

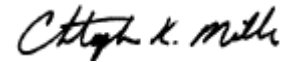
ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: 06/13/2011

Item No.:

Department Approval

Acting City Manager Approval

Item Description: Accept a Livable Housing Incentives Account Grant for Sienna Green II and enter into a Memorandum of Understanding with AEON

1 **BACKGROUND**

2 The Metropolitan Council has awarded the City of Roseville a grant from the Livable Housing Incentives
 3 Account (LHIA) for the Sienna Green Phase II project. The grant is in the amount of \$300,000 and will
 4 assist in the construction of the Phase II 50-unit building. The City needs to approve entering into a grant
 5 agreement with Metropolitan Council. In addition, staff is requesting that the City enter into a
 6 Memorandum of Understanding with AEON regarding the disbursement of the LHIA funds.

7 **POLICY OBJECTIVE**

8 By accepting the LHIA grant, the City is helping Aeon secure the financial resources to construct Sienna
 9 Green Phase II, an affordable housing project, which is supported by the 2030 Comprehensive Plan.

10 **FINANCIAL IMPACTS**

11 By approving these contracts, there are no fiscal impacts to the City as Aeon will be undertaking the work
 12 identified in the LHIA grant. The match requirement outlined in Section 2.02 in the Metropolitan Council
 13 agreement will be the TIF funds that AEON will be receiving as part of the project. The LHIA grant
 14 funds will only be given to AEON once the eligible work has been completed.

15 **STAFF RECOMMENDATION**

16 Staff recommends that the City Council approve the execution of the LHIA grant contract between the
 17 City and the Metropolitan Council in order to facilitate the rehabilitation of Sienna Green Phase II.

18 Staff also recommends that the City Council approve a memorandum of understanding between the City
 19 and Aeon that outlines the responsibilities of the City and AEON regarding the use of the LHIA grant.

20 **REQUESTED COUNCIL ACTION**

21 By MOTION, approve the grant contract between the City and the Metropolitan Council for \$300,000 from
 22 the Livable Housing Incentives Account.

23 By MOTION, approve a memorandum of understanding between the City and Aeon that identifies the
 24 responsibilities and the expectations of the City and AEON pertaining to the use of the LHIA grant.

Prepared by: Patrick Trudgeon, Community Development Director (651) 792-7071

Attachments: A: Livable Housing Incentives Account Contract

B: Memorandum of Understanding

GRANTEE:	City of Roseville	GRANT NO.	SG010-125
PROJECT:	Sienna Green Phase II		
GRANT AMOUNT:	\$300,000.00	FUNDING CYCLE:	Fall 2010
COUNCIL ACTION:	December 8, 2010	EXPIRATION DATE:	December 31, 2012

**METROPOLITAN LIVABLE COMMUNITIES ACT
GRANT AGREEMENT**

THIS GRANT AGREEMENT (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the Municipality or Development Authority identified above as “Grantee.”

WHEREAS, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act (“LCA”) and the policies of the Council’s Metropolitan Development Guide; and

WHEREAS, Minnesota Statutes sections 473.251 and 473.254 establish within the Metropolitan Livable Communities Fund a Local Housing Incentives Account and require the Council to annually distribute funds in the account to Participating Municipalities that have not met their affordable and life-cycle housing goals and are actively funding projects designed to help meet the goals, or to Development Authorities for projects located in eligible Municipalities; and

WHEREAS, the Grantee is a Municipality that has negotiated affordable and life-cycle housing goals pursuant to Minnesota Statutes section 473.254, subdivision 2 and has elected to participate in the Local Housing Incentives Account program, or is a Development Authority; and

WHEREAS, the Grantee seeks funding in connection with an application for Local Housing Incentives Account funds submitted in response to a Request for Proposals issued by the Metropolitan Housing Implementation Group for the “Funding Cycle” identified above and will use the grant funds made available under this Agreement to help fund the “Project” identified in the application; and

WHEREAS, the Council awarded Local Housing Incentives Account funds to the Grantee subject to the Council’s eminent domain policy and any terms, conditions and clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner and all grant funds will be expended prior to the “Expiration Date” identified above.

