

**SECOND AMENDMENT TO
CONTRACT FOR PRIVATE REDEVELOPMENT**

THIS SECOND AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the 21st day of July, 2020 (the “Second Amendment”), is between the ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and GAUGHAN DEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”), and amends the Contract for Private Redevelopment, dated July 3, 2018 (the “Original Agreement”), between the Authority and the Redeveloper, as amended by the First Amendment to Contract for Private Development, dated December 18, 2019 (the “First Amendment”). The Original Agreement, as amended by the First Amendment and this Second Amendment is referred to herein as the “Agreement.”

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended (the “EDA Act”) and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the City has undertaken a program to promote economic development and job opportunities and to promote the development and redevelopment of land which is underutilized within the City, and in this connection created the Minnesota River Valley Housing and Redevelopment Project No. 1 (the “Project”) in an area (the “Project Area”) located in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”); and

WHEREAS, by resolution dated April 4, 1995, the City Council of the City transferred control, authority, and operation of the Project to the Authority, which currently administers the Project, exercising the powers of a housing and redevelopment authority under the HRA Act, in accordance with the EDA Act; and

WHEREAS, pursuant to the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise and promote the development of housing within the City; and

WHEREAS, the City and the Authority have established Tax Increment Financing District No. 19 (the “TIF District”), a redevelopment district, within the Project and have adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Project and promote the development of housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Redeveloper intends to acquire from the Authority certain property described in EXHIBIT A attached hereto (the “Redevelopment Property”) within the TIF District and proposes to develop approximately 170 market-rate luxury apartment units, including approximately 125 garage parking spaces and approximately 70 surface parking spaces (for a total of approximately 195 parking spaces on the Redevelopment Property, in addition to public street parking), and 3,000 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority is prepared to reimburse the Redeveloper for certain land acquisition costs, site improvement costs related to the Minimum Improvements, and other costs eligible to be reimbursed with tax increment; and

WHEREAS, the Authority believes that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the Authority and the Redeveloper entered into the Original Agreement, as amended by the First Amendment, in order to set forth the conditions of the Redeveloper’s construction of the Minimum Improvements; and

WHEREAS, the Redeveloper discovered additional contamination on the Redevelopment Property and costs of cleaning up the contamination are expected to be \$925,625; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

Amendments

Section 1.1. Amendments to Section 1.1 of the Agreement. The following definitions are hereby amended as follows (deleted language is stricken, and new language is underlined):

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Redevelopment Property located in the TIF District and paid to the Authority by the County in the six (6) months preceding the Payment Date after Second deducting therefrom 10% of the Tax Increment to be used to reimburse the Authority for administrative expenses; provided, however, for as long as the Redevelopment Property Purchase Price has not been paid in full to the Authority, “Available Tax Increment” shall mean Tax Increment attributable to the Redevelopment Property located in the TIF District and paid to the Authority by the County in the six (6) months preceding the Payment Date after (i) Second deducting 10% of the Tax Increment to be used to reimburse the Authority for administrative expenses; and (ii) second deducting an additional 22.3% of the Tax Increment to be used to reimburse the Authority for the Redevelopment Property Purchase Price. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement.

Section 1.2. Additions to Section 1.1 of the Agreement. The following definitions are hereby added to Section 1.1 of the Agreement.

“DEED Grant” means the Contamination Cleanup Grant in the amount of \$332,732 received by the City from the Department of Employment and Economic Development for the purposes of cleaning up contamination.

“DEED Grant Agreement” means the Contamination Cleanup Grant Contract, Grant No. CCGP-19-0028-Z-FY20 (Riverfront Bluff Project), dated February 25, 2020.

“Met Council Grant” means the Livable Communities Tax Base Revitalization Grant in the amount of \$458,600 received by the City from the Metropolitan Council for the purposes of cleaning up contamination.

“Met Council Grant Agreement” means an agreement that will be executed by the City and responsibilities assigned to the Redeveloper.

Section 1.3. Addition of Section 3.8 and Section 3.9 to the Agreement. The following sections shall be added to Article III of the Agreement.

