

AGREEMENT REGARDING REGIONAL PARK LAND IN THE CITY OF MINNEAPOLIS

THIS AGREEMENT, between the Minneapolis Park and Recreation Board (the “Minneapolis Park Board”) and the Metropolitan Council (the “Council”), governs an exchange of Minneapolis Park Board property for regional park land located on Nicollet Island in the City of Minneapolis.

BACKGROUND

1. Pursuant to Minnesota Statutes section 473.147, subdivision 1, the Council prepares and adopts (in conjunction with the Metropolitan Parks and Open Space Commission) a long-range system policy plan for regional recreation open space as part of the Council’s metropolitan development guide.
2. “Regional recreation open space” is defined by Minnesota Statutes section 473.121, subdivision 14 as “land and water areas, or interests therein, and facilities determined by the Metropolitan Council to be of regional importance in providing for a balanced system of public outdoor recreation for the metropolitan area, including but not limited to park reserves, major linear parks and trails, large recreation parks, and conservatories, zoos, and other special use facilities.”
3. The Minneapolis Park Board is an “implementing agency” as that term is defined in Minnesota Statutes section 473.351, subdivision 1(a) and is responsible for developing, operating and maintaining parks and park-related facilities within the City of Minneapolis, including park lands located in the City of Minneapolis that are part of the regional park system.
4. The Minneapolis Park Board acquired with regional grant funds certain land on Nicollet Island, including a 1.48-acre parcel located on the Island. As required by Council policy, the land is subject to a restrictive covenant that limits the use of the property to regional recreation open space uses, unless a change is agreed to by the Council.
5. The Council’s *2030 Regional Parks Policy Plan* contains policies and strategies to help ensure a balanced system of public outdoor recreation for the seven-county metropolitan area. Strategy 5(b) of the *Policy Plan* states that lands in the regional parks system may be converted to other uses if approved by the Council through “an equally valuable land or facility exchange” as that phrase is defined in Strategy 5(b).
6. In April 2007, the Minneapolis Park Board asked the Council to consider removing the restrictive covenant on the 1.48-acre parcel and exchanging that parcel for 2.89 acres of land located on the West Bank of the Mississippi River in Minneapolis.

7. At its August 22, 2007 regular meeting, the governing body of the Metropolitan Council considered the Minneapolis Park Board's land exchange request under the "equally valuable land" policy stated in Strategy 5(b) of the *Policy Plan*. The Council denied the request, but adopted a motion that authorizes its Chair and Regional Administrator to negotiate and execute with the Minneapolis Park Board an agreement under which the Council will release the restrictive covenant on the 1.48-acre Nicollet Island parcel, but only after:

- (a) a regional park restrictive covenant is recorded against the 2.89-acre parcel located on the West Bank of the Mississippi Riverfront North of Plymouth Avenue; and
- (b) the Minneapolis Park Board provides a binding commitment, within thirty (30) days, to provide additional acreage not currently encumbered as open space, that is deemed by the Chair of the Metropolitan Council as acceptable for inclusion in the regional park system and sufficient to satisfy the "equally valuable land" provision of Strategy 5(b) of the *2030 Regional Parks Policy Plan* and which will be subject to the Council's restrictive covenant by no later than March 1, 2009.

RESTRICTIVE COVENANT ON 2.89-ACRE PARCEL

8. The Minneapolis Park Board will record against the 2.89-acre parcel (identified as Parcel 1 in Attachment A to this Agreement) a restrictive covenant substantially in the form depicted in Attachment B to this Agreement. The street address of the 2.89-acre parcel is: 1-17th Avenue North, Minneapolis, Minnesota. The PID is: (15-029-24-43-0009).

ADDITIONAL ACREAGE

9. The Minneapolis Park Board represents that it is the fee owner of the following four additional parcels (identified as Parcels 2 through 5 in Attachment A), and that none of these four parcels currently is encumbered as regional recreation open space. As required by the Council's August 22, 2007 action, the Minneapolis Park Board will place a restrictive covenant on the following additional acreage:

- Parcel 2: 1312 West River Road North, Minneapolis, Minnesota (1.30 acres)
PID: (15-029-24-43-0010)
- Parcel 3: 2-17th Avenue North, Minneapolis, Minnesota (1.38 acres)
PID: (15-029-24-42-0010)
- Parcel 4: 1700 West River Road North, Minneapolis, Minnesota (0.87 acres)
PID: (15-029-24-42-0011)
- Parcel 5: 2000 West River Road North, Minneapolis, Minnesota (2.76 acres)
PID: (15-029-24-13-0013)

10. The restrictive covenants placed on Parcels 2 through 5 will be substantially in the form depicted in Attachment B.

BINDING COMMITMENT

11. The Minneapolis Park Board Commissioners' approval of this Agreement and the execution of this Agreement by the Minneapolis Park Board's authorized representatives constitute the Minneapolis Park Board's binding commitment to provide additional acreage not currently encumbered as regional recreation open space.

