



Request for City Council Committee Action from the Department of Community Planning and Economic Development

Date: May 15, 2012

To: Council Member Lisa Goodman, Community Development Committee
Referral to: Council Member Betsy Hodges, Ways and Means/Budget Committee

Subject: Orchestra Hall Renovation: Acceptance of \$14,000,000 State of Minnesota Grant, Appropriation of Funds and Execution of Related Documents,
Public Hearing and Establishment of Alternative Business Subsidy Goal, and
Approval to Build Multi-purpose Space

Recommendation:

1. Adopt the enclosed resolution establishing the governmental program to be achieved through renovation and operation of the Orchestra Hall facility;
2. Accept the \$14,000,000 grant from the State of Minnesota to the City for the project;
3. Authorize the appropriate City officials to execute the following as required by the State of Minnesota:
 - a. a grant agreement with the State of Minnesota;
 - b. a construction funding agreement with the Minnesota Orchestral Association;
 - c. a ground lease with the Minnesota Orchestral Association for a term of fifty years after project completion;
 - d. a use/lease agreement with the Minnesota Orchestral Association for a term of twenty years, with possible renewals to extend the term to the end of the ground lease;
 - e. a master disbursement agreement with the title company and other funders; and
 - f. such other documents as necessary to implement the project;
4. Amend the 2012 General Appropriation Resolution by increasing the Community Planning & Economic Development agency Fund 01600-Other Grants-State and Local (01600-8900320) by \$14,000,000;
5. Increase the 2012 Revenue Budget for the Community Planning & Economic Development agency Fund 01600-Other Grants-State and Local (01600-8900900-321515) by \$14,000,000; and
6. Hold a public hearing to establish an alternative non-job goal for the project under the Business Subsidy Act, and authorize execution of the Business Subsidy Agreement with the Minnesota Orchestral Association.

7. **Delegate authority to the Director of CPED to approve the annual budgets for the program upon finding that the Minnesota Orchestral Association is carrying out the governmental program and the projected program revenues equal or exceed program expenses.**
8. **Authorize the use of the northwest portion of the Minnesota Orchestral Association's property for a multi-purpose lobby/event space and associated terrace, as described herein, and, as consideration, the acceptance by the City of a portion of that parcel for addition to the Peavey Plaza parcel.**

Previous Directives:

- On April 13, 2012, the City Council approved the sale of up to \$15,000,000 in 501(c)(3) revenue bonds for the project.

Department Information

Prepared by: Ann Calvert, Principal Project Coordinator, 612-673-5023
 Approved by: Charles T. Lutz, Deputy Director, CPED _____
 Catherine A. Polasky, Director of Economic Development _____
 Presenters in Committee: Ann Calvert, Principal Project Coordinator, 612-673-5023 or Beth Grosen, Senior Project Coordinator, 612-673-5002
 Funding Source and Appropriation Language Reviewed by Development Finance:
 Jeffrey Streder, Development Finance Director _____

Reviews

- Permanent Review Committee (PRC): Approval – Not applicable
- Civil Rights Approval Approval is pending and will be secured before contract execution
- Policy Review Group (PRG): Approval – Not applicable

Financial Impact

- Action requires an appropriation increase to the Capital Budget or Operating Budget
 Dept Name: Community Planning and Economic Development (CPED)
 Fund Name: Fund 01600-Other Grants-State and Local
 Project Name & Number (if capital budget):
 Amount: \$14,000,000
- Action provides increased revenue for appropriation increase
 Dept Name: Community Planning and Economic Development (CPED)
 Fund Name: Fund 01600-Other Grants-State and Local
 Project Name & Number (if capital budget):
 Amount: \$14,000,000
- Action is within the Business Plan
- Request provided to the Finance Department

Community Impact

- Neighborhood Notification: Information about the planned Orchestra Hall renovation has been provided to the Downtown Minneapolis Neighborhood Association and Citizens for a Loring Park Community through a number of channels.
- City Goals: Livable Communities, Healthy Lives—Plentiful arts, cultural and recreational opportunities
- Comprehensive Plan: The City Planning Commission has granted the approvals needed for the Orchestra Hall project.
- Zoning Code: Consistent
- Living Wage/Business Subsidy Agreement: The State grant triggers the Business Subsidy requirements; see report.
- Job Linkage: Not applicable.
-

Supporting Information

The 2010 Minnesota State Legislature approved a \$14,000,000 grant to the City of Minneapolis to fund the renovation of Orchestra Hall. (An additional \$2,000,000 of the total \$16,000,000 grant was approved for the Peavey Plaza project.) This grant will provide partial funding for the approximately \$52,000,000 renovation project. Other sources include up to \$15,000,000 in 501(c)(3) revenue bonds to be sold by the City, possible New Markets Tax Credits and the proceeds from the Minnesota Orchestral Association's fundraising campaign.

