Notwithstanding anything to the contrary in Subordinate Loan Documents, if HUD is ever deemed the "Owner" of all or part of the Mortgaged Property, HUD shall not be subject to the indemnification provisions contained in the Subordinate Loan Documents. HUD prohibits and does not authorize any expenditure which would violate 31 USC 1341 (the "Anti-Deficiency Act"). Any provision of the Subordinate Loan Documents which violate(s)(d) the Anti-Deficiency Act, in the past, present or future, will not be enforced against HUD. Notwithstanding any other provision of the Subordinate Loan Documents, HUD whether in the capacity of subsidy provider, loan insurer, lender, owner, lessee or mortgagee in possession, shall have no obligation of reimbursement, indemnity, or holding harmless, of any nature whatsoever, to any governmental entity, private entity, person or party, either now or in the future. Additionally, for so long as HUD is the insurer or holder of a mortgage on the Mortgaged Property, any indemnification obligation of Borrower shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Borrower and HUD.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained

therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

[SIGNATURES APPEAR ON SUCCEEDING PAGES.]

Schedule A – List of Senior Loan Documents

1. “Senior Note” means that certain Note (HUD-94001M) in the original principal amount of Eighteen Million Three Hundred Seventy-Five Thousand and NO/100 Dollars (\$18,375,000.00) executed by Borrower in favor of Senior Lender, dated July 1, 2021.
2. “Senior Security Instrument” means that certain Multifamily Mortgage, Assignment of Leases and Rents, and Security Instrument (Minnesota) (HUD-94000M) dated July 1, 2021 executed and delivered by Borrower to Senior Lender.
3. Regulatory Agreement for Multifamily Projects dated July 1, 2021 by and between Borrower and the United States Department of Housing and Urban Development (“HUD”).
4. All other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness.

Schedule B – List of Subordinate Loan Documents

1. “Subordinate Note” means the Promissory Note dated _____, 2021, in an original principal amount of \$962,200.00 by Borrower in favor of Subordinate Lender.
2. “Subordinate Mortgage” means the Mortgage dated _____, 2021 in an original principal amount of \$962,200.00 by Borrower as Mortgagor in favor of Subordinate Lender as Mortgagee.
3. Loan Agreement between Borrower and Subordinate Lender dated _____, 2021.
4. Any other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness.

EXHIBIT A: LEGAL DESCRIPTION

Real property in the City of Falcon Heights, County of Ramsey, State of Minnesota, described as follows:

Parcel 1:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

(Torrens Property-Certificate of Title No. _____)

Parcel 2:

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

(Abstract Property)

Parcel 3:

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

(Abstract Property)

INFORMATIONAL NOTE ONLY: Tax Parcel Nos. _____

Parcel 4:

Parking easements and ingress/egress easements as described in that Easement Agreement (Parking and Ingress/Egress) dated _____, 2021 by and between Buhl Larpenteur West, LLC and Buhl GTA, LP, recorded _____ as Document No. _____.

Parcel 5:

Encroachment, Use, and Maintenance Agreement (Parking Improvements) dated _____, 2021 by and between the City of Falcon Heights, Buhl GTA, LP, Buhl GTA GP, LLC, and Peter Deanovic, recorded _____, as Document No. _____.

Parcel 6:

Green space easement in Encroachment, Use, and Maintenance Agreement (Green Space) dated _____, 2021 by and between the City of Falcon Heights, Buhl GTA, LP, Buhl GTA GP, LLC, and Peter Deanovic, recorded _____, as Document No. _____.