ACCEPTANCE OF ADDITIONAL ACREAGE AND RELEASE OF RESTRICTIVE COVENANT ON 1.48-ACRE PARCEL

12. The Chair of the Council reviewed the additional acreage identified in this Agreement under the policy and criteria stated in Strategy 5(b) and has determined:

- (a) the additional acreage complies with the Council's August 22, 2007 action; and
- (b) together with the 2.89-acre parcel on the West Bank of the Mississippi Riverfront North of Plymouth Avenue, the additional acreage identified in this Agreement satisfies the "equally valuable land" provision of Strategy 5(b).

13. Upon proof of recordation of a restrictive covenant on the 2.89-acre parcel, the Council will execute and provide to the Minneapolis Park Board a release of covenant on the 1.48-acre parcel located on Nicollet Island.

ADDITIONAL PARCEL

14. A 3.47-acre parcel of land (identified as Parcel 6 in Attachment A) located immediately north of Parcel 5 is owned by the Minneapolis Park Board. Parcel 6 was acquired with Council grant funds but a restrictive covenant has not yet been placed on the property. The Minneapolis Park Board will record a restrictive covenant against the 3.47-acre parcel as soon as it is reasonably possible to do so. The restrictive covenant placed on Parcel 6 will be substantially in the form depicted in Attachment B.


EFFECT AND EXECUTION

15. This Agreement is a binding and legally enforceable agreement which either party may enforce through appropriate legal action in the Fourth Judicial District Court, Hennepin County, or other court of competent jurisdiction.

16. This Agreement is null and void if the restrictive covenants are not recorded against Parcels 2 through 5 by March 1, 2009.

17. The individuals signing below represent that the governing bodies of their respective agencies have authorized them to execute this Agreement on their respective agencies' behalf. This Agreement is effective on the date this Agreement is executed by the Council's Chair and Regional Administrator.

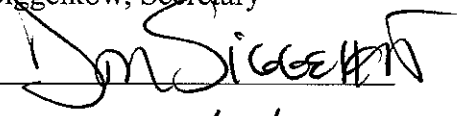
MINNEAPOLIS PARK AND RECREATION BOARD



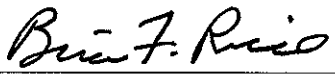
Jon C. Olson, President
Date: _____

METROPOLITAN COUNCIL

Peter Bell, Chair
Date: _____

Don Siggelkow, Secretary
Date: 
9/24/07

Thomas H. Weaver
Regional Administrator
Date: _____

Approved as to form:


Minneapolis Park Board Attorney

ATTACHMENT A

This Attachment A comprises this cover page and the attached aerial photograph depicting the following six parcels of riverfront property in Minneapolis, Minnesota:

Parcel 1 (2.89 acres)

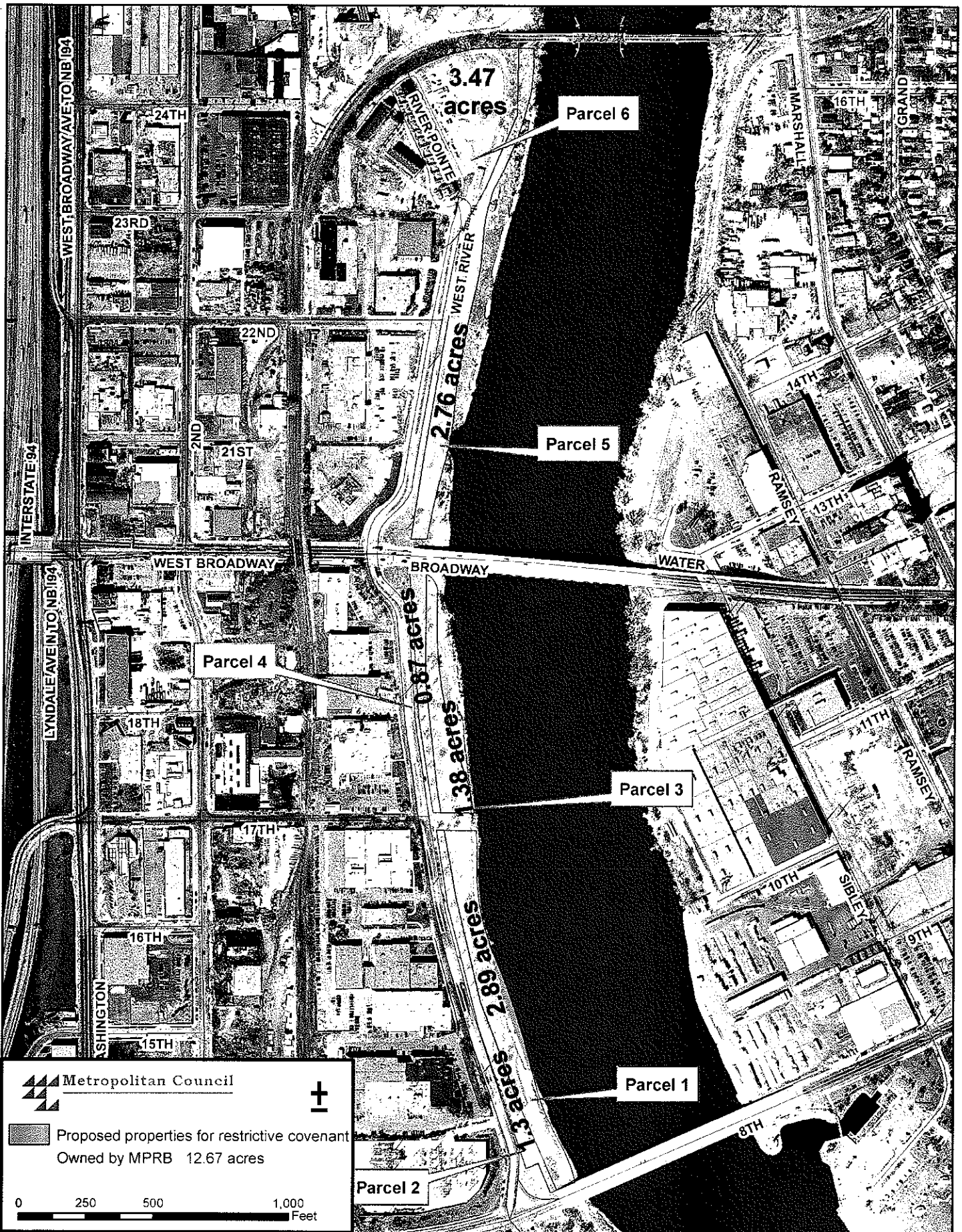
Parcel 2 (1.30 acres)

