

**MEMORANDUM OF UNDERSTANDING
FOR THE RESTORATION OF VICTORY MEMORIAL DRIVE**

This Memorandum of Understanding (MOU) entered into by and between the County of Hennepin, State of Minnesota, hereinafter referred to as the "COUNTY", a public body corporate and politic under the laws of the State of Minnesota, A-2300 Government Center, Minneapolis, Minnesota 55487, on behalf of the Hennepin County Department of Housing, Community Works and Transit, 417 North Fifth Street, Suite 320, Minneapolis, Minnesota 55401-1362, the City of Minneapolis, hereinafter referred to as the "CITY", a public body corporate and politic under the laws of the State of Minnesota, 300 Border Avenue North, Minneapolis, MN 55405-1528, and the city of Minneapolis acting by and through its Park and Recreation Board, a municipal corporation under the laws of the State of Minnesota, hereinafter "PARK BOARD", 2117 West River Road, Minneapolis, Minnesota 55411.

WHEREAS, the CITY and the PARK BOARD are about to oversee restorative improvements to Victory Memorial Drive in Minneapolis ("Project"); and

WHEREAS, the COUNTY has designated funds for the Project in its Capital Projects budget for road closures, monuments and gateway redesign, and pathway lighting; and

WHEREAS, the COUNTY has the authority to contribute funds to the Project pursuant to Minn. Stat. §§ 375.18, subd.12, 398.32, subd.6, 471.59, 471.85, and other law; and

WHEREAS, the COUNTY wishes to coordinate the design and road closure construction with the CITY for said Project, and the PARK BOARD wishes to have a portion of its property improved; and

WHEREAS, the PARK BOARD wishes to install and coordinate the pathway lighting for this Project in conjunction with the road, monument and gateway redesign; and

WHEREAS, a portion of the real property which will be improved is owned by the PARK BOARD.

NOW, THEREFORE, in consideration of the mutual undertakings and MOUs hereafter set forth, the COUNTY, the PARK BOARD and the CITY agree as follows:

1. Right of Entry. The PARK BOARD and the CITY agree to allow the COUNTY to perform the services described in Section 3 listed as these nine (9) streets (Xerxes, Penn, Queen(Victory Memorial to 45th Avenue N) , Oliver, Logan, Morgan, James and Irving) that cross Victory Memorial Parkway. Deliverables, on PARK BOARD and CITY property during the period commencing June 1, 2009 and terminating December 31, 2011.

2. Terms and Cost of the MOU. The PARK BOARD and the CITY understand that the COUNTY is responsible for the design and construction costs of the road, monument and

gateway improvements on CITY or PARK BOARD property as described in this MOU. The COUNTY is also responsible for costs of pathway lighting installation.

2.01 Consultant and Approval. The COUNTY has hired consultants to study and provide a plan for the redesign of the monuments and gateways on Victory Memorial Parkway. The approved plan will be implemented by a consultant chosen by the COUNTY and according to standards and subject to the approval of the PARK BOARD and CITY. In the event that there are any changes to the design plans the COUNTY shall seek PARK BOARD approval of any such changes that are in addition to or replacing the original approved plans.

2.02 Street Closures and Design and Plan Responsibility. The COUNTY AND PARK BOARD has agreed upon the need for closures and improvements of eight (8) streets (Xerxes, Penn, Queen, Oliver, Logan, Morgan, James, and Irving) that cross Victory Memorial Parkway. The COUNTY will be responsible for design, construction services, inspection and contract management to perform all work necessary to construct the agreed to and signed set of plans which are attached as Attachment A.

2.03 Fire Hydrants. The COUNTY agrees to reimburse the CITY to furnish and install three fire hydrants on the Parkway for the actual cost, not to exceed \$47,000.00. This includes hook up to the main waterline along the Parkway. The CITY further agrees to provide plans and locations to the PARK BOARD for approval, and the parties agree that the PARK BOARD is not responsible for any costs related to the furnishing and installation of fire hydrants that may exceed \$47,000.00.

2.04 Pathway Lighting. The COUNTY also agrees to reimburse the PARK BOARD for the costs of the concept design and installation of new pathway lighting on Victory Memorial Drive for a cost not to exceed the amount of \$1,000,000.00, as provided in Attachment B.

