

DEVELOPMENT AGREEMENT

BY AND AMONG

HENNEPIN COUNTY

AND

MINNESOTA BALLPARK AUTHORITY

AND

MINNESOTA TWINS, LLC

DATED AS OF APRIL 26, 2007

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### Exhibits

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Exhibit C	Ballpark Concept Design
Exhibit D	Schedule of Ballpark Costs
Exhibit E	Ballpark Design Documents
Exhibit F	Schedule of County Site Acquisition and Public Infrastructure Costs
Exhibit G	Milestone Dates for Real Property
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Exhibit I	Permitted Encumbrances
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Exhibit L	Bid Package No. 1
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Exhibit N	Project Labor Agreement
Exhibit O	Project Budget



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made as of the 26th day of April, 2007, by and among MINNESOTA BALLPARK AUTHORITY, a public body and political subdivision of the State of Minnesota (the "Authority"), HENNEPIN COUNTY, a political subdivision of the State of Minnesota (the "County"), and MINNESOTA TWINS LLC, a Delaware limited liability company (the "Team").

### BACKGROUND

A. The Team holds, owns and controls a professional baseball franchise which is a member of Major League Baseball.

B. The Authority and the County have determined that the financing, construction and operation of the Ballpark (as defined below) and the performance of this Agreement are in the best interests of the County, the State of Minnesota and shall serve a public purpose. Among other things, the construction and operation of the Ballpark shall support the development of the City of Minneapolis and the County, their convention, tourism, economic development and entertainment industries and the local economy and preserve downtown Minneapolis as the home of a major professional baseball franchise.

C. The Team (or its Affiliate) and the Authority intend to enter into the Ballpark Lease Agreement and the Team and the Authority intend to enter into the Baseball Playing and Use Agreement on or before April 30, 2007.

D. This Agreement is executed to provide for the construction, development and operation of the Ballpark and the Site Acquisition and Public Infrastructure Work prior to its completion and during the term of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, undertakings and covenants hereinafter set forth, and intending to be legally bound hereby, the Authority, the County and the Team covenant and agree as follows:

### ARTICLE 1 DEFINITIONS

#### Section 1.1 Defined Terms.

In addition to other terms defined herein, the following terms used in this Agreement shall have the meaning set forth below:

"Act" shall mean the Minnesota Laws 2006, Chapter 257 as enacted or hereafter amended, providing for, among other things, the financing, construction and operation of a new Major League ballpark in Minneapolis.

"Affiliate" of a specified Person shall mean any corporation, partnership, limited liability company, sole proprietorship or other Person that directly or indirectly, through one or more intermediaries controls, is controlled by or is under common control with the Person specified. The terms "control", "controlled by", or "under common control" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

"Agreement" shall mean this Development Agreement by and among the Authority, the County and the Team.

"Air Rights and Easements" shall mean all air rights and easements as set forth in Exhibit A attached hereto.

"Architect" shall mean HOK Sport, Inc. (d.b.a. HOK Sport + Venue + Event Architecture).

"Architect Agreement" shall mean the Architectural Services Agreement to be entered into by and between the Team and Architect, as the same may be amended, modified or supplemented from time to time pursuant to the terms of this Agreement.

"Authority" shall mean the Minnesota Ballpark Authority.

"Authority Indemnified Persons" shall mean the Authority and its elected officials, appointed officials, board members, officers, employees, agents and attorneys.

"Authority Representative" shall mean Edward Hunter or any successor to the foregoing person designated in writing by the Authority by written notice to the County and the Team.

"Ballpark" shall mean that MLB facility to be constructed and located in Minneapolis, Minnesota at the Site, initially containing approximately 1,000,000 gross square feet of space, approximately 40,000 seats, and with the capacities and amenities referenced in the Ballpark Concept Design Documents, and as amended and detailed from time to time pursuant to the terms of this Agreement.

"Ballpark Advanced Funds" shall mean those funds that the Team may advance as agreed between the Parties, in their respective sole discretion, for expenditures towards Ballpark Costs prior to the Funding Date, in accordance with this Agreement, including those Ballpark Costs incurred through the date listed on Exhibit B attached hereto.

"Ballpark Budget" shall mean those portions of the Project Budget that identify the Ballpark Costs as set forth in Exhibit O attached hereto.

"Ballpark Concept Design Documents" shall mean the program statement and other conceptual design documents prepared by the Architect listed on Exhibit C attached hereto.

"Ballpark Construction Drawings and Specifications" shall mean the working drawings and specifications describing the size, character, appearance, functionality, design, construction, materials, finishes, structure and mechanical, electrical and all other systems, amenities and

components of the Ballpark prepared from the approved Ballpark Design Documents and which are used for obtaining Permits and constructing the Ballpark.

"Ballpark Costs" shall mean all costs and expenses attached hereto as Exhibit D or as mutually agreed to by the Team Representative, County Representative and Authority Representative.

"Ballpark Design Documents" shall mean drawings and specifications based upon, and refining, the Ballpark Concept Design Documents and illustrating the scope, relationship, forms, size, functionality and appearance of the Ballpark and shall provide detail regarding the exterior and interior public spaces of the Ballpark, including materials and colors, by means of plans, sections and elevations, typical construction details, equipment schedules and layouts and specifications and that show all significant Ballpark components, including the Team administrative space and the Authority administrative space, as set forth in Exhibit E attached hereto, all in sufficient detail to define for the County and the Authority the scope, character and quality of the entire Ballpark.

"Ballpark Funds" shall mean the Team Contribution and the County Ballpark Contribution.

"Ballpark Implementation Committee" shall mean the Ballpark Implementation Committee that has been established pursuant to the Act.

"BNSF" shall mean Burlington Northern Santa Fe Co.

"Business Day" shall mean any day other than a Saturday, Sunday or other day on which banks are required or authorized to close in Minneapolis, Minnesota.

"Change Orders" shall mean any change orders or change directives that amend or modify the Contract Documents.

"City" shall mean the City of Minneapolis.

"Claim" shall mean any claim, demand or dispute among the Parties relating to this Agreement or the Project.

"CM Agreement" shall mean the Construction Management Agreement to be entered into by and between the Team and Construction Manager, as the same may be amended, modified or supplemented from time to time pursuant to the terms of this Agreement.

"Completion Date" shall mean the date that is the earlier of (a) the date on which the Team has commenced occupancy of the Ballpark pursuant to the Lease Agreement, or (b) the date on which the following have occurred: (i) the Team has issued to the County a certificate of substantial completion certifying that the Ballpark has been "substantially completed," subject to the completion of minor punchlist items that do not materially affect the use or occupancy of the Ballpark; and (ii) a temporary certificate of occupancy has been issued.

"Construction Manager" or "CM" shall mean M.A. Mortenson Company.

"Construction Start Date" shall mean June 1, 2007.

"Construction Team" shall mean (a) the Team, (b) Construction Manager, (c) Architect, and (d) any other consultants deemed necessary by the Team, County and Authority to assist in the design, construction or development of the Ballpark.

"Contamination" shall mean the presence or release or threat of release of Regulated Substances in, on, under or emanating to or from the Site, which pursuant to Environmental Laws requires notification or reporting to any Governmental Authority, or which pursuant to Environmental Laws requires the identification, investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or other Response Action to such Regulated Substances, or which otherwise constitutes a violation of Environmental Laws.

"Contract Documents" shall mean the CM Agreement, the Architect Agreement, the final Construction Drawings and Specifications for the Ballpark and any Change Orders or other equivalent construction contract documents entered into to complete the Project.

"Contract Sum" shall mean the final fixed and stipulated construction price not to exceed a guaranteed maximum price for the cost of constructing, furnishing and equipping the Ballpark, which shall be established as set forth in the CM Agreement.

"Cost Overrun" shall mean any Ballpark Costs in excess of the sum of Three Hundred Ninety Million Dollars (\$390,000,000) plus interest accrued in the Project Accounts relating to the Team Contribution, excluding costs otherwise arising out of negligent actions or omissions of the Authority or the County or breach of the Agreement by the County or Authority.

"County" shall mean the County of Hennepin, State of Minnesota.

"County Ballpark Contribution" shall mean Two Hundred Sixty Million Dollars (\$260,000,000), which amounts shall be granted to the Authority pursuant to this Agreement and the Grant Agreement.

"County Indemnified Persons" shall mean the County and its elected officials, appointed officials, board members, officers, employees, agents and attorneys.

"County Representative" shall mean Rick A. Johnson or any successor to the foregoing person designated in writing by the County by written notice to the Team.

"County Site Acquisition and Public Infrastructure Contribution" shall mean an amount not to exceed Ninety Million Dollars (\$90,000,000) for County Site Acquisition and Public Infrastructure Costs, with the Site and Public Infrastructure purchased therewith by the County granted by the County to the Authority pursuant to this Agreement and the Grant Agreement.

"County Site Acquisition and Public Infrastructure Costs" shall mean all costs and expenses set forth in the Schedule attached hereto as Exhibit F or as mutually agreed to by the Team Representative, County Representative and Authority Representative.