NOW THEREFORE, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

I. DEFINITIONS

1.01. Definition of Terms. The terms defined in this section have the meanings given them in this section unless otherwise provided or indicated by the context.

LOCAL HOUSING INCENTIVES ACCOUNT

- (a) **Council Action.** “Council Action” means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Local Housing Incentives Account funds.
- (b) **Development Authority.** “Development Authority” means a housing and redevelopment authority, economic development authority, or port authority.
- (c) **Municipality.** “Municipality” means a statutory or home rule charter city or town in the seven-county metropolitan area defined by Minnesota Statutes section 473.121, subdivision 2.
- (d) **Participating Municipality.** “Participating Municipality” means a Municipality electing to participate in the Local Housing Incentives Account program under Minnesota Statutes section 473.254.
- (e) **Project.** Unless clearly indicated otherwise by the context of a specific provision of this Agreement, “Project” means the development or redevelopment project identified in the application for Local Housing Incentives Account funds for which grant funds were requested. Grant-funded activities typically are components of the Project.

II. GRANT FUNDS

2.01. Total Grant Amount. The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement which shall be funds from the Local Housing Incentives Account of the Metropolitan Livable Communities Fund. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Local Housing Incentives Account funds made available to the Council, or any reduction or termination of the dollar-for-dollar match amount required under Section 2.02, may result in a like reduction in the Grant Amount made available to the Grantee.

2.02. Match Requirement. Pursuant to Minnesota Statutes section 473.254, subdivision 6, the Grantee shall match on a dollar-for-dollar basis the total Grant Amount received from the Council under Section 2.01. The source and amount of the dollar-for-dollar match shall be identified by the Grantee in the report(s) required under Section 3.03.

2.03. Authorized Use of Grant Funds. The Grant Amount made available to the Grantee under this Agreement shall be used only for the purposes and Project activities described in the application for Local Housing Incentives Account funds. A Project summary that identifies eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Grant funds must be used for purposes consistent with Minnesota Statutes section 473.25(a), in a Participating Municipality. Grant funds must be used for costs directly associated with the specific proposed Project activities and shall not be used for “soft costs” such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses or authorization fees; costs associated with preparing other grant proposals; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Grant funds may not be used for costs of Project activities that occurred prior to the grant award. Grant funds also shall not be used by the Grantee or others to supplant or replace: (a) grant or loan funds obtained for the Project from other sources; or (b) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee. If consistent with the application and the Project summary, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments), revolving loans (loans made with interest and periodic payments) or otherwise make the

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grant funds available on a “revolving” basis for the purposes of implementing the Project activities described in Attachment A. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities. The Grantee agrees to comply with any “business subsidy” requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee’s expenditures or uses of the grant funds.

2.04. Loans for Low-Income Housing Tax Credit Projects. If consistent with the application and the Project activities described in Attachment A or if requested in writing by the Grantee, the Grantee may structure the grant assistance to the Project as a loan so the Project owner can take advantage of federal and state low-income housing tax credit programs. The Grantee may use the grant funds as a loan for a low-income housing tax credit Project, subject to the terms and conditions stated in Section 2.03 and the following additional terms and conditions:

- (a) The Grantee covenants and represents to the Council that the Project is a rental housing project that received or will receive an award of low-income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended, and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency.
- (b) The Grantee will provide to the Council a copy of the loan agreement between the Grantee and the Project owner.
- (c) The Grantee will submit annual written reports to the Council that certify: (1) the grant funds continue to be used for the Project for which the grant funds were awarded; and (2) the Project is a “qualified low-income housing project” under section 42 of the Internal Revenue Code of 1986, as amended. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 4.01, the Grantee will submit the annual certification reports during the initial “compliance period” and any “extended use period,” or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee.
- (d) The grant funds made available to the Grantee and disbursed to the Project owner by the Grantee in the form of a loan may be used only for the grant-eligible activities and Project components for which the Grantee was awarded the grant funds. For the purposes of this Agreement, the term “Project owner” means the current Project owner and any Project owner successor(s).
- (e) Pursuant to Section 2.03, the grant funds made available to the Grantee and disbursed to the Project owner in the form of a loan shall not be used by the Grantee, the Project owner or others to supplant or replace: (1) grant or loan funds obtained for the Project from other sources; or (2) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee. The Council will not make the grant funds available to the Grantee in a lump sum payment, but will disburse the grant funds to the Grantee on a reimbursement basis pursuant to Section 2.10.
- (f) By executing this Agreement, the Grantee: (1) acknowledges that the Council expects the loan will be repaid so the grant funds may be used to help fund other activities consistent with the requirements of the Metropolitan Livable Communities Act; (2) covenants, represents and warrants to the Council that the Grantee’s loan to the Project owner will meet all applicable low-income housing tax credit program requirements under Section 42 of the Internal