The renovation project will include an expansion of the lobby space and event space, as well as extensive improvements to the existing building to enhance circulation, seating and energy efficiency and upgrade the building exterior. Construction is expected to start in mid-June of this year and be completed in the second half of 2013.

Proposed Resolution and State Grant, Construction Funding, Ground Lease, Use and Disbursement Agreements

The State \$14,000,000 grant will be funded by State General Obligation bond proceeds and must be used by a public entity to construct a publicly-owned facility that meets a public purpose. The attached resolution formally establishes the public purpose and governmental program to be achieved by the City as recipient of the State grant and outlines the statutory authority under which the City will undertake this project

Pursuant to an agreement between the State of Minnesota Department of Employment and Economic Development and the City, the State will provide the grant to the City in accordance with the terms outlined in Exhibit A. Disbursements will be made pursuant to a master disbursement agreement by a title company that will assure that there are always sufficient funds to cover project costs.

It should be noted that, as with all projects funded by a State construction grant, the City will have certain obligations as the public recipient of the grant. This includes being responsible for monitoring the construction of the project and assuring there are sufficient funds for the completion. A team of staff people, including Development Finance staff, has reviewed and approved the proposed financing plan for the construction of the project, and the MOA will be required to supply at closing all funds needed to fully fund the project. Insurance also will be required to mitigate construction period risks. One of the possible remedies in the event of default by the City under the grant agreement would be repayment to the State of the grant amount. Under the use/lease agreement described below, the City may impose upon the MOA any remedies imposed upon the City by the State if the default in question is due to the MOA.

A construction funding agreement will be executed between the City and Minnesota Orchestral Association (MOA) under which the City will pass through the State funds to the MOA for the project. As outlined in the terms in Exhibit B, this agreement will contain many of the requirements that typically would go in a redevelopment contract.

At closing, the Minnesota Orchestral Association (MOA) will convey/ground lease the Orchestra Hall property back to the City for fifty years after project completion for \$1.00 in accordance with the terms in Exhibit C.

The City and MOA will enter into a use/lease agreement as outlined in Exhibit D under which the actual long-term operation of the renovated Orchestra Hall will be the responsibility of the MOA. The initial term of the use agreement will be twenty years, with possible renewals that would extend to the end of the ground lease. Under this agreement, the MOA will operate the facility and pay all operating costs. For the duration of the agreement, the MOA must annually submit for the City's approval (by the CPED Director): a) summaries of the previous year's program, activities, revenues and expenses, and property improvements, and b) proposed future budgets and programs to assure that the project is financially stable

and is meeting the intended public purposes. In the event that the MOA were not able to operate the facility and went into default under the use/lease agreement, the City would have some risks related to the on-going operation of the facility to comply with the grant agreement. These would include interim property management costs after the use/lease agreement were terminated. If the City eventually were to find that Orchestra Hall is no longer needed or usable for its intended purposes, the City could seek the State's permission to sell its leasehold interests, with sales proceeds to be distributed as outlined in the term sheets.

As part of the finance plan review, CPED and Development Finance staff also reviewed the MOA's initial projections of operating revenues and expenses to verify that the project appears financially viable. Their conclusion was that the MOA has the capacity to operate the Governmental Program.