"Damages" shall mean any loss, liability, claim, damage (excluding incidental and consequential damages), cost and expense, including costs of investigation and defense and reasonable attorneys' fees, whether the action is for money damages, or for equitable or declaratory relief.

"Design Documents" shall refer to, as applicable, the Ballpark Concept Design Documents, the Ballpark Design Documents, the Ballpark Construction Drawings and Specifications, the Infrastructure Design Documents and the Infrastructure Construction Drawings and Specifications and the GMP Documents.

"Disbursement Request" shall mean the disbursement documents agreed upon pursuant to Section 5.3.

"District Enhancements" shall mean improvements to streets and sidewalks or other public rights-of-way for the purpose of enhancing the movement, safety, convenience, or enjoyment of the Ballpark patrons and other pedestrians, including decorative lighting and surfaces, plantings, display and exhibit space, adornments, seating, and transit and bus shelters.

"EIS" shall mean the environmental impact statement, to be prepared by the Environmental Consultant, that contains all information, analysis and recommendations required by Minnesota Statutes, Chapter 116D and related rules and regulations.

"Environmental Consultant" shall mean SRF Consulting Group, Inc., the consulting firm engaged to perform an EIS with respect to the Site.

"Environmental Law" shall mean all Laws, including, without limitation, any consent decrees, settlement agreements, judgments, or orders, issued by or entered into with a Governmental Authority pertaining or relating to: (a) pollution or pollution control; (b) protection of human health or the environment; (c) the presence, use, management, generation, processing, treatment, recycling, transport, storage, collection, disposal or release or threat of release of Regulated Substances; (d) the presence of Contamination; or (e) the protection of endangered or threatened species.

"Event of Default" shall have the meaning set forth in Section 10.1 hereof.

"Expedited ADR Dispute" shall have the meaning set forth in Section 13.2 hereof.

"Force Majeure" shall mean acts of God, accidents, fire or other casualty, earthquake, hurricane, tornadoes, named storms, flood, war, riot, intervention by civil or military authorities of government, insurrection, or other civil commotion, governmental action (excluding any governmental action or inaction with respect to the granting or withholding of any governmental approvals or Permits needed for the construction or operation of the Ballpark, the Public Infrastructure or the acquisition of the Site), material shortages, strikes, boycotts, lockouts or labor disputes (but not including player labor stoppages, whether attributable to strikes or lockouts), or any other similar or like event or occurrence beyond the reasonable control of a Party hereto, that causes such Party to be delayed or hindered in, or prevented from, the performance of any covenant or obligation hereunder.

"Funding Date" shall mean the date of the initial closing of the revenue bond issuances, as part of a potential series of closings, contemplated by the Act.

"Geotechnical Report" shall mean that report prepared by American Engineering Testing, Inc., dated as of August 11, 2006, as supplemented and updated.

"GMP Documents" shall have the same meaning as set forth in the CM Agreement.

"Governmental Authority" shall mean any federal, state, county, city, local or other government or political subdivision or any agency, authority, board, bureau, commission, department or instrumentality thereof.

"Grant Agreement" shall mean that certain Grant Agreement dated April \_\_, 2007, by and between the County and the Authority.

"HERC" shall mean Hennepin Energy Recovery Center located adjacent to the Ballpark.

"Infrastructure Construction Drawings and Specifications" shall mean the working drawings and specifications prepared by the Architect or other designated design professionals as approved by the Parties describing the size, character, appearance, functionality, design, construction, materials, finishes, structure and mechanical, electrical and all other systems, amenities and components of the Site Acquisition and Public Infrastructure Work prepared from the approved Infrastructure Design Documents and which are used for obtaining Permits and constructing the Public Infrastructure Work.

"Infrastructure Design Documents" shall mean drawings and specifications prepared by the Architect or other designated design professionals as approved by the Parties illustrating the scope, relationship, forms, site, functionality and appearance of Public Infrastructure Work, by means of plans, sections, and elevations, typical construction details, equipment layouts and specifications, as applicable, as set forth in Exhibit H attached hereto.

"Law" shall mean any binding law, statute, code, ordinance, regulation or constitutional or charter provision, duly enacted or adopted by any Governmental Authority.

"Lease Agreement" shall mean the Ballpark Lease Agreement between the Team (or its Affiliate) and the Authority.

"Legal Requirements" shall mean all present and future Laws (including, but not limited to, Environmental Laws) applicable to the design, development, construction, equipping, use, occupancy, possession, operation, maintenance and management of the Project, including, without limitation, all Laws relating to the issuance of any bonds or the exclusion of interest on such bonds from gross income for federal tax purposes, if such bonds are issued by any Governmental Authority in connection with the financing of the Project.

"Letter of Credit" shall mean a letter of credit issued to the Authority to assure that the Team Final Payment shall be paid when required.

"Major League Baseball" or "MLB" shall mean, collectively, the Office of the Commissioner of Baseball, the Commissioner of Baseball, the Major League Baseball clubs, the Ownership Committee of Baseball, and/or any other Person appointed by any of the foregoing, or any successor substitute association or entity of which the Team is a member or joint owner and which engages in professional baseball in a manner comparable to Major League Baseball.

"Master Project Schedule" shall mean the master project schedule as updated in accordance with the CM Agreement.

"Material Change Order" shall mean any Change Order that materially alters the design concepts set forth in the Design Documents or that would result in a cost increase or decrease to the Contract Sum of Fifty Thousand Dollars (\$50,000) or more.

"Option Agreement" shall mean that certain Option Agreement for Lease and Development of Real Property to be entered into between the Team (or its Affiliate) and the Authority relating to the parking lot known as the ENG lot.

"Parking Lot Lease" shall mean that certain Parking Lot Lease Agreement to be entered into between the Team (or its Affiliate) and the Authority relating to the parking lot known as the ENG Lot.

"Parties" shall mean the Authority, the County and the Team.

"Permits" shall mean any permit, license or approval to be issued by any Person, including, but not limited to, required permits for construction, demolition, installation, alteration or repair of any improvements related in any manner to the Project.

"Permitted Encumbrances" shall mean encumbrances that are listed in Exhibit I hereto.

"Person" shall mean any natural person, sole proprietorship, corporation, partnership, trust, limited liability company, limited liability association, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

"Phase I" shall mean a Phase I Environmental Site Assessment Report prepared by DPRA Incorporated and dated November 2, 2006.

"Phase II" shall mean any further environmental assessment required or contemplated by the Phase I to determine the extent and nature of any Contamination.

"Prime Rate" shall mean that rate of interest published from time to time in the Money Rates column of The Wall Street Journal as the "Prime Rate" or "Prime Interest Rate."

"Privately Financed Enhancement" shall mean additions or enhancements to the Ballpark agreed upon by the Parties that are paid for solely by the Team or other entity and which are not included in Project Costs.

"Project" shall mean (a) the planning, development, design and construction of the Ballpark and (b) the planning, development, design and construction of all Site Acquisition and Public Infrastructure Work.

"Project Accounts" shall mean those accounts to be jointly established by the Authority and the Team to hold the Project Funds.

"Project Advanced Funds" shall mean the Ballpark Advanced Funds and the Public Infrastructure Advanced Funds as set forth on Exhibit B.

"Project Budget" shall mean the budget of the Ballpark Costs and the County Site Acquisition and Public Infrastructure Costs as set forth in Exhibit O attached hereto plus Privately Financed Enhancements.

"Project Costs" shall mean the Ballpark Costs and the County Site Acquisition and Public Infrastructure Costs.

"Project Funds" shall mean the Ballpark Funds and the County Site Acquisition and Public Infrastructure Contribution.

"Public Infrastructure" shall mean all property, facilities and improvements that facilitate the development and use of the Ballpark, including, but not limited to (a) property and improvements for drainage, environmental remediation, parking, roadways, walkways, skyways, pedestrian bridges, bicycle paths, railroad crash wall, railroad right-of-way development, (b) transit improvements to facilitate public access to the Ballpark, and (c) lighting, landscaping, utilities, streets and District Enhancements.

"Public Infrastructure Advanced Funds" means those funds that the Team may advance as agreed between the Parties, in their respective sole discretion, for expenditures towards County Site Acquisition and Public Infrastructure Costs prior to the Funding Date, in accordance with this Agreement, including those County Site Acquisition and Public Infrastructure Costs incurred through the date listed on Exhibit B attached hereto.

"Public Infrastructure Budget" shall mean those portions of the Project Budget that identify County Site Acquisition and Public Infrastructure Costs as set forth in Exhibit O attached hereto.

"Public Infrastructure Work" shall mean the design and construction of the Public Infrastructure.

"Regulated Substances" shall mean, without limitation, any substance, material or waste, regardless of its form or nature, defined under Environmental Laws as a "hazardous substance," "hazardous waste," "toxic substance," "extremely hazardous substance," "toxic chemical," "toxic waste," "solid waste," "industrial waste," "residual waste," "municipal waste," "special handling waste," "mixed waste," "infectious waste," "chemotherapeutic waste," "medical waste," "regulated substance," "pollutant" or "contaminant" or any other substance, material or waste, regardless of its form or nature that otherwise is regulated by Environmental Laws.