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Revenue Code of 1986, as amended (the "Code"), and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency; and (3) agrees to administer its loan to the Project owner consistent with federal and state low-income housing tax credit program requirements.

- (g) The Grantee will, at its own expense, use diligent efforts to recover loan proceeds: (1) when the Project owner becomes obligated to repay the Grantee's loan or defaults on the Grantee's loan; (2) when the initial thirty-year "compliance period" expires, unless the Council agrees in writing that the Grantee may make the grant funds available as a loan to the Project owners for an "extended use period"; and (3) if noncompliance with low-income housing tax credit program requirements or some other event triggers the Project owner's repayment obligations under its loan agreement with the Grantee. The Grantee must repay to the Council all loan repayment amounts the Grantee receives from the Project owner. The Grantee shall not be obligated to repay the grant funds to the Council except to the extent the Project owner repays its loan to the Grantee, provided the Grantee has exercised the reasonable degree of diligence and used administrative and legal remedies a reasonable and prudent public housing agency would use to obtain payment on a loan, taking into consideration (if applicable) the subordinated nature of the loan. At its discretion, the Council may: (1) permit the Grantee to use the loan repayment from the Project owner to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.
- (h) If the Grantee earns any interest or other income from its loan agreement with the Project owner, the Grantee will: (1) use the interest earnings or income only for the purposes of implementing the Project activities for which the grant was awarded; or (2) remit the interest earnings or income to the Council. The Grantee is not obligated to earn any interest or other income from its loan agreement with the Project owner, except to the extent required by any applicable law.

2.05. Revolving or Deferred Loans. If consistent with the application and the Project summary or if requested in writing by the Grantee, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments), revolving loans (loans made with interest and periodic payments) or otherwise make the grant funds available on a "revolving" basis for the purposes of implementing the Project activities described in Attachment A. The Grantee will submit annual written reports to the Council that report on the uses of the grant funds. The form and content of the report will be determined by the Council. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 4.01, the Grantee will submit the annual reports until the deferred or revolving loan programs terminate, or until such time as the Council terminates this annual reporting requirement by written notice from the Council. At its discretion, the Council may: (1) permit the Grantee to use loan repayments to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.

2.06. Project Changes. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to the grant-funded activities described in Attachment A. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee's eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described in Attachment A.

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2.07. Budget Variance. A variance of twenty percent (20%) in the budget amounts for grant-funded activities identified in Attachment A shall be considered acceptable without Council approval, provided no budget amount for any individual grant-funded activity may be increased or decreased by more than twenty percent (20%) from the budget amount identified in Attachment A. The Grantee must inform the Council of any budget variances. Budget variances for any individual grant-funded activity identified in Attachment A exceeding twenty percent (20%) will require approval of the governing body of the Metropolitan Council. Notwithstanding the aggregate or net effect of any variances, the Council's obligation to provide grant funds under this Agreement shall not exceed the Grant Amount identified at Page 1 of this Agreement.

2.08. Eminent Domain Restrictions. On January 25, 2006 the Council adopted a policy that restricted the use of LCA grant funds on projects when eminent domain authority was used to acquire private property for "economic development" purposes in connection with the projects. The Council's policy defined the term "economic development" for LCA program purposes and covers the time period from January 25, 2006 to June 28, 2006. On June 28, 2006 the Council adopted a revised eminent domain policy that is consistent with the statutory definitions and restrictions contained in Minnesota Statutes chapter 117 as amended (effective May 20, 2006) during the 2006 legislative session. The revised policy applies to LCA grant awards and grant agreements made on or after June 28, 2006. The Council's January 25, 2006 and June 28, 2006 eminent domain policies are available online at: <http://www.metrocouncil.org/services/livcomm/EminentDomainPolicy.htm>.