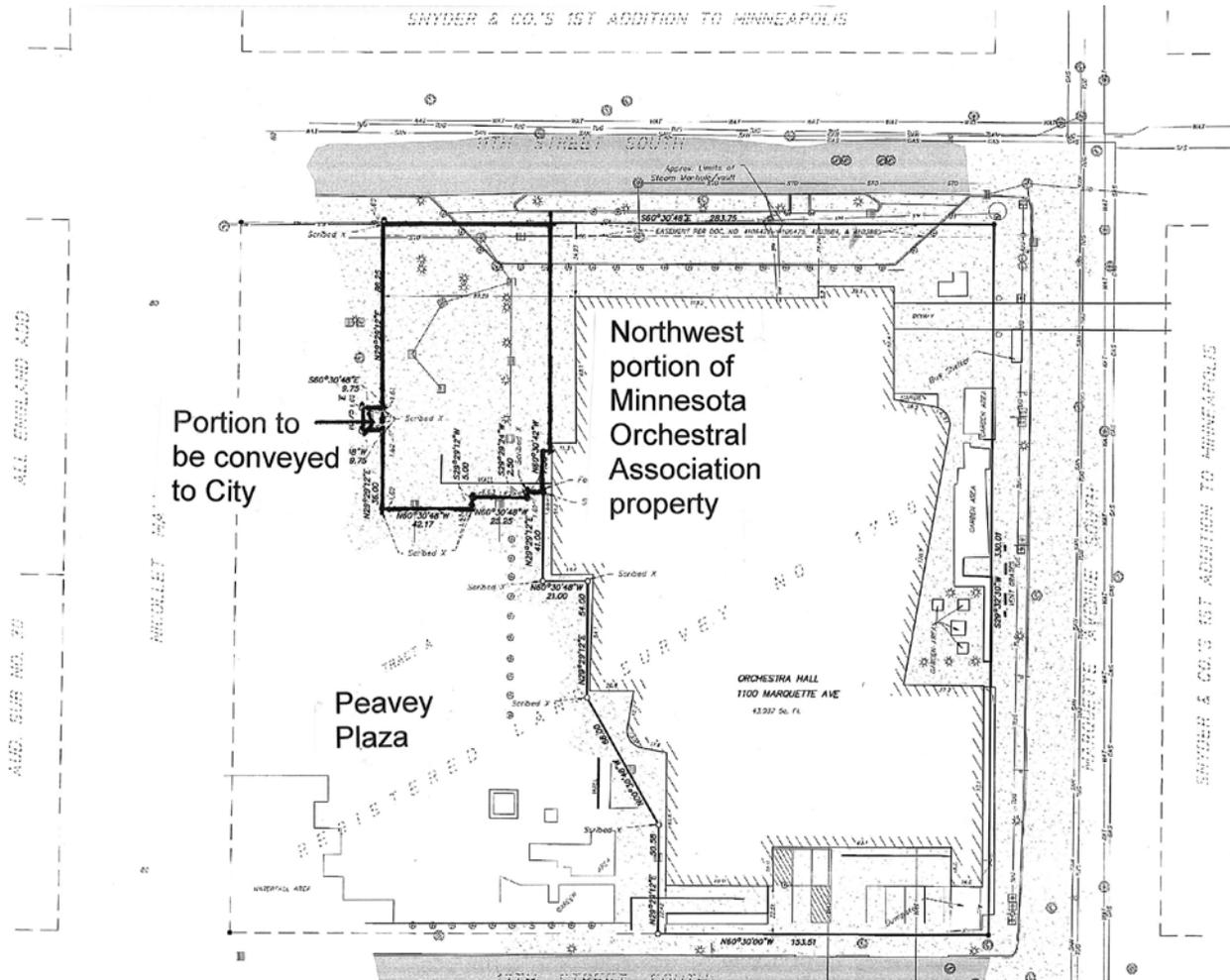
Business Subsidy

The State grant triggers the provision of the State Business Subsidy Act. The purpose for the grant was to preserve and expand Orchestra Hall as a cultural resource for the city and state, not for job creation. Therefore, it is recommended that the completion of the Orchestra Hall renovation (as defined in the construction funding agreement) and continued operation of the Orchestra's performing arts program be established as the goal for the project. A Business Subsidy Agreement will be executed between the City and MOA establishing this goal, outlining the MOA's reporting requirements and identifying the penalty if the MOA does not meet this goal.

City Authorization for Alternate MOA Use of Northwest Portion of Property

In 2005, the City conveyed title to the MOA parcel to the MOA subject to certain requirements, including the requirement that the northwest portion adjacent to Peavey Plaza (see graphic) was to be used for park purposes unless the City approved another use. This portion of the property is where the MOA proposes to build its "City Room" addition. The City Room will be a new multi-purpose space of stone and wood and abundant natural light. It will be flexible to accommodate a range of events including receptions, dinners, performances and educational activities. The 2,500 square foot space will flow directly to the 1,500 square foot terrace that wraps the City Room on the south and west sides providing views over Peavey Plaza. The terrace area will provide table seating for over 100 and will be designed to be unified with Peavey in materials and design intent.