"Required Environmental Permits" shall mean all Permits, licenses, bonds, consents, programs, approvals or authorizations required under Environmental Laws for the construction of the Project, or required by the Team to conduct its operations, maintain or occupy the Site or construct, maintain, operate or occupy any alterations or improvements, regardless of whether such Permits are required to be or have been obtained by the County, the Authority or the Team.

"Response Action" shall mean the investigation, cleanup, removal, remediation, containment, control, abatement, monitoring of or any other Response Action to the presence of Regulated Substances or Contamination in, on, at, under or emanating from the Site, including, but not limited to, the correction or abatement of any violation required pursuant to Environmental Laws, Required Environmental Permits or by a Governmental Authority.

"Site" shall mean the real property and Air Rights and Easements described in Exhibit A, which site includes the area known as the Rapid Park site, as depicted in Exhibit J.

"Site Acquisition and Public Infrastructure Work" shall mean the land acquisition of the Site (including the acquisition of all necessary Air Rights and Easements); demolition of foundations and other structures on and under the Site in accordance with this Agreement; Public Infrastructure Work, Site graphics and artwork. In no event shall Site Acquisition and Public Infrastructure Work include soils correction work or other work required to provide a structurally suitable base for the Ballpark.

"Team" shall mean the Minnesota Twins, LLC.

"Team Additional Funds" shall have the meaning set forth in Section 5.1(a)(vi) hereof.

"Team Contribution" shall mean One Hundred Thirty Million Dollars (\$130,000,000).

"Team Final Payment" shall mean Eighty-Five Million Dollars (\$85,000,000) plus any amounts the Team is required to contribute to pay for any Cost Overrun.

"Team Indemnified Persons" shall mean the Team, Twins Ballpark, LLC and their respective members, partners, officers, employees, agents and attorneys.

"Team Initial Payment" shall mean Forty-Five Million Dollars (\$45,000,000).

"Team Provided/CM Managed Public Infrastructure Work" shall mean those portions of the Site Acquisition and Public Infrastructure Work identified on Exhibit K, the design and construction of which the Team will provide for under the terms of the Architect Agreement and the CM Agreement.

"Team Representative" shall mean John Gockel or any successor to the foregoing person designated by the Team by written notice to the Authority and the County.

"Title Defect" shall mean any lien, encumbrance, easement, license, right-of-way, covenant, condition, restriction, or other title defect encumbering the Site that is not either a Permitted Encumbrance or caused by the acts of the Team or its agents, contractors, employees and tenants.

"Transformer" shall mean the existing HERC transformer on the Site.

"Use Agreement" shall mean the Baseball Playing and Use Agreement between the Authority and the Team.

#### Section 1.2 Construction of Terms.

As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word "including" or any variation thereof, is used herein, it shall mean "including, without limitation," and shall be construed as a term of illustration, not a term of limitation. Wherever the word "or" is used herein, it shall mean "and/or".

### ARTICLE 2 ARCHITECT AND DESIGN

#### Section 2.1 Architect Agreement.

(a) The Authority authorizes and the County consents to the Team entering into the Architect Agreement upon the terms approved by the County and the Authority and in accordance with this Agreement. The Architect Agreement shall include provisions requiring:

(i) An indemnification in favor of the County, Authority and the Team acceptable to all of them.

(ii) Provisions requiring the Architect to maintain insurance acceptable to the County, Authority and the Team, including commercial general liability with the Team, Authority and County as named insureds, and professional liability/errors and omissions insurance.

(iii) Acknowledgement of the Authority as third party beneficiary of the Architect Agreement.

(iv) A conditional assignment of the Architect Agreement to the Authority in the event of default by the Team under the Architect Agreement.

(v) The Architect to promptly deliver such documents and other information as reasonably requested by the County or the Authority through the Team Representative, and otherwise cooperate with the County and the Authority, to meet any planning and construction timetable issued by the County under section 13, subdivision 2 of the Act, or to prepare for, present to or respond to inquiries from the Ballpark Implementation Committee, the Minneapolis Planning Commission or the Minneapolis City Council.

(vi) The Architect to design the Ballpark and be responsible for providing documents necessary for approvals of the design of the Ballpark at the times and occasions set forth in Section 2.3.

(vii) The Architect to design those items of Team Provided/CM Managed Public Infrastructure Work and be responsible for providing documents necessary for approvals of the design of the specified Team Provided/CM Managed Public Infrastructure Work at the times and occasions set forth in Section 2.4.

(viii) The Architect to clearly allocate its fees and costs appropriately between Ballpark Costs and County Site Acquisition and Public Infrastructure Costs and to distinguish Ballpark elements from Site Acquisition and Public Infrastructure Work elements in all designs, plans, reports and invoices.

(ix) The Architect to promptly deliver such documents and other information reasonably requested by the County through the Team Representative in order for the County to complete the EIS and complete all other necessary environmental documents.

(x) The Architect to promptly deliver such documents and other information reasonably requested by the County through the Team Representative necessary for the acquisition of the Site or any other property required for the Ballpark or the Public Infrastructure.

(xi) The Architect to promptly deliver documents and other information reasonably requested by the County or Authority through the Team Representative, and to otherwise cooperate with the County, Team and Authority as necessary to facilitate bidding or contracting with third parties, it being understood that the County and Authority shall have no authority to direct the work or services of the Architect with respect to work on the Ballpark or the Team Provided/CM Managed Public Infrastructure Work except as agreed to through the Team Representative.

(xii) The Architect to discharge any lien filed by it or its respective subcontractors or consultants for labor performed or materials or services furnished in connection with the construction of the Ballpark and the Team Provided/CM Managed Public Infrastructure Work.

(xiii) The Architect to perform its services in accordance with all applicable Law, including the Act, and, to the extent feasible, to follow the sustainable building guidelines established under Minnesota Statutes section 16B.325.

(xiv) The Architect to provide the Construction Manager with information reasonably required by the Construction Manager for cost estimating and scheduling, to consult with the Construction Manager regarding matters affecting construction cost and schedule, to cooperate with the Team, Authority, County, and Construction Manager in reconciling the design, program, schedule and budget for the Project, and to produce documents that are consistent with the Team, Authority and County approvals.

(b) Changes to Architect Agreement. The Authority shall approve or disapprove any change, modification or amendment to the Architect Agreement, and the County shall approve or disapprove any change, modification or amendment to the Architect Agreement concerning provisions other than the amount of services to be provided and the County shall approve or disapprove any change, modification or amendment that results in an increase or decrease in the

services to be provided under the Architect Agreement in excess of \$50,000. The Team shall submit to the County Representative and the Authority Representative for review and approval any such proposed change, modification or amendment. The Authority Representative and the County Representative, if applicable, shall act within five (5) Business Days of receipt to approve or disapprove such change. Approvals shall not be unreasonably withheld or conditioned. If the Authority Representative or the County Representative, if applicable, shall fail to approve such change within five (5) Business Days, the change shall be deemed to have been approved. The County and/or Authority, as applicable, shall state the reasons for any disapproval in writing. The Team Representative, Authority Representative, or County Representative may designate an individual to execute such changes on his/her behalf.

(c) Right to Attend Meetings. The Team Representative, County Representative and the Authority Representative shall receive notice of all design meetings, have the right to attend all design meetings regarding the design of the Ballpark or the Site Acquisition and Public Infrastructure Work (except the Team Representative shall not attend meetings regarding the acquisition of the Site except with the consent of the County at the County's sole discretion) and to receive from the Architect all documents required to be provided to the Team under the Architect Agreement at the same time they are provided to the Team. All design meetings shall be held in Hennepin County, Minnesota unless otherwise agreed by the parties and shall be scheduled at a regular time that generally allows the County Representative, the Authority Representative and other County and Authority staff to attend.

(d) LEED Certification and Environmental/Building Matters. If the Authority obtains grants sufficient to cover the increased costs in the Ballpark design, and provided such design elements can be incorporated without affecting the orderly progress of the Design Documents, the Team shall require the Architect to design the Ballpark to receive Leadership in Energy and Environmental Design (LEED) certification for environmental design.

## Section 2.2 Project Representatives.

(a) Team Representative. The Team has designated the Team Representative as its agent and representative authorized to act on the Team's behalf with respect to the Project. The Team reserves the right to change its representative, and the Team shall notify the County and the Authority in writing prior to such change. The County and the Authority shall have the right to approve any replacement of the Team Representative, which approval shall not be unreasonably withheld, conditioned or delayed. The Team Representative is the Team's exclusive representative to the Parties insofar as this Agreement is concerned. All instructions from the Team to the Parties relating to this Agreement shall be issued or made in writing through the Team Representative. All communications and submittals from the Parties to the Team with respect to matters covered by this Agreement shall be issued or made through the Team Representative, unless the Team or the Team Representative shall otherwise direct in writing.