DRAFT BY:

Winthrop & Weinstine, P.A. (KMM)
225 South 6th Street, Suite 3500
Minneapolis, MN 55402
612-604-6400

21941334v2

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 001 PERIOD TO: August 31, 2021 CONTRACT FOR: General Construction CONTRACT DATE: July 19, 2021 PROJECT NOS: / /	Distribution to: OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
FROM CONTRACTOR: EnviroBate, Inc. 3301 East 26th Street Minneapolis, MN 55406	VIA ARCHITECT: Braun Intertec 11001 Hampshire Avenue South Bloomington, MN 55438	PO# B1810605.13	

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$1,637,170.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$211,620.00
5. RETAINAGE:	
a. <u>5.00</u> % of Completed Work (Column D + E on G703)	\$10,581.00
b. <u>0</u> % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$10,581.00
6. TOTAL EARNED LESS RETAINAGE	\$201,039.00
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$0.00
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$201,039.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$1,436,131.00

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

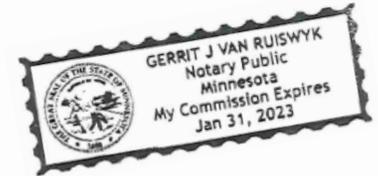
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates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

CONTRACTOR: [Signature] Date: August 20, 2021
By: _____
State of: Minnesota

County of: Hennepin

Subscribed and sworn to before me this 20th day of August 2021

Notary Public: [Signature]
My Commission expires: _____



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$201,039.00
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
By: _____ Date: _____

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

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 002	Distribution to:
		PERIOD TO: September 30, 2021	OWNER: <input type="checkbox"/>
FROM EnviroBate, Inc.	VIA Braun Intertec	CONTRACT FOR: General Construction	ARCHITECT: <input type="checkbox"/>
CONTRACTOR: 3301 East 26th Street Minneapolis, MN 55406	ARCHITECT: 11001 Hampshire Avenue South Bloomington, MN 55438	CONTRACT DATE: July 19, 2021	CONTRACTOR: <input type="checkbox"/>
		PROJECT NOS: / /	FIELD: <input type="checkbox"/>
			OTHER: <input type="checkbox"/>

CONTRACTOR'S APPLICATION FOR PAYMENT

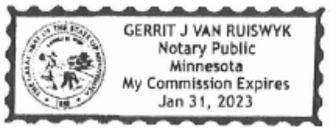
Application is made for payment, as shown below, in connection with the Contract. AIA Document G703®, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$1,637,170.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$981,530.00
5. RETAINAGE:	
a. <u>5.00</u> % of Completed Work (Column D + E on G703)	\$49,076.50
b. <u>0</u> % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$49,076.50
6. TOTAL EARNED LESS RETAINAGE	\$932,453.50
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$201,039.00
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$731,414.50
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$704,716.50

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

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

CONTRACTOR: [Signature]
 By: _____ Date: September 29, 2021
 State of: Minnesota
 County of: Hennepin
 Subscribed and sworn to before me this 29th day of September 2021
 Notary Public: [Signature]
 My Commission expires: _____



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$731,414.50
 (Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
 By: _____ Date: _____

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

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 004 PERIOD TO: October 31, 2021 CONTRACT FOR: General Construction CONTRACT DATE: July 19, 2021 PROJECT NOS: / /	Distribution to: OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
FROM CONTRACTOR: EnviroBate, Inc. 3301 East 26th Street Minneapolis, MN 55406	VIA ARCHITECT: Braun Intertec 11001 Hampshire Avenue South Bloomington, MN 55438		

CONTRACTOR'S APPLICATION FOR PAYMENT

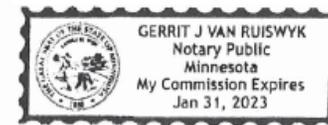
Application is made for payment, as shown below, in connection with the Contract. AIA Document G703®, Continuation Sheet, is attached.

