

EXHIBIT H-1

TUNNEL AGREEMENT
(City Hall Tunnel)

THIS AGREEMENT is made as of _____, 199__ among the City of Minneapolis, a Minnesota municipal corporation ("City"), United States General Services Administration ("GSA"), and the Minneapolis Community Development Agency, a body corporate and politic under the laws of the State of Minnesota ("MCDA").

RECITALS

A. GSA is the owner, in fee, of the tracts of land situated in the City of Minneapolis, County of Hennepin, State of Minnesota, described on Exhibit 1 (the "GSA Tract").

B. City, through the Municipal Building Commission has an interest in the tract of land situated in the City of Minneapolis, County of Hennepin, State of Minnesota, described on Exhibit 2 (the "City Hall Tract").

C. GSA, City and MCDA are parties to a Development Agreement in Minneapolis, Minnesota, dated March 19, 1993 (the "Development Agreement") providing for, among other things, development of a new U.S. Courthouse and related plaza and structured parking (collectively, the "Project") on the GSA Tract.

D. In connection with the Project, GSA, City and MCDA desire to provide for the re-opening and maintenance of a currently-existing pedestrian tunnel ("City Hall Tunnel") under South Fourth Street between the City Hall Tract and GSA Tract.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, MCDA, City and GSA hereby agree as follows:

1. MCDA or the City shall cause the City Hall Tunnel to be connected between the GSA Tract and City Hall Tract on the GSA Tract property line at the approximate location shown on Exhibit 3 attached hereto in substantial accordance with plans and specifications to be developed by MCDA or the City. Plans and specifications for the City Hall Tunnel re-opening shall be subject to the approval of GSA, which shall not be unreasonably withheld, delayed or conditioned. If within 30 days following receipt of the plans and specifications, GSA has not provided the MCDA or the City with notice withholding approval and specifying such adjustments GSA believes are necessary to secure approval, the plans and specifications shall be deemed to be approved. Upon execution of this Agreement, GSA shall provide the MCDA or the City with all existing

drawings, specifications and other documents and shall thereafter furnish any additional drawings, specifications and other documents pertaining to the buildings and improvements to be located on the GSA Tract as may be helpful in re-opening the City Hall Tunnel connection. Except for reasons beyond MCDA's and City's reasonable control, construction of the City Hall Tunnel will be substantially complete no later than the Completion Date of the Project as set out in the Development Agreement. MCDA or the City shall construct and restore the interior of the improvements on the City Hall Tract, and GSA shall construct the interior of the improvements on the GSA Tract, as may be necessary to provide access to the City Hall Tunnel so that such access will be available upon completion of the City Hall Tunnel and improvements on the GSA Tract. In particular but without limitation, GSA shall construct the improvements on the GSA Tract in such manner that there shall be direct and convenient access to and from the City Hall Tunnel and the Plaza Garage and the Grain Exchange Tunnel (as defined in the Development Agreement).

2. City does hereby grant, bargain, quitclaim and convey to GSA, its successors and assigns, for the benefit of the GSA Tract, and GSA does hereby grant, bargain, quitclaim and convey to the City, its successors and assigns, for the benefit of the City Hall Tract, mutual easements for the period provided in Paragraph 4 below, to construct, reconstruct, repair, maintain, operate and use the City Hall Tunnel all in accordance with the terms, covenants and conditions provided in this Agreement. Such easements shall include the nonexclusive right to use the public areas designated or reasonably necessary for pedestrian City Hall Tunnel walkway and service corridor access between and within the buildings and improvements on the City Hall Tract and the GSA Tract, as the case may be, to provide reasonably convenient pedestrian access from the City Hall Tunnel to and from such buildings and improvements and to any other tunnel or pedestrian walkways or skyways now or hereafter attached to or accessible through such buildings and improvements. City acknowledges that, except during normal Federal business hours, and except as otherwise required to carry out the intent of this Paragraph 2, GSA may restrict public pedestrian access to portions of the interior of buildings and improvements on the GSA Tract which are normally closed to the public outside of normal Federal business hours. City and GSA shall each have the right in its sole discretion to increase, decrease, alter or rearrange at its expense the public areas in its respective building for pedestrian City Hall Tunnel walkway and service corridor access so long as the resulting configuration of the public areas provides such reasonably convenient access.