(b) County Representative. The County has designated the County Representative as its agent and representative authorized to act on the County's behalf with respect to the Project except in cases where approval by the Board of County Commissioners is denoted or reserved by the Board of County Commissioners or required by Law. The County reserves the right to

change its representative, and the County shall notify the Team in writing prior to such change. The Team shall have the right to approve any replacement of the County Representative, which approval shall not be unreasonably withheld, conditioned or delayed. The County Representative is the County's exclusive representative to the Parties insofar as this Agreement is concerned. All instructions from the County to the Parties relating to this Agreement shall be issued or made in writing through the County Representative. All communications and submittals from the Parties to the County with respect to matters covered by this Agreement shall be issued or made through the County Representative, unless the County or the County Representative shall otherwise direct in writing.

(c) Authority Representative. The Authority has designated the Authority Representative as its agent and representative authorized to act on the Authority's behalf with respect to the Project except in cases where approval by Authority board is denoted or reserved by the Authority board or required by Law. The Authority reserves the right to change its representative, and the Authority shall notify the Team in writing prior to such change. The Team shall have the right to approve any replacement of the Authority Representative, which approval shall not be unreasonably withheld, conditioned or delayed. The Authority Representative is the Authority's exclusive representative to the Parties insofar as this Agreement is concerned. All instructions from the Authority to the Parties relating to this Agreement shall be issued or made in writing through the Authority Representative. All communications and submittals from the Parties to the Authority with respect to matters covered by this Agreement shall be issued or made through the Authority Representative, unless the Authority or the Authority Representative shall otherwise direct in writing.

### Section 2.3 Ballpark Design Approval Process.

(a) Ballpark Concept Design Documents. The Parties have reviewed and hereby approve the Ballpark Concept Design Documents.

(b) Ballpark Design Documents. Based upon the approved Ballpark Concept Design Documents, the Team shall cause the Architect to prepare the Ballpark Design Documents in consultation with the Team Representative, County Representative and Authority Representative for submittal to the Board of County Commissioners and the Authority board. The Board of County Commissioners and the Authority board shall review for approval that (i) the Ballpark Design Documents are in conformance with the design intent of Ballpark Concept Design Documents previously submitted, and (ii) the new details provided in the Ballpark Design Documents, while addressing the public needs, do not exceed what is normal for similar facilities. Such review shall occur on or before April 26, 2007. The approval of the Board of County Commissioners or the Authority board shall not be unreasonably withheld. Any disapproval by the Board of County Commissioners or by the Authority board shall include specific reasons for the disapproval. Before April 17, 2007, the Team Representative, County Representative and Authority Representative, and such other staff and personnel as each representative deems appropriate, shall meet as necessary to review the Ballpark Design Documents. The Team Representative, County Representative and Authority Representative shall use good faith efforts to resolve any disagreements in an expeditious manner so as not to delay the consideration of approval of the Ballpark Design Documents by the Board of County Commissioners or the Authority board and to present Ballpark Design Documents to the Team,

the Board of County Commissioners, and the Authority board with a unanimous recommendation that the Ballpark Design Documents are consistent with the Ballpark Concept Design Documents. The Team Representative shall provide the County and the Authority with the Team's approval of the Ballpark Design Documents on or before April 17, 2007. If the Board of County Commissioners or the Authority board fails to consider the Ballpark Design Documents on or before April 26, 2007, the applicable board shall make a good faith effort to schedule a meeting to consider approval of the documents within thirty (30) days of the originally scheduled meeting.

(c) CM to Provide Detailed Estimate. On or before April 17, 2007, the Construction Manager shall provide a detailed estimate of the cost of construction of the Ballpark based upon the documents delivered to the Team Representative, County Representative and Authority Representative. The Construction Manager shall meet with the Team Representative, County Representative and Authority Representative as reasonably requested to provide information regarding the estimate and value engineering proposals.

(d) Ballpark Construction Drawings and Specifications. Upon approval of the Ballpark Design Documents and GMP Documents pursuant to Section 2.6, the Team shall cause the Architect to prepare Construction Drawings and Specifications based on the approved Ballpark Design Documents and GMP Documents. The Team Representative, County Representative and Authority Representative shall review the Ballpark Construction Drawings and Specifications to determine whether the Ballpark Construction Drawings and Specifications are consistent with the approved Ballpark Design Documents and GMP Documents. The County Representative and the Authority Representative shall have seven (7) days from receipt to approve or disapprove the Ballpark Construction Drawings and Specifications. Ballpark Construction Drawings and Specifications may not change the exterior materials or colors without the approval of the County Representative and Authority Representative. Any disapproval shall include itemized objections to those components of the Ballpark Construction Drawings and Specifications that are not consistent with the approved Ballpark Design Documents and GMP Documents. If the County Representative or Authority Representative fail to approve or disapprove the Ballpark Construction Drawings and Specifications within seven (7) days, the Ballpark Construction Drawings and Specifications shall be deemed to have been approved. The Team shall cause the Architect to coordinate with the CM to organize the Ballpark Construction Drawings and Specifications in such a manner as to prepare documents for bidding or competitive pricing.

#### Section 2.4 Design for Site Acquisition and Public Infrastructure Work.

(a) Limit on Site Acquisition and Public Infrastructure Work. The Parties acknowledge that the County is limited by the Act to financing Ninety Million Dollars (\$90,000,000) of the Site Acquisition and Public Infrastructure Work. Included within the County Site Acquisition and Public Infrastructure Costs are costs such as Site acquisition, acquisition of air rights, environmental remediation and Site preparation which are not capable of determination at this time. The Parties agree that should the costs of any item in the Site Acquisition and Public Infrastructure Work exceed the amount determined by the Authority in consultation with the County to be available for any item, it may be necessary to reduce the scope or eliminate one or more items of the Site Acquisition and Public Infrastructure Work

unless the Team elects to provide such additional funding as necessary. The Team Representative, County Representative and Authority Representative shall meet to discuss the revisions to be made or items to be eliminated so as not to exceed the County Site Acquisition and Public Infrastructure Contribution; provided that the Authority, upon the granting of bond proceeds to the Authority, shall have the right to make such revisions as are necessary, in consultation with the County Representative, to not exceed the County Site Acquisition and Public Infrastructure Contribution provided that such revisions shall maintain the design set forth in the Infrastructure Design Documents to the greatest extent practicable.

(b) Architect to Design Certain Site Acquisition and Public Infrastructure Work. Under the Architect Agreement, the Architect shall be responsible for the design of the Team Provided/CM Managed Public Infrastructure Work. The County Representative shall consult with the Team Representative and the Authority Representative as to the items for which design services are requested. The Team shall cause, and the Architect Agreement shall require, the Architect to maintain records and invoices clearly designating the fees and costs for design services attributable to Site Acquisition and Public Infrastructure Work. All fees and costs of the Architect for design of Site Acquisition and Public Infrastructure Work shall be payable from the County Site Acquisition and Public Infrastructure Contribution, whether directly from the County or as granted to the Authority, or from the Team Additional Funds.

(c) Infrastructure Design Documents. The Architect or other designated design professionals, as approved by the Parties, shall prepare the Infrastructure Design Documents and submit the Infrastructure Design Documents to the Team Representative, County Representative and Authority Representative on or before April 17, 2007 in order to allow the Board of County Commissioners and the Authority board to consider approval of the Infrastructure Design Documents on or before April 26, 2007. The Team Representative shall provide the County and the Authority with the Team's approval of the Infrastructure Design Documents on or before April 17, 2007. The Team Representative, County Representative and Authority Representative, and such other staff and personnel as each representative deems appropriate, shall meet as necessary to review the Infrastructure Design Documents. The Team Representative, County Representative and Authority Representative shall use good faith efforts to resolve any disagreements in an expeditious manner so as not to delay the consideration of approval of the Infrastructure Design Documents by the Board of County Commissioners or the Authority board.

(d) CM to Provide Detailed Estimate. On or before April 17, 2007, the Construction Manager shall provide a detailed estimate of the cost of construction of the Public Infrastructure Work based upon the documents delivered to the Team Representative, County Representative and Authority Representative. The Construction Manager shall meet with the Team Representative, County Representative and Authority Representative as reasonably requested to provide information regarding the estimate and value engineering proposals.

(e) Infrastructure Construction Drawings and Specifications. Upon approval of the Infrastructure Design Documents and the GMP Documents pursuant to Section 2.6, the Architect or other designated design professionals shall prepare Infrastructure Construction Drawings and Specifications. The Team Representative, County Representative and Authority Representative shall review and approve the Infrastructure Construction Drawings and Specifications. The Team Representative shall have seven (7) days from receipt to approve or disapprove the

Infrastructure Construction Drawings and Specifications. If the Team Representative fails to approve or disapprove the Infrastructure Construction Drawings and Specifications within seven (7) days, the Infrastructure Construction Drawings and Specifications shall be deemed to have been approved. The Team, with the cooperation of the County, the Authority, and CM, shall cause the Architect to organize the Infrastructure Construction Drawings and Specifications in such a manner as to allow Architect to prepare documents for bidding or competitive pricing.