- (a) If a notice of petition was served between January 25, 2006 and May 20, 2006 in connection with the Grantee's Project (or any component of the Project) for which grant funds were awarded, the grant funds may not be used to fund or support the Project unless the Project: (1) would have been eligible under the Council's January 25, 2006 policy; or (2) qualifies for an exemption under Minnesota Statutes section 117.012, subdivision 3 or 2006 Minnesota Laws chapter 214, section 22, clauses (b) through (e).
- (b) If a notice of petition was served on or after May 20, 2006 in connection with the Grantee's Project (or any component of the Project) for which grant funds were awarded, the grant funds may not be used to fund or support the Project unless the Project qualifies for an exemption under Minnesota Statutes section 117.012, subdivision 3 or 2006 Minnesota Laws chapter 214, section 22, clauses (b) through (e).

2.09. Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; any grant funds that are not matched on a dollar-for-dollar basis as required by Section 2.02; and any interest earnings described in Section 2.11 that are not used for the purposes of implementing the Project activities described in Attachment A. For the purposes of this Agreement, grant funds are "expended" prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. The Grantee also shall forfeit and promptly repay in full the entire Grant Amount if eminent domain authority is exercised for "economic development" purposes in connection with the Project for which the grant funds were awarded. This forfeiture and repayment obligation applies to eminent domain proceedings that occur after January 25, 2006, including proceedings that occur after the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council's Local Housing Incentives Account for distribution through application processes in future Funding Cycles or as otherwise permitted by law.

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2.10. Payment Request Forms and Disbursements. The Council will disburse grant funds in response to written payment requests submitted by the Grantee and reviewed and approved by the Council's authorized agent. Written payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms are available online at: <http://www.metrocouncil.org/services/livcomm/LCAresources.htm>. The Council will disburse grant funds on a reimbursement basis or a "cost incurred" basis. The Grantee must provide with its written payment requests documentation that shows grant-funded Project activities actually have been completed. Disbursements prior to the performance of a grant-funded Project activity will be subject to terms and conditions mutually agreed to by the Council's authorized agent and the Grantee. Subject to verification of each payment request form (and its documentation) and approval for consistency with this Agreement, the Council will disburse a requested amount to the Grantee within two (2) weeks after receipt of a properly completed payment request form.

2.11. Interest Earnings. If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described in Attachment A.

2.12. Effect of Grant. Issuance of this grant neither implies any Council responsibility for contamination, if any, at the Project site nor imposes any obligation on the Council to participate in any pollution cleanup of the Project site if such cleanup is undertaken or required.

2.13. Resale Limitations. The Grantee must impose resale limitations regarding the disposition of any equity realized by the purchasers of "affordable" units if grant funds received from the Council under this Agreement are used for homeownership gap financing in the Project described in Attachment A. The intent of this resale limitation is to protect the public investment in the Project and ensure that a proportion of the affordability gap provided by the public investment in the form of grant funds received from the Council is recaptured for reuse in conjunction with other affordable housing efforts and does not become a windfall for any purchaser who might sell the home prior to expiration of a predetermined resale limitation period. If a purchaser sells the "affordable" home prior to expiration of the resale limitation time period, an equitable proportion of the affordability gap filled by grant funds received from the Council under this Agreement must be recaptured by the Grantee within twenty-four (24) months of the triggering resale event and applied to a similar affordable housing project within the Participating Municipality, or returned to the Council. Unless otherwise agreed to by the Council and the Grantee, the length of the resale limitation time period and the proportion of the affordability gap to be recovered will be consistent with resale limitation time periods and repayment schedules stated in the Project application. These resale limitations do not apply when the grant funds are used for homeownership value gap financing.