It is recommended that the City approve this alternate use of the northwest portion of the MOA property. As consideration, the MOA will convey to the City (through either a permanent easement or deed) a small area of about 100 square feet that is part of this northwest portion and that juts into the plaza area.



Future Possible Additional Actions

The legal boundary between the Orchestra Hall property and the adjacent Peavey Plaza is very irregular as a result of previous ownership patterns on the block, and it does not match the actual use of space by the Hall and the plaza. The conveyance noted above will address one of these irregularities. In addition, there are places where the Orchestra will need access to the plaza property to provide emergency egress or maintenance access. While the cooperative working relationship between the City and MOA has meant that these irregularities have not caused any problems in the past, it would be beneficial to resolve them. There also will be some nearer-term grade challenges that will result from the fact that the Orchestra Hall renovation will be completed before the renovation of the plaza (and resulting grade changes) are completed.

City and MOA staff will work together to identify the most effective way to resolve these border challenges and will return to the City Council as needed to seek the appropriate approvals. This may include the granting of easements, a long-term land lease and/or possibly a land swap.

Establishing the governmental program to be achieved through renovation and operation of the Orchestra Hall facility in downtown Minneapolis.

WHEREAS, the City's Comprehensive Plan includes policies supporting the promotion of the economic and creative vitality of arts activities based in the City (Policy 6.5) and supporting the role of arts in tourism and community pride (Policy 6.6); and

WHEREAS, the City has been implementing long-term plans to continually strengthen downtown Minneapolis as the region's arts, entertainment and culture center; and

WHEREAS, Orchestra Hall has been one of Minneapolis' pre-eminent cultural institutions since 1974 and is one of the unique amenities and arts institutions that Minneapolis desires to retain, enhance, support and promote; and

WHEREAS, the proposed renovated Orchestra Hall is expected to generate significant economic benefits in the form of direct and indirect construction spending, increased tourism and direct and indirect spending by patrons of the facility; and

WHEREAS, a 2007 study of the impact of arts estimated that the Minneapolis nonprofit arts industry generates \$328 million in economic activity annually, through investments by the arts organizations themselves and expenditures by their audiences in association with event attendance; and

WHEREAS, Minnesota Statutes, section 471.191 authorizes the City, as part of its operation of a public recreation program that may include facilities for cultural participation and exhibitions, to acquire, lease, equip, and maintain land, buildings and other improvements; and

WHEREAS, specific language contained in 2010 Minn. Law Chapter 189, Sec. 21, Subd. 11 authorizes the City to operate a performing arts center; and

WHEREAS, the State of Minnesota has approved a \$14,000,000 grant to the City to design, construct, furnish and equip a renovated Orchestra Hall in the City of Minneapolis; and

WHEREAS, to satisfy conditions of the State grant, the City must own the Orchestra Hall property, but may enter into a use agreement with the Minnesota Orchestral Association under which it will take on responsibility for the operation of the facility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

1. **THAT** the renovation of Orchestra Hall in downtown Minneapolis will achieve the important public goals of the City identified above.

2. **BE IT FURTHER RESOLVED THAT** the predesign, design, construction, furnishing, equipping, ownership, financing, lease and operation of a renovated Orchestra Hall are within the City's authority under Minnesota Statutes, sections 471.15-471.191 and specific language contained in 2010 Minn. Law Chapter 189, Sec. 21, Subd. 11.

3. **BE IT FURTHER RESOLVED THAT** the governmental program to be achieved by the City's sponsorship of the renovated Orchestra Hall will be the establishment and maintenance of a performing arts center, pursuant to which the City expects to support cultural participation and encourage economic development and tourism.

4. **BE IT FURTHER RESOLVED THAT** the City hereby accepts the grant of \$14,000,000 from the State of Minnesota and authorizes the appropriate City officials to execute a grant agreement with the State of Minnesota, a construction funding agreement with the Minnesota Orchestral Association, a ground lease with the Minnesota Orchestral Association, a master disbursement agreement with the State of Minnesota, Minnesota Orchestral Association and others, a use/lease agreement with the Minnesota Orchestral Association, and such other documents as necessary to implement the project.

5. **BE IT FURTHER RESOLVED THAT** the City Council delegates to the CPED Director the authority to approve and certify to the State of Minnesota the annual reports submitted by the Minnesota Orchestral Association under the use agreement, provided that the CPED Director finds that: a) the forecast revenues (including program and other revenue) for the current fiscal year and next three fiscal years equal or exceed the forecast expenses, and b) the Premises continue to achieve the Governmental Program.