#### Section 2.5 Ballpark Implementation Committee.

The Team Representative, the County Representative, and Authority Representative shall meet with the Ballpark Implementation Committee as necessary to assist its review under the Act. The recommendations of the Ballpark Implementation Committee shall be forwarded to the City of Minneapolis planning commission for an advisory recommendation and then to the Minneapolis city council for final action in a single resolution. The Board of County Commissioners and the Authority board shall meet promptly after receipt of the resolution to formally receive the Ballpark Implementation Committee's recommendations and shall provide direction to the County Representative and Authority Representative. The County may seek de novo review in the district court for Hennepin County of any Minneapolis City Council action.

#### Section 2.6 Board of County Commissioners and Authority Board Review of GMP Documents.

Upon approval of the Ballpark Design Documents and the Infrastructure Design Documents, the Team shall cause the Architect or other designated design professionals to prepare GMP Documents as that term is defined in the CM Agreement ("GMP Documents") based upon the approved Ballpark Design Documents and Infrastructure Design Documents, as applicable. The submittal shall include a certification by the Construction Manager that the Ballpark as shown in the GMP Documents and the Public Infrastructure Work as shown in the GMP Documents can be constructed within the Contract Sum. The County Representative and Authority Representative shall review the GMP Documents to determine whether the GMP Documents are consistent with the approved Ballpark Design Documents and the Infrastructure Design Documents, respectively. The County Representative and Authority Representative shall recommend to the Board of County Commissioners and Authority board, respectively, for their consideration that (i) the GMP Documents are generally consistent with the approved Ballpark Design Documents and Infrastructure Design Documents, as appropriate, and should be approved by the Board of County Commissioners and the Authority board, or (ii) the GMP Documents are inconsistent with the Ballpark Design Documents and Infrastructure Design Documents, as applicable, and should be approved by the Board of County Commissioners and Authority board subject to specified changes recommended by the County Representative and Authority Representative that would bring the GMP Documents into conformance with the approved Ballpark Design Documents and the Infrastructure Design Documents. The Board of County Commissioners and the Authority board shall use good faith efforts to meet on or before July 31, 2007, to approve the GMP Documents, but in no event shall meet later than August 31, 2007. The Team Representative, County Representative and Authority Representative shall meet as necessary and use good faith efforts to resolve any disagreements relative to the conformance of the GMP Documents to the Ballpark Design Documents and Infrastructure



Design Documents, as appropriate, prior to action by the Board of County Commissioners and the Authority board.

### ARTICLE 3 SITE ACQUISITION AND PUBLIC INFRASTRUCTURE

#### Section 3.1 Acquisition and Delivery of Site.

(a) The County and the Authority shall provide the Team access to those portions of the Site necessary to commence construction prior to the Construction Start Date and access to other portions of the Site identified in Exhibit G on or before the dates set forth in Exhibit G under the column titled "Date Access is Required for Construction". In addition, the County and the Authority shall acquire title to portions of the Site on or before the dates set forth in Exhibit G under the column titled "Outside Acquisition Date" and shall acquire title to the entire Site on or before August 31, 2007. The County and the Authority shall acquire good and marketable title to the portions of the Site identified on Exhibit A as "Areas to be Owned in Fee" and valid and enforceable easements, licenses, and leases, as the case may be, over the portions of the Site identified on Exhibit A as "Support and Air Rights Easement Areas" and "Access Areas," in each case, free and clear of all encumbrances other than Permitted Encumbrances, provided that with respect to Title Defects that impair the marketability of title or the validity or enforceability of easements identified by the Team in the manner provided below, the County (or the County on behalf of the Authority) shall have such time as is reasonably necessary following acquisition of title, or easements, as the case may be, to the Site to cure such Title Defects and the County and Authority hereby agree to diligently undertake to effect such cure. Notwithstanding the foregoing, the Team acknowledges that the property rights acquired from BNSF by the County and the Authority will be acquired without warranty or representation of title by BNSF, and that the Team, any parties claiming through the Team, and any assignees or transferees of the Team, shall lease, occupy and possess the Site without warranty or representation from the County or Authority regarding title to any property rights acquired from BNSF.

(b) Following execution of this Agreement, the County shall provide to the Team title commitments and surveys (showing, among other matters, all gaps between parcels covered by the title commitments) covering the Site (the "Title Evidence"). Within twenty (20) days following receipt of all of the Title Evidence, the Team shall deliver to the County and the Authority a list of Title Defects identified by the Team within the Title Evidence. Prior to acquiring title to each portion of the Site, the County (or the County on behalf of the Authority) shall give notice to the Team of (i) any Title Defects identified by the Team it does not intend to cure ("Rejected Title Defects"), provided that if the Authority and the County do not exercise their right to terminate this Agreement pursuant to Section 9.6(b)(ii) hereof or if the Team elects in writing to remove such Rejected Title Defect(s) from its list of Title Defects and accept title to the Site subject to the Rejected Title Defect(s), the County shall be deemed to have withdrawn its notice of intent not to cure, and (ii) if not so terminated, the anticipated schedule for curing the Title Defects.

### Section 3.2 Environmental Matters.

(a) The County has obtained a Phase I environmental assessment of the Site addressed to the Parties to enable each to rely on such Phase I. The County, in consultation with the Team and the Authority, shall cause such Phase II environmental work to be performed as is recommended by the Phase I or as otherwise determined to be reasonably necessary by the County, the Authority or the Team.

(b) The cost of the Phase I (including the cost to prepare the Phase I) and the Phase II (including the cost to prepare any report of the results thereof, if any) shall be paid by the County or the Authority as part of the County Site Acquisition and Public Infrastructure Costs. In the event the results of the Phase I or the Phase II indicate the presence of Contamination or if any Contamination is discovered during the course of construction that, pursuant to applicable Environmental Laws, requires the performance of a Response Action, the County or the Authority shall prepare a Response Action plan sufficient to obtain from the Minnesota Pollution Control Agency a "No Further Action" letter for soils at the Site and shall obtain approval of such plan by the Minnesota Pollution Control Agency. The Team shall cause the CM to cause such Response Action to be performed in accordance with the approved plan as expeditiously as is reasonably possible and the CM shall demonstrate that the costs for such Response Action are based upon competitive pricing. The costs of any Response Action shall be paid as a County Site Acquisition and Public Infrastructure Cost and shall not be a Ballpark Cost. If any Contamination is discovered during the course of construction, then the Party discovering such Contamination shall notify the other Parties immediately, and before such Contamination is disturbed, but in no event later than five (5) days after either (i) the date the Party first observes the conditions or (ii) the date that such Contamination is reported to any of the Parties by Construction Manager. The County shall not be responsible for any costs incurred because of a delay or inaction by the CM or Team in conducting a Response Action or otherwise responding to a discovery of Contamination. The Parties shall explore in good faith the procurement of insurance coverage for any legal liability relating to Contamination at the Site other than as disclosed in the Phase I or Phase II and such insurance cost shall be a County Site Acquisition and Public Infrastructure Cost.

(c) The County shall cause the Environmental Consultant to prepare and complete the EIS on or before June 30, 2007. Each Party shall receive a copy of the EIS for its review and comment. The Team and the Authority shall be provided a copy of the proposed EIS prior to its publication for public comment.

### Section 3.3 Foundations and Utility Relocation.

(a) As part of the Site Acquisition and Public Infrastructure Work, the Team shall cause the CM to undertake the work in Bid Package No. 1, which is described in Exhibit L.

(b) The County or the Authority shall pay, as part of the County Site Acquisition and Public Infrastructure Costs, the cost of the following items:

(i) A boundary survey or other such legal description of the Site identifying new and existing confines of the Site, including all Air Rights and Easements. Such

survey shall incorporate proposed road relocation and any proposed property and street vacation;

(ii) A final report concerning the site-use assessment of historical and archaeological artifacts including any necessary surveys and investigations, together with clearance by the appropriate public agencies approving findings and recommendations identified in the final report;

(iii) Obtaining approval of any Response Action plan required under Section 3.2(b), and obtaining a No Further Action Letter covering soils at the Site and a No-Association Letter, as appropriate, from the Minnesota Pollution Control Agency stating that any such Contamination discovered during the Phase II has been removed or remediated to the extent required by the Minnesota Pollution Control Agency, and that the Team, the Authority and the County, and their respective successors and assigns and lenders, will not become associated with such contamination as a result of acquiring title to the Site or constructing and operating the Ballpark.