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$0.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$1,637,170.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$1,466,370.00
5. RETAINAGE:	
a. <u>5.00</u> % of Completed Work (Column D + E on G703)	\$73,318.50
b. <u>0</u> % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$73,318.50
6. TOTAL EARNED LESS RETAINAGE	\$1,393,051.50
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$932,453.50
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$460,598.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$244,118.50

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

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

CONTRACTOR: [Signature] Date: November 08, 2021
 By: _____ State of: Minnesota
 County of: Hennepin
 Subscribed and sworn to before me this 8th day of November 2021
 Notary Public: [Signature]
 My Commission expires: _____



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$460,598.00
 (Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
 By: _____ Date: _____

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

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 004 PERIOD TO: November 30, 2021 CONTRACT FOR: General Construction CONTRACT DATE: July 19, 2021 PROJECT NOS: / /	Distribution to: OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
FROM EnviroBate, Inc. CONTRACTOR: 3301 East 26th Street Minneapolis, MN 55406	VIA Braun Intertec ARCHITECT: 11001 Hampshire Avenue South Bloomington, MN 55438		

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$74,800.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$1,711,970.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$1,647,874.00
5. RETAINAGE:	
a. 5.00 % of Completed Work (Column D + E on G703)	\$82,393.70
b. 0 % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$82,393.70
6. TOTAL EARNED LESS RETAINAGE	\$1,565,480.30
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$1,393,051.50
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$172,428.80
9. BALANCE TO FINISH, INCLUDING RETAINAGE	
(Line 3 less Line 6)	\$146,489.70

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$0.00	\$0.00
Total approved this Month	\$74,800.00	\$0.00
TOTALS	\$74,800.00	\$0.00
NET CHANGES by Change Order		\$74,800.00

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

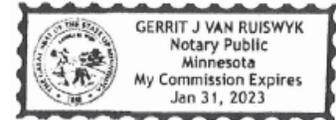
CONTRACTOR:  By: _____ Date: December 08, 2021

State of: Minnesota

County of: Hennepin

Subscribed and sworn to before me this 8th day of December 2021

Notary Public: 
My Commission expires:



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$172,428.80
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
By: _____ Date: _____

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

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 005 PERIOD TO: CONTRACT FOR: General Construction CONTRACT DATE: July 19, 2021 PROJECT NOS: / /	Distribution to: OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
FROM CONTRACTOR: EnviroBate, Inc. 3301 East 26th Street Minneapolis, MN 55406	VIA ARCHITECT: Braun Intertec 11001 Hampshire Avenue South Bloomington, MN 55438		

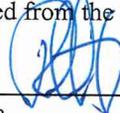
CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$90,160.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$1,727,330.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$1,727,330.00
5. RETAINAGE:	
a. <u>5.00</u> % of Completed Work (Column D + E on G703)	\$86,366.50
b. <u>0</u> % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$86,366.50
6. TOTAL EARNED LESS RETAINAGE	\$1,640,963.50
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$1,565,480.60
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$75,482.90
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6)	\$86,366.50

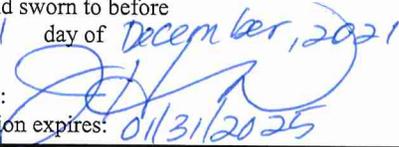
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$74,800.00	\$0.00
Total approved this Month	\$15,360.00	\$0.00
TOTALS	\$90,160.00	\$0.00
NET CHANGES by Change Order		\$90,160.00

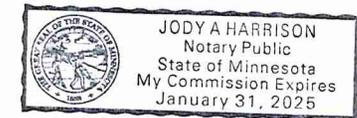
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates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

CONTRACTOR: 
By: _____ Date: December 31, 2021
State of: Minnesota

County of: Hennepin

Subscribed and sworn to before me this 31 day of December, 2021

Notary Public: 
My Commission expires: 01/31/2025



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$75,482.90
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
By: _____ Date: _____

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

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 006 PERIOD TO: March 31, 2022 CONTRACT FOR: General Construction CONTRACT DATE: July 19, 2021 PROJECT NOS: / /	Distribution to: OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
FROM EnviroBate, Inc. CONTRACTOR: 3301 East 26th Street Minneapolis, MN 55406	VIA Braun Intertec ARCHITECT: 11001 Hampshire Avenue South Bloomington, MN 55438		