III. ACCOUNTING, AUDIT AND REPORT REQUIREMENTS

3.01. Accounting and Records. The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Sections 4.01 and 4.02, such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described in Attachment A or six (6) years following the expenditure of the grant funds, whichever occurs earlier. For all expenditures of grant funds received pursuant to this Agreement, the Grantee will keep proper financial records and other appropriate documentation sufficient to evidence the nature and expenditure of the dollar-for-dollar

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match funds required under Section 2.02. Accounting methods shall be in accordance with generally accepted accounting principles.

3.02. Audits. The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee's premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

3.03. Reporting and Continuing Requirements. The Grantee will report to the Council on the status of the Project activities described in Attachment A, the expenditures of the grant funds, and the source and expenditure of the dollar-for-dollar match funds required under Section 2.02. Submission of properly completed payment request forms (with proper documentation) required under Section 2.10 will constitute periodic status reports. The Grantee also must complete and submit to the Council a grant activity closeout report. The closeout report form must be submitted with the final payment request form or within 120 days after the expiration or termination of this Agreement, whichever occurs earlier. Within 120 days after the Expiration Date, the Grantee must complete and submit to the Council a certification of expenditures of funds form signed by the Grantee's chief financial officer or finance director. The form and content of the closeout report and certification form will be determined by the Council. These reporting requirements, the reporting requirement of Section 2.05 and the eminent domain restrictions stated in Sections 2.08 and 2.09 shall survive the expiration or termination of this Agreement.

3.04. Environmental Site Assessment. The Grantee represents that a Phase I Environmental Site Assessment or other environmental review has been or will be carried out, if such environmental assessment or review is appropriate for the scope and nature of the Project activities funded by this grant, and that any environmental issues have been or will be adequately addressed.

IV. AGREEMENT TERM

4.01. Term. This Agreement is effective upon execution of the Agreement by the Council. Unless terminated pursuant to Section 4.02, this Agreement expires on the Expiration Date identified at Page 1 of this Agreement and **ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.**

4.02. Termination. This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days' written notice to the Grantee. Cause shall mean a material breach of this Agreement and any amendments of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described in Attachment A that have been completed prior to the termination. Termination of this Agreement does not alter the Council's authority to recover grant funds on the basis of a later audit or other review, and does not alter the Grantee's obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council's interests and may

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refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

4.03. Amendments and Extension. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or an extension of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. If the Grantee needs additional time within which to complete the Project, the Grantee must submit to the Council **AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, a resolution of the Grantee's governing body requesting the extension and a written extension request. The form and content of the written extension request and instructions for requesting an extension are available online at: <http://www.metrocouncil.org/services/livcomm/LCAGrantExtensions.htm>. **THE EXPIRATION DATE MAY BE EXTENDED ONLY ONCE. THE PERIOD OF THE ONE-TIME EXTENSION SHALL NOT EXCEED ONE (1) YEAR BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.** The Grantee's extension request must be approved by the governing body of the Metropolitan Council.

V. GENERAL PROVISIONS

5.01. Equal Opportunity. The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

5.02. Conflict of Interest. The members, officers and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

5.03. Liability. Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify and hold harmless the Council and its members, employees and agents from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the conduct or implementation of the Project activities funded by this grant, except to the extent the claims, damages, losses and expenses arise from the Council's own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, Title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this section shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466, or other applicable state or federal law.

5.04. Acknowledgments. The Grantee shall acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports and publications relating to the Project activities described in Attachment A which are funded in whole or in part with the grant funds. The acknowledgment should contain the following language:

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Financing for this project was provided by the Metropolitan Council Metropolitan Livable Communities Fund.

Until the Project activities funded by this Agreement are completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved by the Council's authorized agent, is included on all signs located at Project or construction sites that identify Project funding partners or entities providing financial support for the Project.

5.05. Permits, Bonds and Approvals. The Council assumes no responsibility for obtaining any applicable local, state or federal licenses, permits, bonds, authorizations or approvals necessary to perform or complete the Project activities described in Attachment A. The Grantee and its developer(s), if any, must comply with all applicable licensing, permitting, bonding, authorization and approval requirements of federal, state and local governmental and regulatory agencies, including conservation districts.