3. The cost of the design and construction of the City Hall Tunnel shall be paid as follows:

- (a) MCDA or the City shall pay the cost of all work performed, services rendered and materials furnished in designing, constructing and restoring the interior of the improvements on the City Hall Tract incurred by reason of the re-opening of the City Hall Tunnel. Such cost will be borne by MCDA or the City only, and GSA shall not pay any portion of the cost thereof.
- (b) MCDA or the City shall pay the cost of all work performed, services rendered and materials furnished by reason of the re-opening of the City Hall Tunnel from the City Hall Tract to the GSA Tract property line. Such cost will be borne by MCDA or the City only, and GSA shall not pay any portion of the cost thereof.
- (c) MCDA or the City shall pay all of the cost of work performed, services rendered and materials furnished in connecting the City Hall Tunnel to the GSA Tract at the GSA Tract property line at the approximate location shown on Exhibit 3 attached hereto, and all associated architectural fees, insurance and bonds including the costs of designing and installing all heating and ventilation equipment and lighting.
- (d) GSA shall pay the cost of all work performed, services rendered and materials furnished in designing and constructing the improvements on the GSA Tract to permit and facilitate the connection of the City Hall Tunnel to the GSA Tract at the GSA Tract property line at the approximate location shown on Exhibit 3 attached hereto.

4. The mutual easements referred to above shall continue in effect so long as both that portion of the existing building or improvements on the City Hall Tract to which the City Hall Tunnel is affixed and that portion of the building or improvements to be erected by GSA on the GSA Tract to which the City Hall Tunnel is affixed or provides access continue to exist. Upon the demolition or destruction of either that portion of the existing building or improvements on the City Hall Tract to which the City Hall Tunnel is affixed or that portion of the building or improvements to be erected by GSA on the GSA Tract to which the City Hall Tunnel is affixed or provides access (except where destroyed by casualty and rebuilt within 3 years), such mutual easements shall terminate, at which time the City Hall Tunnel shall be promptly sealed.

5. From and after the date the City Hall Tunnel is substantially complete, all repairs, maintenance, cleaning, operations,

replacement and removal of the City Hall Tunnel (a) not within the GSA Tract shall be performed by MCDA or the City, and (b) within the GSA Tract shall be performed by GSA. The City Hall Tunnel shall be kept and maintained in first-class condition and repair and shall be operated in a first-class manner consistent with the highest level of standards maintained in other tunnels in the Minneapolis central business district. The City Hall Tunnel shall not be replaced or removed, nor except in any emergency shall extraordinary repairs be performed without the prior written approval of MCDA or the City, which approval will not be unreasonably withheld, delayed or conditioned.

6. The City shall maintain, at all times from and after the opening of the City Hall Tunnel, (a) public liability insurance insuring GSA, MCDA and City, and the holder of any mortgage on the GSA Tract or City Tract as specified from time to time by GSA or MCDA or the City, against all claims, demands or actions for injury or death, in an amount not less than \$5,000,000 combined single limit, arising from, related to or connected with the operation of the City Hall Tunnel and (b) insurance on that part of the City Hall Tunnel not within the GSA Tract covering those risks covered by an "All-Risk" policy of property insurance, with coverage for the full replacement cost of such portion of the City Hall Tunnel. The aforesaid insurance shall be in form and amount reasonably satisfactory to all parties, and with an insurer reasonably satisfactory to all parties. Each policy shall provide that it will not be subject to cancellation or reduction in coverage except after 30 days' prior written notice to each of the insureds. Certificate evidence of each policy shall be deposited with GSA prior to opening of the City Hall Tunnel and for renewals, not less than 30 days prior to the expiration of the term of the expiring policy. The City may self-insure for any or all of the foregoing with the consent of GSA which consent shall not be unreasonably withheld.

7. The operation and use of the City Hall Tunnel, and the availability of all pedestrian easement rights and areas described in Paragraph 2, shall be from 6:00 a.m. to 10:00 p.m., Mondays through Fridays, from 9:30 a.m. to 10:00 p.m. Saturdays and from 10:00 a.m. to 6:00 p.m. Sundays and Holidays, and any other hours as may be agreed by the City and GSA. As used herein, "Holidays" means New Years Day, Easter Sunday, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and such other days as GSA and the City shall mutually agree.

8. Title to the City Hall Tunnel shall vest in the City, its successors and assigns.

9. From and after the day the City Hall Tunnel is substantially complete, it shall be used continuously as a pedestrian tunnel and a service corridor, subject to the conditions specified

in Paragraphs 4 and 7 hereof, for travel to and from the buildings on the City Hall Tract and the GSA Tract, and for no other purpose. No advertising signs will be permitted on the City Hall Tunnel, except that directional and identification signs and special decorations as agreed upon between the parties hereto may be permitted.