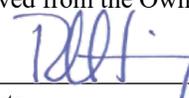
CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$117,160.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$1,754,330.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$1,754,330.00
5. RETAINAGE:	
a. 5.00 % of Completed Work (Column D + E on G703)	\$87,716.50
b. 0 % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$87,716.50
6. TOTAL EARNED LESS RETAINAGE	\$1,666,613.50
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$1,640,963.50
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$25,650.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE	\$87,716.50
(Line 3 less Line 6)	

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$90,160.00	\$0.00
Total approved this Month	\$27,000.00	\$0.00
TOTALS	\$117,160.00	\$0.00
NET CHANGES by Change Order		\$117,160.00

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

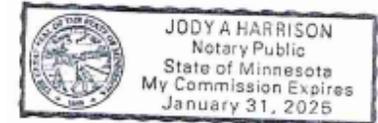
CONTRACTOR:  By: _____ Date: March 16, 2022

State of: Minnesota

County of: Hennepin

Subscribed and sworn to before me this 16 day of March 2022,

Notary Public: 
My Commission expires:



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$25,650.00
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
By: _____ Date: _____

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



AIA Document G703[®] – 1992

Continuation Sheet

AIA Document G702[®], Application and Certification for Payment, or G732[™], Application and Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:	006
APPLICATION DATE:	March 16, 2022
PERIOD TO:	March 31, 2022
ARCHITECT'S PROJECT NO:	

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D + E + F)		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		% (G÷C)			
1	Boiler Room	80,000.00	80,000.00	0.00	0.00	80,000.00	100.00%	0.00	4,000.00
2	Basement	268,300.00	268,300.00	0.00	0.00	268,300.00	100.00%	0.00	13,415.00
3	1st Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
4	2nd Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
5	3rd Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
6	4th Floor	50,000.00	50,000.00	0.00	0.00	50,000.00	100.00%	0.00	2,500.00
7	Windows/Glazing	139,800.00	139,800.00	0.00	0.00	139,800.00	100.00%	0.00	6,990.00
8	Remove/Coat Lead Walls	277,020.00	277,020.00	0.00	0.00	277,020.00	100.00%	0.00	13,851.00
9	Wet Grind Floors	33,650.00	33,650.00	0.00	0.00	33,650.00	100.00%	0.00	1,682.50
10	Roofing C&D	38,400.00	38,400.00	0.00	0.00	38,400.00	100.00%	0.00	1,920.00
11	Annex Flooring	74,800.00	74,800.00	0.00	0.00	74,800.00	100.00%	0.00	3,740.00
12	Foundation Waterproofing	15,360.00	15,360.00	0.00	0.00	15,360.00	100.00%	0.00	768.00
13	Auditorium Phase 1	15,360.00	0.00	15,360.00	0.00	15,360.00	100.00%	0.00	768.00
14	Under Slab Pipe	11,640.00	0.00	11,640.00	0.00	11,640.00	100.00%	0.00	582.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
	GRAND TOTAL	\$1,754,330.00	\$1,727,330.00	\$27,000.00	\$0.00	\$1,754,330.00	100.00%	\$0.00	\$87,716.50

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 007 PERIOD TO: April 30, 2022 CONTRACT FOR: General Construction CONTRACT DATE: July 19, 2021 PROJECT NOS: / /	Distribution to: OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
FROM EnviroBate, Inc. CONTRACTOR: 3301 East 26th Street Minneapolis, MN 55406	VIA Braun Intertec ARCHITECT: 11001 Hampshire Avenue South Bloomington, MN 55438		

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$172,360.00
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$1,809,530.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$1,809,530.00
5. RETAINAGE:	
a. 5.00 % of Completed Work (Column D + E on G703)	\$90,476.50
b. 0 % of Stored Material (Column F on G703)	\$0.00
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	\$90,476.50
6. TOTAL EARNED LESS RETAINAGE	\$1,719,053.50
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	\$1,666,613.50
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	\$52,440.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE	\$90,476.50
(Line 3 less Line 6)	