5.06. Subgrantees, Contractors and Subcontractors. The Grantee shall include in any subgrant, contract or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this grant comply with all applicable state and federal Occupational Safety and Health Act regulations.

5.07. Stormwater Discharge and Water Management Plan Requirements. If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, title 40, parts 122 and 123; and
- (b) The Council's *2030 Water Resources Management Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

5.08. Authorized Agent. Payment request forms, written reports and correspondence submitted to the Council pursuant to this Agreement shall be directed to:

Metropolitan Council
Attn: LCA Grants Administration
390 Robert Street North
Saint Paul, Minnesota 55101-1805

5.09. Non-Assignment. Minnesota Statutes section 473.254, subdivision 6 requires the Council to distribute the grant funds to eligible "municipalities" or "development authorities" for projects in municipalities participating in the Local Housing Incentives Account program. Accordingly, this Agreement is not assignable and shall not be assigned by the Grantee.

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5.10. Warranty of Legal Capacity. The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee's and the Council's behalf respectively and that this Agreement constitutes the Grantee's and the Council's valid, binding and enforceable agreements.

IN WITNESS WHEREOF, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

CITY OF ROSEVILLE

METROPOLITAN COUNCIL

By: _____

By: _____

Title: _____

Guy Peterson, Director
Community Development Division

Date: _____

Date: _____

By: _____

Title: _____

Date: _____

Approved as to form:

By: _____

Title: _____

Date: _____

ATTACHMENT A

APPLICATION FOR LOCAL HOUSING INCENTIVES ACCOUNT FUNDS

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Local Housing Incentives Account grant funds submitted in response to a Request for Proposals issued by the Metropolitan Housing Implementation Group for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision in the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project summary contained in this Attachment A, the terms, descriptions and dollar amounts reflected in the Council Action or contained in this Agreement and the Project summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project summary; and (4) the grant application.



PROJECT SUMMARY

Applicant: City of Roseville
Project Name: Sienna Green Phase II
Project Location: 2275 Snelling Avenue North
Council District: 10 – Kris Sanda

SG010-125

Project Description:

The project involves the new construction of a 50-unit, four-story apartment building of a phased development. This development will transform an under-utilized surface parking lot into a vibrant apartment community, located on a 1.1 acre parcel of land adjoining the existing Sienna Green Phase I development.

The project will have 4 one-bedroom, 30 two-bedroom, and 16 three-bedroom units. All units will be affordable to households at 50% or less of area median income (\$42,000 for a family of four). Four of those units will be set aside and marketed to households experiencing long-term homelessness. Rents (including utilities) will range from \$698 to \$1,062.

Local resources used to match the LHIA funds will be \$938,610 in TIF that the city has dedicated to this project. LHIA funds will be used for eligible construction costs of the units. Previous LCA grant awards for this development include two LCDA grants, \$305,000 in 2007 (Phase I), and \$202,100 in 2009, and one TBRA grant, \$121,500 in 2007 (Phase I).

Funding:

Amount requested: \$300,000

Amount recommended: \$300,000

Amount Requested	Amount Recommended	Use of Funds	Scheduled Completion Date
\$300,000	\$300,000	Eligible construction costs for a 50-unit four-story building with four one-bedroom apartments, 30 two-bedroom apartments, and 16 three-bedroom apartments.	12/31/12

1 MEMORANDUM OF UNDERSTANDING
2 BETWEEN
3 CITY OF ROSEVILLE, MINNESOTA
4 AND SNELLING AVENUE, LLC
5

6 This MEMORANDUM OF UNDERSTANDING (“MOU”) is hereby made and entered into by
7 and between the City of Roseville, “the City,” and Snelling Avenue LLC, “the Developer.”
8

9 A. PURPOSE
10

- 11 1. The purpose of this MOU is to identify the responsibilities of the City and the Developer in
12 regards to the implementation of a grant awarded to the City by the Metropolitan Council
13 through the Local Housing Incentives Account for the Sienna Green Phase 2 project. Nothing
14 in this agreement shall be construed as altering the terms and conditions of the grant.
15