(c) If conditions are encountered at the Site that are subsurface structures, conditions or materials that differ substantially from those indicated in the Geotechnical Report, then the Party discovering such condition shall notify the other Parties immediately, and before such conditions are disturbed, but in no event later than five (5) days after either (i) the date the Party first observes the conditions or (ii) the date that such conditions are reported to any of the Parties by Construction Manager. The County Representative, Authority Representative and Team Representative shall promptly investigate such conditions. Subject to the provisions of Section 10.5 hereof, if such conditions cause an increase in the cost of, or time required for, performance of any part of the Project, such costs shall be a County Site Acquisition and Public Infrastructure Cost paid from the County Site Acquisition and Public Infrastructure Contribution, unless such conditions involve soils correction work or other work required to provide a structurally suitable base for the Ballpark in which case such costs shall be Ballpark Costs. Such increased costs shall be funded to the extent applicable pursuant to the provisions of Section 5.6 of this Agreement.

(d) The Parties hereby agree that the Transformer does not need to be removed or relocated in developing the surface parking for the Ballpark.

#### Section 3.4 Parking.

The obligations of the Authority and the Team are set forth in the Parking Lot Lease and the Option Agreement with respect to the Ballpark parking.

### ARTICLE 4 CONSTRUCTION MATTERS

#### Section 4.1 Construction Administration.

(a) CM Agreement. The Authority authorizes and the County consents to the Team entering into the CM Agreement upon the terms approved by the County and the Authority and

in accordance with the terms of this Agreement. The CM Agreement shall include provisions requiring:

- (i) an indemnification in favor of the County, the Authority and the Team acceptable to all of them;
- (ii) the Construction Manager to maintain insurance acceptable to the County, Authority and the Team, including commercial general liability with the Team, Authority and County as named insureds, and errors and omissions insurance where applicable;
- (iii) acknowledgement of the Authority as third party beneficiary of the agreement;
- (iv) a conditional assignment of the agreement to the Authority or its designee in the event of default by the Team under the CM Agreement;
- (v) the right to require payment and performance bonds if and to the extent required to comply with the Act, the terms of any grant or loan, or other reasonable requirements of the County or Authority;
- (vi) the Construction Manager to clearly allocate its fees and costs appropriately between Ballpark Costs and County Site Acquisition and Public Infrastructure Costs and to distinguish Ballpark elements from Site Acquisition and Public Infrastructure Work elements in all plans, reports and invoices;
- (vii) the Construction Manager to be responsible for the performance of the Team Provided/CM Managed Public Infrastructure Work;
- (viii) the Construction Manager to comply with all Legal Requirements, including in the delivery of services and in contracting;
- (ix) the Construction Manager to promptly deliver such documents and other information reasonably requested through the Team Representative by the County in order for the County to complete the EIS and complete all other necessary environmental documents;
- (x) the Construction Manager to promptly deliver such documents and other information reasonably requested by the County or the Authority necessary for the acquisition of the Site or any other property required for the Ballpark or the Site Acquisition and Public Infrastructure Work;
- (xi) the Construction Manager to promptly deliver such documents and other information as reasonably requested through the Team Representative by the County or Authority and otherwise cooperate with the County and the Authority to meet any planning and construction timetable issued by the County under section 13, subdivision 2, of the Act, or to prepare for, present to or respond to inquiries from the Ballpark Implementation Committee, the Minneapolis Planning Commission or the Minneapolis City Council;

(xii) the Construction Manager to promptly deliver documents and other information reasonably requested through the Team Representative, by the County Team or Authority, and to otherwise cooperate with the County, Team and Authority as necessary to facilitate bidding or contracting with third parties;

(xiii) programs, including Youthbuild, which provide for participation by small local businesses and businesses owned by women and people of color in the workforces of the CM and its subcontractors;

(xiv) the Construction Manager to discharge any lien filed by it or its respective subcontractors or consultants for labor performed, or materials or services furnished in connection with the construction of the Ballpark or the Site Acquisition and Public Infrastructure Work; and

(xv) the Construction Manager to comply with the prevailing wage law under Minnesota Statutes sections 177.41 to 177.43.

(b) Team Oversight of CM. The Team, in cooperation with the County and the Authority, shall cause the Construction Manager to:

(i) Prepare the Project Budget, including separately the Ballpark Budget and the Public Infrastructure Budget;

(ii) Develop a Master Project Schedule and cause the Master Project Schedule to be updated on at least a monthly basis and timely deliver a copy of same to the Team Representative, Authority Representative and County Representative;

(iii) Provide detailed estimates as set forth in Sections 2.3 and 2.4;

(iv) Develop an initial Contract Sum and final Contract Sum and a completion date for approval by the Team, County and Authority;

(v) Develop contract prices for the Team Provided/CM Managed Public Infrastructure Work to be constructed by the CM for approval by the County.

(vi) Organize the division of the construction work for both the Ballpark and the Team Provided/CM Managed Public Infrastructure Work into major trades for bidding in accordance with the Act;

(vii) Obtain or cause to be obtained, in coordination with the Architect, all Permits;

(viii) Review the Design Documents and make recommendations to the Architect, Team, County and Authority to coordinate the work of separate bid packages, allocate the work into separate bid packages, and provide coordination of the construction;

(ix) Maintain complete and accurate books and records, consistent with industry standards, regarding the design and construction of the Ballpark and Team Provided/CM Managed Public Infrastructure Work, including, without limitation, records relating to the Contract Documents, shop drawings, Change Orders, as built drawings, applications for payment, Permits, insurance policies, correspondence, bills, vouchers, receipts and lien waivers;

(x) Develop and implement, with cooperation from the Team, the County and the Authority, a plan to mitigate the impacts of construction on surrounding neighborhoods;

(xi) Develop and implement, in cooperation with the Parties and the City, a plan for construction staging and storage;

(xii) Furnish promptly to the County Representative and Authority Representative all documents and information required to be provided pursuant to this Agreement and all other information that the County Representative or Authority Representative may reasonably request;

(xiii) Notify promptly the County of any claim, suit, proceeding or action that is initiated or threatened or that facts reasonably indicate may be initiated or threatened in connection with the Project;

(xiv) Make available to the County Representative and Authority Representative copies of all Project meeting minutes and, upon request of the County Representative or Authority Representative, all Project documents;

(xv) Make available to the County and Authority copies of all contracts and subcontracts relating to the construction of the Ballpark, and the Site Acquisition and Public Infrastructure Work and all amendments thereto;

(xvi) Provide the Team Representative, the County Representative and Authority Representative with monthly progress reports and at such other times as may be reasonably requested containing such financial information as the County or the Authority may reasonably request relating to Ballpark Costs and including a status report on the progress of the Ballpark construction;

(xvii) Supervise and coordinate the construction of the Ballpark and the Team Provided/CM Managed Public Infrastructure Work so that the Ballpark and the Team Provided/CM Managed Public Infrastructure Work that the County has requested to be performed by CM is constructed, equipped, furnished and substantially completed in a good and workmanlike manner in accordance with the Contract Documents, lien free, by April 1, 2010 (subject to Force Majeure) in accordance with all Legal Requirements;

(xviii) To the extent feasible, provide for the use of environmentally friendly materials in the construction of the Ballpark;

(xix) Erect or cause to be erected, signs at the Site acknowledging the financial assistance of the County with respect to construction;

(xx) Ensure to the greatest extent practicable that the Ballpark is constructed of American-made steel;

(xxi) Develop, with the cooperation of the Team, County and Authority, a transportation management plan for the construction period, including traffic control, truck routing and street closures, for any required City approval; and

(xxii) Implement a plan acceptable to the Team, County and Authority to facilitate minority and female owned businesses participating in subcontracts with emphasis on those businesses located in Hennepin County meeting at least the minimum requirements set forth in Exhibit M, and provide status and progress reports to the County and Authority as requested.

(c) Changes to CM Agreements. The Authority shall approve or disapprove any change, modification or amendment to the CM Agreement and the County shall have the right to approve or disapprove any change, modification or amendment to the CM Agreement concerning provisions other than the amount of services to be provided and the County shall approve or disapprove any change, modification or amendment that results in an increase or decrease in the services or work to be provided under the CM Agreement in excess of \$50,000. The Team shall submit to the County Representative and the Authority Representative for review and approval any proposed change, modification or amendment. The Authority Representative and the County Representative, if applicable, shall have five (5) Business Days to approve or disapprove such change. If the Authority Representative or the County Representative, if applicable, shall fail to approve or disapprove such change within five (5) Business Days, the change shall be deemed to have been approved. Approval shall not be unreasonably withheld or conditioned and the County and/or Authority shall state the reasons for any disapproval in writing. The Team Representative, Authority Representative or County Representative may designate an individual to execute changes on his/her behalf.