6. **BE IT FURTHER RESOLVED THAT** this resolution shall be in full force and effect from and after its passage.

EXHIBIT A

Summary of Terms State of Minnesota Construction Grant to City for Minnesota Orchestra Hall

Subject to approval by State

Parties:

State Entity – Minnesota Department of Employment and Economic Development

Public Entity – City of Minneapolis

Amount – \$14,000,000

Use of grant – Predesign, design, construction, furnishing and equipping of a renovated Orchestra Hall for the purposes of establishing and maintaining a performing arts center (the “Governmental Program”).

Public ownership – To satisfy the public ownership requirement, the City will acquire a ground lease interest in the real property and facility for a term that is at least 125% of the useful life of the Project and otherwise meets state requirements.

Termination – The project must start within five years of the effective date of the grant agreement, and all funds must be disbursed within four years after the construction commencement date, or the grant agreement will terminate (unless mutually extended). The Grant Agreement also will terminate at the end of the City’s Ground Lease and upon a sale of the Project approved by the State.

Compliance with state laws and requirements – The City will comply with (and/or cause the Minnesota Orchestral Association to comply with) all requirements necessitated by State laws and the State constitution, including:

- The City (and Minnesota Orchestral Association) will adhere with general obligation bond requirements to assure that interest on the State bonds remains exempt from taxes.
- The facility must be insured.
- A declaration must be filed in the real estate records against the City’s ground lease interest in the real property and facility to put others on notice of the State’s interest in the Project.
- If the City determines that the facility is no longer needed or usable for the Governmental Program and the Commissioner of the Minnesota Office of Management and Budget consents, the Project may be sold. It must be sold for “fair market value,” and (unless the General Obligation Compliance Legislation no longer applies to the Project) the net proceeds after sale-related costs will be used to repay the State grant and the State will also share in any residual after other obligations are repaid.

Use/lease agreement – The City will enter into a use/lease agreement with Minnesota Orchestral Association to operate the Governmental Program in the Project, subject to State approval of the use/lease agreement and compliance with State requirements, including the requirement that the initial term not exceed 50% of the useful life of the facility (see Exhibit D).

Design review – The City must submit (or cause the Minnesota Orchestral Association to submit) the facility predesign plans and a program plan and cost estimates for State review in accordance with its standard requirements.

Matching funds – The City will document (or cause the Minnesota Orchestral Association to document) that no less than \$16,000,000 in matching funds from non-State sources is committed and available for the Orchestra Hall project. The City also will document or cause the Minnesota Orchestral Association to document that all resources needed to fully fund the completion of the improvements will be available at closing.

Disbursements – To be made in accordance with the following and the terms of a Master Disbursement Agreement.

- **Draws** – State funds will be disbursed pro rata with matching funds through a title company on a draw by draw basis.
- **Project Costs** – All costs to construct, install, furnish and equip the Orchestra Hall.
- **Documentation prior to disbursement** – Funds to be disbursed upon submission of appropriate documentation, including project completion status, lien waivers and sufficiency of remaining funds.
- **Filing of Declaration** – No State funds will be disbursed until the declaration is filed against the City's ground lease interest in the real property and facility.
- **Reimbursement proportions** – State funds may only be used for qualified capital expenditures that are incurred on or after May 5, 2010.

Remedies – In the event of an uncured default, the State may require the City to repay (or cause the MOA to repay) the outstanding balance of the Grant. If not repaid (and as required in other State grant transactions), the State could withhold LGA or other payments due the City.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not adversely impact the City's rights, obligations or interests.

EXHIBIT B

Summary of Terms Construction Funding Agreement

Parties:

City of Minneapolis
Minnesota Orchestral Association (MOA)

Grant: \$14,000,000, to be disbursed to the MOA for completion of the Improvements in accordance with the terms of the Grant Agreement between the State and City and the provisions of the Construction Funding Agreement. Prior to final grant disbursement, Improvements must have been completed, certificate of occupancy issued and all lien waivers secured.

Improvements: Rehabilitation of Orchestra Hall's lobby spaces, construction of approximately 36,268 square feet of new multi-use space, energy updating, acoustical improvements and updating of the building envelope.

Construction Documents: Documents to be delivered to the City (along with executed State grant documents) prior to initial grant disbursement, including construction plans, evidence of necessary approvals, evidence of insurance and compliance with City contracting requirements, sworn construction statement and final pro forma.