10. If at any time it is necessary or permissible to give any notice under the terms of this Agreement to any party hereto, such notice shall be deemed to have been given or served on the date the same is deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to MCDA: Minneapolis Community Development Agency
Crown Mill, Suite 600
105 Fifth Avenue South
Minneapolis, MN 55401
Attn: Federal Courts Project Coordinator

If to City: City of Minneapolis
Office of City Traffic Engineer
Room 233 City Hall
Minneapolis, MN 55415

If to GSA: U. S. General Services Administration
230 South Dearborn Street
Chicago, IL 60604-1503
Attn: Assistant Regional Administrator,
Public Buildings Service

Any party hereto may change the address or addresses to which notice is to be given to it by giving written notice thereof to the other parties not less than thirty (30) days prior to the effective date of change.

11. The easements and provisions of this Agreement are appurtenant to the use of City Hall Tract and GSA Tract and shall run with the land, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. GSA and its successors and assigns as owner of the GSA Tract shall each be liable only for such obligations of GSA under this Agreement as accrue during its respective period of ownership of the GSA Tract. City and its successors and assigns shall each be liable only for such obligations of City under this Agreement as accrue to it during its respective period of ownership of the City Hall Tract. MCDA and its successors and assigns shall each be liable only for such obligations of MCDA under this Agreement as accrue to it during its respective period of ownership of the City Hall Tract. Nothing in this Agreement is to be interpreted to give the public, any governmental authority, or any other third party any easement upon any land.

13. This Agreement constitutes the entire agreement and understanding of the parties on the subject matter hereof. It may be amended or modified only by written amendment or supplement signed by the party to be bound. The laws of the State of Minnesota shall govern the validity, performance and enforcement of this Agreement.

14. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

CITY OF MINNEAPOLIS

By _____
Mayor

Approved for Execution:

Countersigned

By _____
Finance Officer

Attested

By _____
City Clerk

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 199_, by _____, as the Mayor, and _____, as the Finance Officer, of the City of Minneapolis, a Minnesota municipal corporation.

Notary Public

[City of Minneapolis signature page to Tunnel Agreement (City Hall Tract), between and among The United States of America, acting by and through the General Services Administration, Minneapolis Community Development Agency, and the City of Minneapolis, dated as of _____, 199_]

EXHIBIT 1
TO
CITY HALL TUNNEL AGREEMENT
(South Fourth Street)

DESCRIPTION OF CITY HALL TRACT

The following described real property situate in Hennepin County, Minnesota:

EXHIBIT 2
TO
CITY HALL TUNNEL AGREEMENT
DESCRIPTION OF GSA TRACT

The following described real property situate in Hennepin County, Minnesota:

PARCEL 1:

Lots 1 to 7 inclusive, Rearrangement of Part Block 66, Minneapolis, Files of Registrar of Titles, County of Hennepin, State of Minnesota.

PARCEL 2:

Lots 1, 2 and 3, Block 66, Town of Minneapolis, and the Southwesterly One-half of vacated alley adjoining said Lots 1, 2 and 3.

PARCEL 3:

Tract A: The Northwesterly 41 feet of Lot 7 and the Southeasterly 37 feet of Lot 8, Block 66, Town of Minneapolis, Files of Registrar of Titles, County of Hennepin, State of Minnesota.

Tract B: The Northwesterly 29 feet front and rear of Lot 8, next to and adjoining Lot 9, and all of Lots 9 and 10 in Block 66, Town of Minneapolis, together with that part of vacated alley accruing thereto by reason of the vacation thereof.

PARCEL 4:

Lots 8 and 9, Rearrangement of Part of Block 66, Minneapolis, Files of Registrar of Titles, County of Hennepin, State of Minnesota.

All of the vacated alley as dedicated in Rearrangement of Part Block 66 Minneapolis according to the recorded plat thereof Hennepin County, Minnesota.

The northeasterly half of the vacated alley dedicated in Block 66, Town of Minneapolis, according to the recorded plat thereof Hennepin County, Minnesota which lies between the southwesterly extensions of the southeasterly line of the northwesterly 29.00 feet of Lot 8, Block 66 and the southeasterly line of the northwesterly 41.00 feet of Lot 7, Block 66.

The southwesterly half of the vacated alley dedicated in Block 66, Town of Minneapolis, according to the recorded plat thereof Hennepin County, Minnesota which lies between the northeasterly

extension of the northwesterly line of Lot 3, Block 66 and the northwesterly line of 4th Avenue South.

Together with the northeasterly 1/2 of South Fourth Street to the center of South Fourth Street which lies between the southeasterly line of Third Avenue South and the northwesterly line of Fourth Avenue South, subject to the public easement for street purposes.

Hennepin County, Minnesota

EXHIBIT 3

TO
CITY HALL TUNNEL AGREEMENT

LOCATION OF TUNNEL AND CONNECTION
[To come]

[The description herein set forth is subject to appropriate adjustment in accordance with actual construction as provided by the Development Agreement, the adjustments to be determined by an "as built" survey prepared by a registered land surveyor, the expense of which shall be shared equally by the parties.]