(d) Change Orders. The Team shall promptly submit to the Authority Representative for its review and approval all Change Orders and shall submit to the County Representative any Material Change Orders. The County Representative and Authority Representative shall review the Change Order, as applicable, in an expeditious manner so that the Team shall have sufficient time to respond within the period of time provided in the CM Agreement for responding to Change Orders. The failure of the Authority Representative, or the County Representative, if applicable, to respond within five (5) Business Days shall constitute a deemed approval unless the Authority Representative or the County Representative, if applicable, reasonably requests additional time not to exceed five (5) Business Days, in which case the period for action shall be extended for such additional time. The Authority Representative and the County Representative, if applicable, shall exercise good faith efforts to respond as diligently and expeditiously as possible to any requested Change Order. In considering whether to approve a Material Change Order, the County Representative shall consider (i) whether the requested change is a proper use of public funds, and (ii) whether the requested change addresses public needs while not being in excess of what is normal for a similar ballpark. In the event that the County Representative or

Authority Representative disapproves a Change Order, the County Representative or Authority Representative shall state, with specificity, the reason for disapproval. If the execution of any Change Order relates to a Privately Financed Enhancement or results in a Cost Overrun, then the Team, prior to executing the Change Order, shall deposit an amount equal to such Cost Overrun in the Project Accounts containing the Ballpark Funds. The Team shall provide the County and the Authority with a copy of all Change Orders. In addition, the County Representative and Authority Representative shall review for approval, which approval shall not be unreasonably withheld or conditioned, a requested Change Order for a Privately Financed Enhancement unless such requested Change Order is for enhancements to Team administrative spaces (including offices and conference rooms), suites, locker rooms, training area, press box, media room, or the bullpen, in which case approval by the County or Authority shall not be required.

(e) County's and Authority's Right to Attend Meetings. The County Representative and the Authority Representative shall receive from the Team advance notice of all Project meetings. During the term of this Agreement, the County Representative and the Authority Representative shall have the right to attend all of the Construction Team meetings, inspect the Ballpark at all reasonable times and subject to all Site safety rules, and receive all documents provided to the Team at the same time as provided to the Team. The Team Representative, County Representative and the Authority Representative shall meet regularly in order to keep all Parties informed throughout the duration of the planning, design and construction of the Ballpark and the Site Acquisition and Public Infrastructure work.

#### Section 4.2 CM Subcontracting.

(a) The Construction Manager may enter into contracts with contractors for labor, materials, supplies, and equipment for the construction of the Ballpark and Site Acquisition and Public Infrastructure Work through the process of public bidding, provided, with the consent of the Team, the County and the Authority and pursuant to the Act, the Construction Manager may:

(i) Narrow the listing of eligible bidders to those which the Construction Manager determines to possess sufficient expertise to perform the intended functions;

(ii) Award contracts to the contractors that the Construction Manager determines provide the best value, which are not required to be the lowest responsible bidder; and

(iii) For work the Construction Manager determines to be critical to the completion schedule, award contracts on the basis of competitive proposals or perform work with its own forces without soliciting competitive bids if the Construction Manager provides evidence of competitive pricing.

(b) All contracts awarded by the Construction Manager shall be for a stipulated sum and be one hundred percent (100%) bonded.

#### Section 4.3 Lists of Contractors and Subcontractors.

Upon the request of the County, the Team shall promptly furnish to the County and/or Authority correct lists of all contractors and subcontractors employed in connection with the



construction of the Ballpark and the Team Provided/CM Managed Public Infrastructure Work and true and correct copies of all executed contracts, subcontracts and purchase orders therefor.

#### Section 4.4 Team Responsibilities.

(a) The Team shall be responsible for the administration of the Architect Agreement and the CM Agreement, subject to the rights of the County and Authority as set forth herein.

(b) The Team shall select and negotiate contracts with all consultants and professionals that shall comprise the Construction Team, subject to consultation with and final approval by the County and the Authority, such approval not to be unreasonably withheld, conditioned or delayed; with the Authority being named a third-party beneficiary of such contracts; except that at the Authority's option, independent testing contracts may be awarded by the Authority subject to consultation with and final approval by the County and the Team, such approval not to be unreasonably withheld, conditioned or delayed, with the Team being named a third party beneficiary of such independent testing contracts.

(c) The Team shall provide accounting services for the Project, including records that reasonably detail Ballpark Costs and County Site Acquisition and Public Infrastructure Costs. The Team, County and Authority shall agree to standards for tracking and allocating such costs, in accordance with and subject to the limitations of the Act.

(d) The Team shall furnish to the County and the Authority monthly reports, or more often if reasonably requested, containing (i) a status of design planning, (ii) a comparison of the Project Budget, including a breakdown between Ballpark Costs and Site Acquisition and Public Infrastructure Costs, to costs incurred through the date of the report, and an analysis of the reasons for variances, (iii) a narrative comparison of the Master Project Schedule to the work actually completed through the date of the report, and an analysis of the reasons for variances, (iv) any revision to the Master Project Schedule and/or Project Budget, including a breakdown between Ballpark Costs and Site Acquisition and Public Infrastructure Costs, made during the period covered by the report, and (v) the status of any municipal requirements and activities required to facilitate the approval of the Project.

(e) The Team, in cooperation with the County and the Authority, shall develop competitive bidding procedures and requirements to ensure compliance with the Act.

(f) The Team shall cause any consultants retained for the purposes of providing budgeting confirmations and value engineering services or identifying alternative cost reduction options to timely provide such information for consideration by the Team, County and Authority.

(g) The County Representative and the Authority Representative shall have the right to approve the use of contingencies, allowances and bid alternates established in the Ballpark Budget or the Public Infrastructure Budget.

(h) The Team shall, in coordination with the CM, the Architect, the County and the Authority, develop for County and Authority approval, procedures for reviewing and processing applications for payments by the CM, and procedures for payment of other Project Costs, including payments to other consultants. Any such procedures shall include the right of the

Team Representative and Authority Representative to review and approve the applications for payments and invoices and the right of the County Representative to review such applications to assure compliance with Project Budget and the allocation between Ballpark Costs and Site Acquisition and Public Infrastructure Costs.

(i) The Team shall take all action reasonably required to comply with all Legal Requirements and take all reasonable action to cause the Architect, the CM, and all other agents and contractors engaged by, or acting on behalf of, the Team to design and construct the Ballpark and the Team Provided/CM Managed Public Infrastructure Work in accordance with Legal Requirements.

(j) The Team shall supervise punchlist and warranty work after the date of substantial completion of the Ballpark and the Team Provided/CM Managed Public Infrastructure Work.

(k) The Team, with the cooperation of the County and the Authority, shall develop a transportation management plan for Ballpark operations, including traffic control, street signage, street closures or diversions, public transportation issues, and parking meters, for any required City approval.

(l) The Team shall cause the Team Representative to promptly respond to requests from the County or Authority, including but not limited to those requests made pursuant to Sections 2.1 and 4.1.

#### Section 4.5 Permits.

Except to the extent that the Team is unable to do so due to the County's or the Authority's failure to perform its obligations under this Agreement, the Team shall comply with and keep in effect all Permits and other approvals obtained from any Governmental Authorities, regardless of the procurer of such Permits, that relate to the construction of the Ballpark.

#### Section 4.6 Project Labor Agreement.

The Authority and the Team shall cause the Construction Manager to negotiate a no-strike project labor agreement with the applicable trade unions so as to prevent strikes or lockouts that would halt, delay or impede construction of the Ballpark or the Site Acquisition and Public Infrastructure Work. The form of the project labor agreement is as attached in Exhibit N.

#### Section 4.7 Insurance.

(a) Insurance. The Team shall obtain insurance as mutually agreed by the Parties, and the cost of such insurance shall be appropriately allocated between Ballpark Costs and Site Acquisition and Public Infrastructure Costs. The County and the Authority acknowledge that the Team will be implementing an "owner controlled" insurance program. The "owner controlled" insurance program shall, at a minimum, include the following coverages: general liability insurance and workers' compensation and employers' liability insurance. The program shall cover the Parties, Architect, the CM, enrolled subcontractors and enrolled consultants involved in the Project. The Team shall also place and maintain an owner protective professional

indemnity policy, railroad protective liability policy and a pollution liability policy as agreed among the Parties. The Team shall also place and maintain an all-risk or "special form" policy of builder's risk insurance for the Ballpark. The Team, the County and the Authority shall cooperate with each other and jointly adjust and settle any loss insured under the builder's risk insurance or to allocate any deductibles. The Team shall cause the Architect to maintain professional liability insurance as set forth in the Architect Agreement. The limits of liability for the various insurance coverages and other details of the owner controlled insurance program are described in the General Conditions of the Contract for Construction attached to the CM Agreement, a copy of which each Party has reviewed and approved.

(b) Delay in Completion Date. The Parties acknowledge that, under various circumstances, the Team may be entitled to payments as compensation for construction delays or payments to cover certain costs of acceleration pursuant to the "owner controlled" insurance program if such is implemented by the Team with respect to the Project or pursuant to other insurance policies that may be maintained by the Team to cover the costs of delays in construction or construction acceleration costs. Under certain circumstances, the Team may also be entitled to delay damages or liquidated damages pursuant to the terms of the CM Agreement. If the Team is entitled to receive any such payments or damages, then all such payments or damages actually received by the Team shall be allocated among the Parties as determined when placing or implementing such insurance.

(c) Risks of Damage or Destruction Prior to Completion.