3. Deliverables; Review by CITY and PARK BOARD. The COUNTY shall be responsible for creating plans and bidding documents (with CITY Engineer approval), bid award, construction management, quality assurance and quality control, payment and project documentation and any other items associated with the successful completion of the street closures. The COUNTY shall perform all design, testing and construction services required to complete the street closures, monument and gateway redesign and improvements as shown in the Attachment A. The submitted plans and specifications shall comply with the CITY standards for construction. The CITY and the PARK BOARD shall receive and approve a schedule of construction activities and completion dates. The CITY and the PARK BOARD are authorized to provide final acceptance of all work based on submitted inspection reports. This final acceptance, which shall not be unreasonably denied or delayed, shall release the COUNTY of any future obligations and responsibilities on this Project. Prior to final acceptance it is the COUNTY responsibility to perform on going maintenance and warranty work and any other items necessary to provide safe access of the public.

3.01 Access to Park Land. The PARK BOARD agrees to give the COUNTY access to PARK BOARD land for completion of the redesigning of the monuments, gateways and street

closures. Also, the PARK BOARD will conduct public meetings as required for completion of the road closures and/or vacations prior to the street work commencing.

3.02 Access to City Land. The CITY agrees to give the COUNTY access to city streets to complete the redesign and construction of the monuments, gateways and street closures (Xerxes, Penn, Queen, Oliver, Logan, Morgan, James, and Irving). The CITY will help coordinate the necessary authorizations for completion of the road closure work and lighting installation.

3.03 Reimbursement for Fire Hydrants. The CITY will perform with its own staff, the installation of three (3) new fire hydrants for a not to exceed amount of \$47,000 as outlined in Attachment C. Copies of invoices and payroll will be submitted to the COUNTY for reimbursement.

3.04 Pathway Lights. The PARK BOARD is responsible for concept design and installation of the new pathway lights. The PARK BOARD agrees to work cooperatively and within the requirements of the CITY and COUNTY to install the new pathway lighting. The PARK BOARD will be reimbursed by the COUNTY for the actual amount charged by the contractor, which shall not exceed the contract price approved by the COUNTY. Any work performed outside the approved contract needs written authorization from the COUNTY before reimbursement.

4. Independent Contractor. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners or joint venturers between the parties hereto or as constituting the any of the parties as the agent, representative, or employee of any other party for any purpose or in any manner whatsoever.

5. Maintenance and Repairs. After final acceptance, The PARK BOARD shall be responsible for maintenance and repairs of all Project improvements with the exception of the fire hydrants that shall be maintained by the CITY.

6. Liability. It is further understood that neither the COUNTY, nor its elected officials, officers, agents and employees, either in their individual or official capacity, shall be responsible or liable in any manner to the PARK BOARD for any claims, demands, judgments, fines, penalties, expenses, actions or causes of actions of any kind or character arising out of or by reason of negligent performance of the herein described work by the CITY, or arising out of the negligence of any contractor under the contract let by the COUNTY for the performance of said work. The COUNTY agrees that any contract that it enters into with a contractor for the work contemplated under this MOU shall preserve the PARK BOARD's rights to pursue a claim against the contractor for negligent performance under the contract. The COUNTY further agrees to list the PARK BOARD and CITY as an additional insured and obligee on the payment for performance bonds. The COUNTY agrees to provide the PARK BOARD with copies of any contract it enters into with a contractor prior to any work contemplated by this MOU by said contractor.

It is further understood that the neither the CITY, nor its elected officials, officers, agents and employees, either in their individual or official capacity, shall be responsible or liable in any manner to either the PARK BOARD or the COUNTY for any claims, demands, judgments, fines, penalties, expenses, actions or causes of actions of any kind or character arising out of or by reason of negligent performance on the part of the PARK BOARD or the COUNTY for performance of the PARK BOARD and/or COUNTY conditions and undertakings set forth in this MOU.

7. Indemnification. The COUNTY and/or PARK BOARD shall defend, indemnify, and save CITY harmless from and against all liabilities, obligations, damages, claims, demands, costs, charges, judgments and expenses, including but not limited to, reasonable attorney's fees, which may be imposed upon or incurred or paid by or asserted against CITY by reason of or in connection with the following: the closure of the CITY streets in connection with the Project, the design and plan responsibilities outlined in paragraph 2.02 herein, any accident, injury, death or damage to any person or property occurring in or on the Project following its completion, and any failure on the part of the COUNTY or the PARK BOARD to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this MOU. Notwithstanding the foregoing, the COUNTY shall not be liable for claims related to maintenance or repairs which are the responsibility of the PARK BOARD or the CITY after final acceptance pursuant to paragraph 5 herein.