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$117,160.00	\$0.00
Total approved this Month	\$55,200.00	\$0.00
TOTALS	\$172,360.00	\$0.00
NET CHANGES by Change Order		\$172,360.00

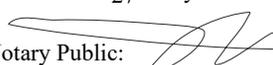
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates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

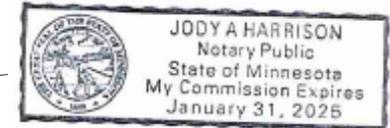
CONTRACTOR:  By: _____ Date: April 27, 2022

State of: Minnesota

County of: Hennepin

Subscribed and sworn to before me this 27 day of April 2022

Notary Public: 
My Commission expires:



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$52,440.00
(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
By: _____ Date: _____

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



AIA Document G703® – 1992

Continuation Sheet

AIA Document G702®, Application and Certification for Payment, or G732™, Application and Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

007
April 28, 2022
April 30, 2022

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G÷C)		
1	Boiler Room	80,000.00	80,000.00	0.00	0.00	80,000.00	100.00%	0.00	4,000.00
2	Basement	268,300.00	268,300.00	0.00	0.00	268,300.00	100.00%	0.00	13,415.00
3	1st Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
4	2nd Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
5	3rd Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
6	4th Floor	50,000.00	50,000.00	0.00	0.00	50,000.00	100.00%	0.00	2,500.00
7	Windows/Glazing	139,800.00	139,800.00	0.00	0.00	139,800.00	100.00%	0.00	6,990.00
8	Remove/Coat Lead Walls	277,020.00	277,020.00	0.00	0.00	277,020.00	100.00%	0.00	13,851.00
9	Wet Grind Floors	33,650.00	33,650.00	0.00	0.00	33,650.00	100.00%	0.00	1,682.50
10	Roofing C&D	38,400.00	38,400.00	0.00	0.00	38,400.00	100.00%	0.00	1,920.00
11	Annex Flooring	74,800.00	74,800.00	0.00	0.00	74,800.00	100.00%	0.00	3,740.00
12	Foundation Waterproofing	15,360.00	15,360.00	0.00	0.00	15,360.00	100.00%	0.00	768.00
13	Auditorium Phase 1	15,360.00	15,360.00	0.00	0.00	15,360.00	100.00%	0.00	768.00
14	Under Slab Pipe	11,640.00	11,640.00	0.00	0.00	11,640.00	100.00%	0.00	582.00
15	Auditorium Phase 2	48,500.00	0.00	48,500.00	0.00	48,500.00	100.00%	0.00	2,425.00
16	Ceramic Tiles	2,800.00	0.00	2,800.00	0.00	2,800.00	100.00%	0.00	140.00
17	Exterior Adhesive	3,900.00	0.00	3,900.00	0.00	3,900.00	100.00%	0.00	195.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00
	GRAND TOTAL	\$1,809,530.00	\$1,754,330.00	\$55,200.00	\$0.00	\$1,809,530.00	100.00%	\$0.00	\$90,476.50

Application and Certificate for Payment

TO OWNER: Buhl Investors 4116 West 44th Street Edina, MN 55424	PROJECT: Amber Union Asbestos 1667 Snelling Avenue Falcon Heights, Minnesota	APPLICATION NO: 008 PERIOD TO: CONTRACT FOR: General Construction CONTRACT DATE: July 19, 2021 PROJECT NOS: / /	Distribution to: OWNER: <input type="checkbox"/> ARCHITECT: <input type="checkbox"/> CONTRACTOR: <input type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
FROM EnviroBate, Inc. CONTRACTOR: 3301 East 26th Street Minneapolis, MN 55406	VIA ARCHITECT: Braun Intertec 11001 Hampshire Avenue South Bloomington, MN 55438		