Section 3.8. DEED Grant. The Redeveloper has been provided with a copy of the DEED Grant Agreement between the City and DEED. The Redeveloper agrees to comply with all of the requirements of the DEED Grant Agreement, including, but not limited to, the following:

- (a) The Redeveloper shall comply with all applicable OSHA regulations, including but not limited to, the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- (b) The Redeveloper shall list any vacant or new positions with the state workforce center pursuant to Minn. Stat. Section 116L.66, subd.1. The Redeveloper shall list any job vacancy in its personnel complement with MinnesotaWorks.net at www.minnesotaworks.net as soon as it occurs.
- (c) The Redeveloper shall ensure that all contractors and subcontractors performing work covered by the DEED Grant are paid for their work that is satisfactorily completed.
- (d) The Redeveloper shall comply with Minn. Stat. Section 471.345 if it is using DEED Grant funds for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair, or maintenance of real or personal property.
- (e) The Redeveloper shall have workers’ compensation insurance coverage or cause its contractors to have workers’ compensation insurance in compliance with Minn. Stat. Section 176.181, subd. 2.
- (f) The Redeveloper shall assist the City with preparing the annual reports required by the State.

Section 3.9. Met Council Grant. The Redeveloper has been provided with a copy of the Met Council Grant Agreement between the City and DEED. The Redeveloper agrees to comply with all of the requirements of the DEED Grant Agreement, including, but not limited to, the following:

- (a) [Requirements for the Met Council grant will be added here when received.]

Section 1.4. Addition of Section 3.10 to the Agreement. The following section shall be added to Article III of the Agreement.

Section 3.10. Street and Storm Water Improvements. The Redeveloper agrees to pay a portion of the costs of the City's road and stormwater project adjacent to the Development Property, including restoration of part of the adjacent park following the construction of the storm water treatment system on the park property. The estimated total cost which will be finalized with bids for the project is \$423,500 and is expected to be paid with the following allocation of funds:

City CIP	\$296,450
City CIP	25,410
EDA TIF	38,115
Redeveloper TIF	63,525
Total	\$423,500

The City and the Redeveloper will enter into a separate developer's agreement for the construction of storm water, road, sidewalk and other required infrastructure similar to the concept in Exhibit F.

Section 1.5. Addition of Exhibit E to the Original Agreement. The attached EXHIBIT E (Additional Contamination Removal Costs) is hereby added to the Original Agreement.

Section 1.6. Addition of Exhibit F to the Original Agreement. The attached EXHIBIT F (Infrastructure Improvements) is hereby added to the Original Agreement.

ARTICLE II

Miscellaneous

Section 2.1. Effective Date. The amendments made to the Original Agreement, as set forth in this Second Amendment, shall be effective as of the date and year Second written above.

Section 2.2. Certain Defined Terms. Terms used in this Second Amendment and not defined herein shall have the meanings given in the Original Agreement.

Section 2.3. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 2.4. Recording. The Authority may record this Second Amendment with the County Recorder or the Registrar of Titles of the County, as the case may be. The Redeveloper shall pay all costs for recording.

Section 2.5. Confirmation of Original Agreement. Except as specifically amended by the First Amendment and this Second Amendment, the Original Agreement is hereby ratified and confirmed and remains in full force and effect.

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

IN WITNESS WHEREOF, the Authority has caused this Second Amendment to Contract for Private Redevelopment to be duly executed in its name and behalf and the Redeveloper has caused this Second Amendment to Contract for Private Redevelopment to be duly executed in its name and behalf, all as of the date and year Second written above.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Jay Whiting, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

GAUGHAN DEVELOPMENT LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2020, by
_____, the _____ of Gaughan Development LLC, a
Minnesota limited liability company, on behalf of the Redeveloper.

Notary Public

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROPERTY

Lot 1, Block 7;
Lot 2, Block 7;
Lot 3, Block 7;
Lot 4, Block 7
Lot 5, Block 7,
Lot 6, Block 7;
Lot 7, Block 7;
Lot 8, Block 7;
Lot 9, Block 7; and
Lot 10, Block 7;

All in City of Shakopee, according to the recorded plat thereof, Scott County, Minnesota;

EXHIBIT E TO ORIGINAL AGREEMENT

ADDITIONAL CONTAMINATION REMOVAL COSTS

Activities	Costs
Investigation and RAP Development	\$23,600
Contaminated Soil Excavation, Transport, and Disposal	737,425
Clean Fill Import, Placement, and Compaction	112,000
RAP Implementation, Oversight, and Reporting	52,600
Total	<u>\$925,625</u>

EXHIBIT F OF THE ORIGINAL AGREEMENT

INFRASTRUCTURE IMPROVEMENTS

[insert depiction of infrastructure improvements]