8. Contract Administration. To coordinate the activities of the PARK BOARD and the CITY with the activities of the COUNTY so as to accomplish the purposes of this MOU, Jan Duffie, or her successor, shall manage this MOU on behalf of the COUNTY and serve as liaison between the COUNTY, the PARK BOARD and the City. Nick Eoloff shall be the contact person for the PARK BOARD and Larry Matsumoto shall be the contact person for the CITY.

9. Notices. Any notice or demand which must be given or made by a party hereto under the terms of this MOU or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator with a copy to the originating Department at the address given in the opening paragraph of this MOU. Notice to the PARK BOARD and CITY shall be sent to the PARK BOARD Manager and CITY at the address stated in the opening paragraph of this MOU.

10. Merger and Modification.

- a. It is understood and agreed that the entire MOU between the parties is contained herein and that this MOU supersedes all oral MOUs and negotiations between the parties relating to the subject matter hereof. All items referred to in this MOU are incorporated or attached and are deemed to be part of this MOU.
- b. Any alterations, variations, modifications, or waivers of provisions of this MOU shall only be valid when they have been reduced to writing as an amendment to this MOU signed by the parties hereto.

11. Default and Cancellation.

- a. If any party fails to perform any of the provisions of this MOU or so fails to administer the work as to endanger the performance of the MOU, this shall constitute a default. Unless the default is excused by the non-defaulting party, the non-defaulting party may upon written notice immediately cancel this MOU in its entirety.
- b. The COUNTY's or the CITY's or the PARK BOARD's failure to insist upon strict performance of any provisions or to exercise any right under this MOU shall not be deemed a relinquishment of waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the MOU.
- c. This MOU may be canceled with or without cause by any party upon thirty (30) day written notice.

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COUNTY BOARD APPROVAL

CITY and the PARK BOARD having signed this MOU, and the Hennepin County Board of Commissioners having duly approved this MOU on the ____ day of _____, 2009 and pursuant to such approval, the proper COUNTY officials having signed this MOU, the parties hereto agree to be bound by the provisions herein set forth.

COUNTY OF HENNEPIN

ATTEST:

By: _____
Deputy/Clerk of the County Board

By: _____
Chair of Its County Board

Date: _____

Date: _____

APPROVED AS TO FORM:

And: _____
Assistant/Deputy/County Administrator

By: _____
Assistant County Attorney

Date: _____

Date: _____

And: _____
Assistant County Administrator, Public Works

Date: _____

APPROVED AS TO EXECUTION:

RECOMMENDED FOR APPROVAL

By: _____
Assistant County Attorney

By: _____
Director, Department of Housing,
Community Works & Transit

Date: _____

Date: _____

(Signature page continued on next page)

City of Minneapolis

Minneapolis Park and Recreation Board

By: _____
Director, Department of Public Works

By: _____
President

Date: _____

Date: _____

And: _____
Finance Officer or Designee

By: _____
Secretary

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

By: _____
Assistant City Attorney

By: _____
Park Board Attorney

Date: _____

Date: _____

Attachment A

SERVICES TO BE PROVIDED BY HENNEPIN COUNTY

A redesign process of the monuments and gateways on Victory Memorial Parkway is underway. All interested parties will have input to give approval before implementation.

The COUNTY's design, construction plans and cost estimate for closures and improvements of eight (8) streets (Xerxes, Penn, Queen, Oliver, Logan, Morgan, James and Irving) that cross Victory Memorial Parkway is attached.

Attachment B

SERVICES TO BE PROVIDED BY MINNEAPOLIS PARK AND RECREATION BOARD

The estimate for the PARK BOARD to provide the concept design and installation of the new pathway lights at an actual cost not to exceed cost of \$1,000,000.00 is attached.

Attachment C

SERVICES TO BE PROVIDED BY THE CITY OF MINNEAPOLIS

The estimate provided by the CITY to install three (3) new fire hydrants at an actual cost not to exceed amount of \$47,000 is attached.