CONTRACTOR'S APPLICATION FOR PAYMENT

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

1. ORIGINAL CONTRACT SUM	\$1,637,170.00
2. NET CHANGE BY CHANGE ORDERS	\$209,898.00
3. CONTRACT SUM TO DATE (Line 1 ± 2)	\$1,847,068.00
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703)	\$1,847,068.00
5. RETAINAGE:	
a. <u>5.00</u> % of Completed Work (Column D + E on G703)	<u>\$92,353.40</u>
b. <u>0</u> % of Stored Material (Column F on G703)	<u>\$0.00</u>
Total Retainage (Lines 5a + 5b or Total in Column I of G703)	<u>\$92,353.40</u>
6. TOTAL EARNED LESS RETAINAGE	<u>\$1,754,714.60</u>
(Line 4 Less Line 5 Total)	
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT	<u>\$1,719,053.50</u>
(Line 6 from prior Certificate)	
8. CURRENT PAYMENT DUE	<u>\$35,661.10</u>
9. BALANCE TO FINISH, INCLUDING RETAINAGE	
(Line 3 less Line 6)	<u>\$92,353.40</u>

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$172,360.00	\$0.00
Total approved this Month	\$37,538.00	\$0.00
TOTALS	\$209,898.00	\$0.00
NET CHANGES by Change Order		\$209,898.00

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

CONTRACTOR:  Date: September 15, 2022
 By: _____
 State of: Minnesota
 County of: Hennepin
 Subscribed and sworn to before
 me this 15th day of September 2022
 Notary Public: 
 My Commission expires: _____



ARCHITECT'S CERTIFICATE FOR PAYMENT

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

AMOUNT CERTIFIED \$35,661.10
 (Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:
 By: _____ Date: _____

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



AIA Document G703[®] – 1992

Continuation Sheet

AIA Document G702[®], Application and Certification for Payment, or G732[™], Application and Certificate for Payment, Construction Manager as Adviser Edition, containing Contractor's signed certification is attached.

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

APPLICATION NO:
APPLICATION DATE:
PERIOD TO:
ARCHITECT'S PROJECT NO:

008

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G		H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD		TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G÷C)		
1	Boiler Room	80,000.00	80,000.00	0.00	0.00	80,000.00	100.00%	0.00	4,000.00
2	Basement	268,300.00	268,300.00	0.00	0.00	268,300.00	100.00%	0.00	13,415.00
3	1st Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
4	2nd Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
5	3rd Floor	250,000.00	250,000.00	0.00	0.00	250,000.00	100.00%	0.00	12,500.00
6	4th Floor	50,000.00	50,000.00	0.00	0.00	50,000.00	100.00%	0.00	2,500.00
7	Windows/Glazing	139,800.00	139,800.00	0.00	0.00	139,800.00	100.00%	0.00	6,990.00
8	Remove/Coat Lead Walls	277,020.00	277,020.00	0.00	0.00	277,020.00	100.00%	0.00	13,851.00
9	Wet Grind Floors	33,650.00	33,650.00	0.00	0.00	33,650.00	100.00%	0.00	1,682.50
10	Roofing C&D	38,400.00	38,400.00	0.00	0.00	38,400.00	100.00%	0.00	1,920.00
11	Annex Flooring	74,800.00	74,800.00	0.00	0.00	74,800.00	100.00%	0.00	3,740.00
12	Foundation Waterproofing	15,360.00	15,360.00	0.00	0.00	15,360.00	100.00%	0.00	768.00
13	Auditorium Phase 1	15,360.00	15,360.00	0.00	0.00	15,360.00	100.00%	0.00	768.00
14	Under Slab Pipe	11,640.00	11,640.00	0.00	0.00	11,640.00	100.00%	0.00	582.00
15	Auditorium Phase 2	48,500.00	48,500.00	0.00	0.00	48,500.00	100.00%	0.00	2,425.00
16	Ceramic Tiles	2,800.00	2,800.00	0.00	0.00	2,800.00	100.00%	0.00	140.00
17	Exterior Adhesive	3,900.00	3,900.00	0.00	0.00	3,900.00	100.00%	0.00	195.00
18	7-28 Proposal Auditorium PH 3, Door Salvage, 3rd FL Tile Salvage	15,600.00	0.00	15,600.00	0.00	15,600.00	100.00%	0.00	780.00
19	Proposal Auditorium PH 4, Door Salvage, Add'l Tile	21,938.00	0.00	21,938.00	0.00	21,938.00	100.00%	0.00	1,096.90
		0.00	0.00	0.00	0.00	0.00	0.00%	0.00	0.00