16 B. THE CITY OF ROSEVILLE SHALL:
17

- 18 1. Pass through grant funding awarded to the City from the Metropolitan Council’s Local
19 Housing Incentives Account (LHIA) in the amount of \$300,000 to the Developer pursuant to
20 the terms of the grant.
- 21 2. Prepare reimbursement request forms and provide all back up documentation as required by
22 the Metropolitan Council for the off-site grant funded activities.
- 23 3. Review and submit all reimbursement requests completed for the Developer portion of the
24 project to the Metropolitan Council.
- 25 4. Submit a request for a grant extension to the Metropolitan Council, if requested by the
26 Developer.
- 27 5. Prepare required LHIA grant annual report, final report, and certificate of expenditures,
28 pursuant to Metropolitan Council requirements for onsite grant funded activities for submittal
29 by the City.
- 30 6. If requested, work with the Developer to convert grant funds for the onsite grant-funded
31 activities to a loan in accordance with the process set forward in 2.03 of the grant contract.
32

33 C. THE DEVELOPER SHALL:
34

- 35 1. Complete the onsite grant-funded improvements described in the grant application.
- 36 2. Comply with all applicable state and federal laws and the agreement entered into by the City
37 of Roseville and the Metropolitan Council specific to the LHIA grant.
- 38 3. Require contractors and subcontractors performing work covered by the LHIA grant to
39 obtain all required permits, licenses and certifications, and comply with all state and federal
40 Occupational Safety and Health Act regulations, especially the federal Hazardous Waste
41 Operations and Emergency Response standards under Code of Federal Regulations, title 29,
42 sections 1910.120 and 1926.65.

- 43 4. Prepare payment request forms and provide all back up documentation as required by the
44 Metropolitan Council for the grant-funded activities and submit the documentation to the
45 City. The Developer must demonstrate that the grant-funded activities have been completed
46 and that the contractor has received payment for this work.
- 47 5. Be responsible for the completion of the project described in the grant application within the
48 two-year grant period.
- 49 6. Submit a written explanation to the City if the grant funds for the improvements cannot be
50 expended within the timeframe of the grant agreement.
- 51 7. If a grant extension is required, request a grant extension at least 100 days before the
52 expiration of the grant agreement.
- 53 8. Provide necessary information to the City to complete the LHIA grant annual report, final
54 report, and certificate of expenditures, pursuant to Metropolitan Council requirements for
55 onsite grant funded activities for submittal by the City.
- 56 9. If requesting the conversion of the grant to a loan, pay for all attorney fees associated with
57 loan document review and all other costs incurred by the City to convert the grant to a loan.
- 58 10. Comply with all terms and conditions of the grant and use the grant funds in the manner and
59 only for such purposes as are set forth in the grant.
- 60 11. Provide such additional information and documentation as the City may request from time to
61 time to enable the City to comply with the terms and conditions of the grant.

62

63 D. BOTH PARTIES AGREE:

64

- 65 1. MODIFICATION. Modifications within the scope of the instrument shall be made only by
66 mutual consent of the parties, by the issuance of a written modification, signed and dated by
67 all parties, prior to any changes being performed.
- 68
- 69 2. PARTICIPATION IN SIMILAR ACTIVITIES. This instrument in no way restricts Aeon
70 from participating in similar activities with other public or private agencies, organizations,
71 and individuals.
- 72
- 73 3. COMMENCEMENT/EXPIRATION DATE. This instrument is executed as of the date of
74 last signature and is effective through December 31, 2012, at which time it will expire unless
75 extended.
- 76
- 77 4. ASSIGNMENT. The Developer shall not assign this MOU or its rights or obligations
78 hereunder without the prior written consent of the City.
- 79
- 80 5. In the event that the Developer shall fail to perform any of its obligations under this
81 Agreement, the City shall have, in addition to all other rights and remedies it has at law or in
82 equity, the right to withhold grant funds until such failure to perform has been cured by the
83 Developer.

84

85

86

87 IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written
88 date below.

89
90
91
92

Snelling Avenue, LLC

By: _____

Title: _____

Date: _____

CITY OF ROSEVILLE

Mayor

By: _____

Title: _____

Date: _____

City Manager

By: _____

Title: _____

Date: _____