Construction Start and Completion Dates: Construction must start by August 1, 2012, and be completed no later than December 1, 2013.

City Contracting Requirements: MOA to comply with standard City contracting requirements, including preparation of Affirmative Action Plans, participation in apprenticeship plans, compliance with Small and Underutilized Business requirements and payment of Prevailing Wages.

Business Subsidy: MOA will enter into a Business Subsidy Agreement with the following terms:

- Goal is that Improvements must be completed by Construction Funding Agreement deadline (Completion Date). There are no wage or job goals.
- If goal is not met within two years after Completion Date (with provisions for curing defaults and Unavoidable Delays), MOA must repay \$14,000,000 grant (if not already repaid under other provisions of grant).
- MOA must report on achievement of goal and job generation/retention until later of two years after Completion Date or when goal is met.

EXHIBIT C

Summary of Terms Ground Lease between Minnesota Orchestral Association and City

Subject to approval by State

Parties:

Ground Lessor – Minnesota Orchestral Association

Ground Lessee – City of Minneapolis

Premises – Tract B, Registered Land Survey No. 1750 in the Office of the Registrar of Deeds, Hennepin County, Minnesota, including the improvements constructed or to be constructed thereon.

Permitted use – The Premises may be used as a venue for music and other performing arts, to achieve the Governmental Program.

Term – 50 years, which equals or exceeds 125% of the useful life of the Improvements, commencing on the date of closing and continuing for 50 years after December 1, 2013, and which cannot be prematurely cancelled without the prior approval of the Minnesota Department of Employment and Economic Development.

Rent – \$0 per year, with pass through to the Minnesota Orchestral Association of responsibility for all operating, maintenance, taxes, insurance and other costs pursuant to the Use Agreement to be executed simultaneously with the Ground Lease.

Conditions – The City's obligations under the Ground Lease are contingent upon: concurrent execution of the Construction Grant Agreement by the State and of the Use Agreement by the Minnesota Orchestral Association; Commissioner of the Minnesota Office of Management and Budget approval of such agreements; and receipt of a title insurance commitment acceptable to City (with insurance premium to be paid by the Minnesota Orchestral Association).

Indemnity – Minnesota Orchestral Association will agree to indemnify, defend and hold harmless the City from any actions, proceedings or claims, of whatsoever nature, including attorney's fees, arising out of the condition, ownership, use, or operation of the Premises.

Title to improvements - Upon expiration of the Ground Lease (e.g., at the end of the term), the City and State interests in the Premises will terminate and the City shall immediately quit and surrender possession of the Premises to the Minnesota Orchestral Association in its then condition.

Sale or assignment – The City shall not assign or sublet its interest in the Ground Lease or the Premises without the prior written consent of the Minnesota Orchestral Association and the Commissioner of the Minnesota Office of Management and Budget.

Limitation – There will be no personal liability on the part of City, or its officers, directors, members, employees and agents, to the Minnesota Orchestral Association with respect to any of the terms, covenants and conditions of the Ground Lease.

Sale upon discontinuance of Governmental Program – If the Use Agreement with the Minnesota Orchestral Association is terminated prior to the end of the term or not renewed and the City has decided the Premises are no longer needed for the Governmental Program and the State concurs, then the City must first offer to sell (with State approval) the City's interest in the Premises to the Minnesota Orchestral Association. If the Minnesota Orchestral Association elects not to purchase the City's interest, then it will convey fee title to the Premises to the purchaser of the City's ground lease interest in the Premises. In either case, the sale proceeds, after deducting City's sale-related costs, will be applied in the following order: State grant, any outstanding approved debt, the cumulative capital investment of the Minnesota Orchestral Association, and proportional distribution of any excess proceeds. If the City's interim property management costs cannot be deducted from the sale proceeds, then the Minnesota Orchestral Association shall pay them.

Purchase Option upon continuance of Governmental Program—If the Use Agreement is terminated or not renewed and the City has decided to continue the Governmental Program in the Premises, then the City may elect to purchase the Minnesota Orchestral Association’s fee title and ground lease interest for fair market value.

Other provisions – The Minnesota Orchestral Association through the Use Agreement will:

- Comply with laws;
- Pay taxes, if any;
- Maintain and insure the Premises; and
- Consent to a leasehold mortgage.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney’s office and Finance Officer, determines that said revisions do not adversely impact the City’s rights, obligations or interests.