A	B	C	D	E	F	G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D + E + F)	% (G÷C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
	GRAND TOTAL	\$1,847,068.00	\$1,809,530.00	\$37,538.00	\$0.00	\$1,847,068.00	100.00%	\$0.00	\$92,353.40

Instructions: Please answer the questions below, then upload the completed form to Webgrants with the final claim.	
Project Name: Amber Union	SG#: 14966
Grantee: City of Falcon Heights	
<p>1. Will there be unexpended funds remaining after the final payment? No If "Yes," unexpended funds will be returned to the to the Council for use in future funding rounds.</p>	
<p>2. What is the current status of grant-funded cleanup and/or investigation activities? Complete</p> <p>3. If "Not Complete," please provide a status update.</p>	
<p>4. Have all relevant cleanup and/or investigation reports been provided to Council staff? Yes</p> <p>5. If "No," when do you expect them to be available?</p>	
<p>6. What is the current status of the development project associated with the grant? Complete</p> <p>7. Please explain if the project is not "Complete."</p>	
<p>8. Have there been changes to the elements of the development project that have not been reported in status updates or formalized in a grant amendment? No If "Yes," please describe the changes in detail. Attach any supplemental materials needed to convey the details of the project change. For housing, include affordability level, bedroom size, and number of units.</p>	
<p>9. Please share any feedback you or development partners may have to help us improve the program or program administration.</p>	
Grantee Signature <u>Hannah B. Lynch</u>	Date: <u>1/10/2023</u>

Livable Communities Grant Payment Request and Project Status Report

LCA Grant # SG-14966 **Amount awarded** \$ 962,200.00
Project name Amber Union
Grantee City of Falcon Heights
Award date 13-Jan-21 **Expiration date** 12/31/2023
Request date From: 7/19/2021 To: 9/15/2022 **Request #:** 1
Program TBRA Cleanup **Partial or final draw:** Final
Notes to grantee:

Approved budget items

- #1 Asbestos & Lead Based Paint Abatement
- #2 Environmental Oversight
- #3
- #4
- #5
- #6
- #7

Award amount Amount claimed

\$ 900,000.00 \$ 962,200.00
 \$ 62,200.00 \$ -

Total \$ 962,200.00 \$ 962,200.00

#1: Project Update	
Last completed milestone	Next milestone
Known obstacles to timely completion	

#2: Payment request

Do NOT combine invoices - list one per row, and list each invoice only ONCE

Budget #	Vendor	Invoice # or Pay App #	Invoice date	Total Invoice Amount	Requested Amount	Note
1	Envirobate	1	8/20/2021	\$ 201,039.00	\$ 201,039.00	
1	Envirobate	2	9/29/2021	\$ 731,414.50	\$ 731,414.50	
1	Envirobate	3	11/8/2021	\$ 460,598.00	\$ 29,746.50	
1	Envirobate	4	11/30/2021	\$ 172,428.80	\$ -	
1	Envirobate	5	7/19/2021	\$ 75,482.90	\$ -	
1	Envirobate	6	3/16/2021	\$ 25,650.00	\$ -	
1	Envirobate	7	4/27/2022	\$ 52,440.00	\$ -	
1	Envirobate	8	9/15/2022	\$ 35,661.10	\$ -	
Total this page					\$962,200.00	

#3: Certification of Information Accuracy:

I certify that the this request and its substantiating documentation is true and correct and represents actual work done on behalf of the grant-funded project; that all claimed activities are eligible under the Livable Communities Act grant agreement; that all ineligible costs have been excluded from this request, and that the Project Status Update above is accurate.

Authorized signature:

Hannah B. Lynch

Date: 1/10/2023