Parcel 3 (1.38 acres)

Parcel 4 (0.87 acres)

Parcel 5 (2.76 acres)

Parcel 6 (3.47 acres)



ATTACHMENT B

This Attachment B comprises this cover page and the attached five -page Agreement and Restrictive Covenant.

Agreement and Restrictive Covenant

THIS AGREEMENT AND RESTRICTIVE COVENANT is made and entered into this ___ day _____, 2007, by and between the City of Minneapolis, acting by and through its Park and Recreation Board (the "Minneapolis Park and Recreation Board), a Minnesota municipal corporation, and the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota.

RECITALS

1. The Minneapolis Park and Recreation Board has acquired (describe here nature of interest) in the following described real property, to-wit:

 , hereinafter referred to as the "Property."
2. At its August 22, 2007 regular meeting the governing body of the Metropolitan Council adopted a motion under which it agreed to release a restrictive covenant on certain regional park land located on Nicollet Island in the City of Minneapolis if the Minneapolis Park and Recreation Board provided other land in exchange for the Nicollet Island park land.
3. On September __, 2007, the Metropolitan Council and the Minneapolis Park and Recreation Board entered into an agreement under which the Minneapolis Park and Recreation Board agreed to exchange the above-described Property for the Nicollet Island park land and place a restrictive covenant on the Property that requires the Property to be used only for regional recreational open space purposes.

NOW, THEREFORE, in consideration of the grant made by the Metropolitan Council to the _____ and in consideration of the mutual agreements and covenants contained in this agreement, the parties agree as follows:

1. No sale, lease, mortgage, or other conveyance, nor the creation of any easement, restriction, or other encumbrance against the Property shall be valid for any purpose unless the written approval of the Metropolitan Council or its successors is duly filed and recorded at the time of the filing and recording of the instrument to which such approval pertains, nor shall the Property be used for any purpose except regional recreational open space purposes as those purposes are from time to time defined by the Metropolitan Council or its successors, unless the Metropolitan Council or its successors shall consent to the other use or uses by written instrument duly filed and recorded and designating the nature, extent, and duration of the use for which such consent is given.
2. As a condition to this Grant, and provided that conveyance of such easement or easements is consistent with the Approved Master Plan, the Grantee agrees to convey to the Council, its successors or assigns, a permanent easement or easements, hereinafter referred to as "Wastewater Facilities Easement[s]" for future regional wastewater conveyance corridors on the Property. Upon written request by and at no cost to the Council, Grantee will

EXHIBIT A

EASEMENT

THIS INSTRUMENT, MADE THIS ___ day of _____, 2007, by and between _____, of the County of _____, State of Minnesota, Grantor(s), and the Metropolitan Council, a public corporation and political subdivision of the state (successor to the Metropolitan Waste Control Commission), Grantee;

WITNESSETH, that Grantor(s), in consideration of One Dollar and other good and valuable consideration to ___ in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey to Grantee, its successors and assigns, the following described easement for sanitary sewer and utility purposes:

[Insert]

The above described easement includes the rights of grantee, its contractors, agents and employees to do whatever is necessary for enjoyment of the rights granted herein including the right to enter the easement for purposes of constructing, operating, maintaining, altering, repairing, replacing, and/or removing said sewers and utilities.

Grantor(s), _____ heirs, successors and assigns, will not erect, construct, or create any building, improvement, obstruction or structure of any kind, either above or below the surface, or stockpile soils, construction debris, or construction equipment or change the grade thereof, without the express written permission of the Grantee.