EXHIBIT D

Summary of Terms Use Agreement between City and the Minnesota Orchestral Association

Subject to approval by State

Parties:

Landlord– City of Minneapolis

Tenant– the Minnesota Orchestral Association

Governmental Program – The City will lease the Premises to Tenant to construct the improvements and operate the “Governmental Program,” which is establishment and maintenance of a performing arts center in the City of Minneapolis, pursuant to which the City expects to support cultural participation and arts education and to encourage economic development.

Premises – The City’s Ground Lease interests in the property, including the improvements constructed or to be constructed thereon.

Term – The Use Agreement between the City and Tenant must be for a term substantially less than the useful life of the buildings leased. Accordingly, the Use Agreement will have an initial term of 20 years.

Renewals – Two renewal terms. The first renewal term will be for 20 years, and the second renewal term will extend to the end of the Ground Lease term. As a condition precedent to each renewal, the Minneapolis City Council shall have determined that Tenant has demonstrated that such renewal continues to carry out the Governmental Program and that Tenant is suited and able to perform the functions contained in the Use Agreement and upon such demonstration the City shall act in good faith to renew the Use Agreement.

Rent - \$0 per year, with Tenant responsible for all operating, maintenance and other costs, including any taxes or special assessments.

Initial Improvements and Funding – Tenant will build the Improvements in accordance with the Construction Funding Agreement and provide the resources to meet the \$16 million State match requirement, fully fund the Improvements at closing and secure repayment of the 501(c)(3) tax exempt revenue bonds. Pursuant to the Construction Funding Agreement, the City will provide the State grant funds to Tenant to cover the appropriate share of the Project cost.

Reporting and oversight – Tenant must:

- Submit the predesign plans and a program plan and cost estimates for State review in accordance with its standard requirements and make any changes needed for approval.
- After the facility is completed, submit annual reports: a) of major activities at the facility, including a description of how the major activities meet the performing arts element of the Governmental Program, b) the annual program budget for the next fiscal year showing that forecast revenues equal or exceed forecast expenses, c) projected program budgets for the next three fiscal years showing that forecast revenues will equal or exceed forecast expenses, and d) a report of MOA’s expenditures for Improvements in the preceding year. The CPED Director will approve the submittal upon finding that: a) Tenant is continuing to carry out the Governmental Program, and b) the projected revenues will support the projected expenses. The City will not have artistic control over the performing arts programs.
- Maintain books and records.

Permitted uses – The Premises may be used as a performing arts center and for related and ancillary uses, pursuant to which the City expects to support cultural participation and to encourage economic development.

Financing – Subject to City and State approval, Tenant may encumber its leasehold interests in the Premises with a subordinate mortgage.

Future potential sale –The Use Agreement has the same sale and purchase option provisions as the Ground Lease (see Exhibit C) in the event of early termination or nonrenewal of the Use Agreement.

Default under State grant and use agreements – In the event that a default under the Use Agreement results in the City being in default under the State grant agreement, the City may impose upon Tenant any remedy imposed upon the City by the State. In the event of a default under the Use Agreement, the City also may elect to perform the Tenant's obligations, including operation of the Governmental Program, with City costs to be reimbursed by the Tenant.

Statutory Termination – If the Governmental Program is terminated or changed due to changes in state law in such a way as to cause the Use Agreement and the operation of the Center to be inconsistent with the changed Governmental Program, then the Use Agreement may, at the City's option, be terminated by 485 days written notice. Any termination will be deemed automatically rescinded if within such 485 days (i) the State law requiring the Governmental Program to be terminated or changed is repealed or modified appropriately, or (ii) Tenant conforms its operation of the Center to the changed Governmental Program.

Other provisions –Tenant:

- Cannot sublet without the City's consent.
- May make additional improvements or modifications to the Premises without the City's approval as Landlord, as long as said improvements or modifications don't reduce the Project's value or the ability to achieve the Governmental Program (and the improvements or modifications receive the City's standard regulatory approvals).
- Must maintain and insure the Premises and restore them in the event of damage.
- Must indemnify the City against liability for Tenant's actions in building, maintaining and operating the facility on the Premises.
- Must list its job openings with the State of Minnesota for the term of the Use Agreement.
- Must comply with any other requirements imposed by the State.

Revisions – The above terms may be revised if the CPED Director, in consultation with the City Attorney's office and Finance Officer, determines that said revisions do not adversely impact the City's rights, obligations or interests.