(i) The County, the Authority and the Team acknowledge that the Team shall obtain, as a part of the Ballpark Costs, a builder's risk policy of property insurance for the Ballpark, which provides coverage for direct physical loss or damage resulting from an insured peril at the Ballpark or to personal property that is at the Ballpark, in storage or in transit. The maximum deductible under such builder's risk policy shall be \$100,000. Payment of any deductible resulting from an insured peril under the insurance shall be a Ballpark Cost. This coverage may include sublimits for delay in completion (including gross earnings and soft costs) and for flood coverage. The policy shall be an "all risk" or "special form" policy. The Team shall apply the proceeds of any recovery under such builder's risk policy of property insurance toward restoration of the damage giving rise to such proceeds and to other costs arising out of such damage. The Team shall not be liable or otherwise financially responsible for any loss or damage caused by actions or omissions of the County or the Authority that is not covered by the builder's risk insurance. All such insurance proceeds shall be considered Project Funds and will be deposited in the appropriate Project Accounts in order to pay for the Ballpark Costs.

(ii) The Team shall cause to be obtained a builder's risk policy of property insurance for improvements to be constructed as part of the Site Acquisition and Public Infrastructure Costs, which shall provide coverage for direct physical loss or damage resulting from an insured peril at the Site or to personal property that is at the Site, in storage or in transit, in connection with the Site Acquisition and Public Infrastructure Work. The maximum deductible under such builder's risk policy shall be \$100,000. Payment of any deductible resulting from an insured peril under the insurance shall be a Site Acquisition and Public Infrastructure Cost. The Team, County and Authority shall

decide whether to obtain such coverage for roads, streets and paving, and shall otherwise cooperate to assure that all improvements to be insured under the policy are identified and reported to the property insurer. The policy shall be an "all risk" or "special form" policy. The County or Authority shall apply the proceeds of any recovery under such builder's risk policy of property insurance toward restoration of the damage giving rise to such proceeds and to other costs arising out of such damage. All such insurance proceeds received by the Authority as the insured shall be considered Project Funds and will be deposited by the Authority in the appropriate Project Accounts in order to pay for the County Site Acquisition and Public Infrastructure Costs.

(d) Allocation of Costs of Insurance. The costs of the above referenced owner controlled insurance program, the owner protective professional indemnity policy, the railroad protective liability policy and pollution liability policy shall be allocated 18.75% to County Site Acquisition and Public Infrastructure Costs and 81.25% to Ballpark Costs.

## ARTICLE 5 FINANCING OF THE PROJECT

### Section 5.1 Project Budget.

The Team, the Authority and the County agree that the Project Costs shall be paid pursuant to the Project Budget. Subject to the terms and conditions of this Agreement, the Parties shall provide the following financing toward the Project Budget:

(a) Team Contribution. Subject to the terms and conditions of this Agreement, the Team shall deposit the Team Contribution into the Project Accounts, which contribution shall be deposited as follows:

(i) On or before May 7, 2007, the Team shall deposit the Team Initial Payment into the Project Accounts, which contribution shall be made by wire transfer of federal funds for deposit in one or more of the Project Accounts. The Team Initial Payment shall be the source of the first funds used for construction of the Ballpark.

(ii) After the County has fully funded the County Ballpark Contribution and the remaining cash balance in the Project Accounts for Ballpark Costs is less than \$25,000,000 (Twenty-Five Million Dollars), the Team shall deposit the Team Final Payment into the Project Accounts within thirty (30) days, which contribution shall be made by wire transfer of federal funds for deposit in one or more of the Project Accounts. The Team Final Payment shall be the source of the last funds used for construction of the Ballpark. On or before the Funding Date, the Team shall provide a Letter of Credit in an amount equal to the Team Final Payment or other pledged collateral in an amount satisfactory to the County and Authority in form and substance reasonably acceptable to the County and Authority, and which shall permit the Authority to make draws thereunder upon presentment of a draw certificate. If the Team makes the Final Payment or if the County should fail to issue any of the series of bonds set forth in Section 5.1(b), below, the Letter of Credit or other pledged collateral shall be released in an amount equal to the amount that remains to be contributed by the County for the County Ballpark

Contribution and the County Site Acquisition and Public Infrastructure Contribution and the County and Authority shall take such appropriate actions as necessary to release the Letter of Credit or other collateral.

(iii) The Team Contribution is unconditional as to sources of payment, shall earn interest on any funds deposited pending disbursement, and may be structured as prepaid rent or otherwise to provide maximum benefit to the Team to allow the Team to remain competitive, all as more particularly set forth in the Lease Agreement.

(iv) The Team Initial Payment shall be used for payment of the Ballpark Costs.

(v) Regardless of the timing of the contribution and disbursement of the Ballpark Funds, the Team and the Authority agree that legal and beneficial ownership of the Ballpark shall be set as set forth in Section 5.8 hereof, but no such agreement as to legal and beneficial ownership shall affect the rights of a Party under this Agreement, including but not limited to design approval.

(vi) Subject to the provisions of a separate joint litigation agreement between the Team and County dated April 10, 2007, and any agreements made thereunder or with the Authority, the Team will pay certain amounts to the Authority for additional County Site Acquisition and Public Infrastructure Costs in excess of the County Site Acquisition and Public Infrastructure Contribution ("Team Additional Funds"). Payment of the Team Additional Funds shall be made when the County or the Authority have spent or obligated \$85 million of the County Site Acquisition and Public Infrastructure Costs. On or before December 31, 2007, or such later date as agreed upon by the Parties, the Team shall provide a Letter of Credit in an amount equal to the Team Additional Funds or other pledged collateral in an amount satisfactory to the County and Authority, in form and substance reasonably acceptable to the County and Authority, and which shall permit the Authority to make draws thereunder upon presentment of a draw certificate. The Team Additional Funds will first be used to mitigate the impact on non-land infrastructure items from acquisition costs for the Site in excess of \$23 million, which is the total amount allocated by the County for the acquisition of the Site. Any remaining Team Additional Funds will be spent first to fund PI Overrun pursuant to Section 5.6(a) and second on Public Infrastructure Work as agreed upon by the County Representative, Authority Representative and Team Representative, each in his sole discretion, provided, however, that any payment by the County or Authority to BNSF shall not require Team approval. If Team Additional Funds remain after using such funds as described above, such remaining Team Additional Funds will be used for Ballpark enhancements not included in the approved Design Documents. The design and specifications for Public Infrastructure Work or Ballpark enhancements are subject to the approval of the County and the Authority as provided in this Agreement for Change Orders.

(b) County Ballpark Contribution. The County shall authorize the issuance of bonds in connection with the approval of this Agreement in order to make the grant of the County Ballpark Contribution to the Authority. Such authorization shall be binding upon the County in accordance with the approved bond resolution unless the County terminates in accordance with this Agreement. The County anticipates issuing the bonds in three series with the first issuance

occurring on or before June 29, 2007, with the subsequent issuances on or before March 31, 2008, and June 30, 2008; provided, however, that the issuance dates remain within the sole discretion of the County, but shall occur no later than the preceding dates. Upon the issuance of any of the bonds in one or more series, the County shall grant to the Authority and the Authority shall deposit into the Project Accounts in a timely manner bond proceeds totaling Two Hundred Sixty Million Dollars (\$260,000,000) towards the County Ballpark Contribution, which contribution shall be made by wire transfer of federal funds for deposit into one or more of the Project Accounts. Any interest on earnings on that portion of the County Ballpark Contribution granted to the Authority shall be retained by the Authority and may be used in the sole discretion of the Authority for any lawful purpose. Any interest earnings on the County Ballpark Contribution prior to expenditure by grant to the Authority shall be retained by the County and may be used in the sole discretion of the County for lawful purposes.

(c) County Site Acquisition and Public Infrastructure Contribution. The County shall authorize the issuance of bonds in connection with the approval of this Agreement in order to make the grant of the County Site Acquisition and Public Infrastructure Contribution to the Authority. Such authorization shall be binding upon the County in accordance with the approved bond resolution unless the County terminates in accordance with this Agreement. Upon issuance of any of the bonds, the County shall grant to the Authority and the Authority shall deposit into the Project Accounts in a timely manner such portion of the bond proceeds that the County will pay in cash towards the County Site Acquisition and Public Infrastructure Contribution, which contribution shall be made by wire transfer of federal funds for deposit into one or more of the Project Accounts. In addition, the County may use bond proceeds to acquire, or to reimburse itself for acquiring, property interests that the County shall grant to the Authority. Any interest on earnings on that portion of the County Site Acquisition and Public Infrastructure Contribution granted to the Authority shall be retained by the Authority and may be used in the sole discretion of the Authority for any lawful purpose. Any interest earnings on the County Site Acquisition and Public Infrastructure Contribution prior to expenditure by grant to the Authority shall be retained by the County and may be used in the sole discretion of the County for lawful purposes.

(d) Ballpark Cost Savings. If Ballpark Costs are less than \$390 million, the difference between \$390 million and the actual Ballpark Costs shall be shared pro rata between the Authority and the Team, with the Authority receiving two-thirds (2/3) of the difference for repayment to the County to the extent provided in the Grant Agreement and the Team receiving one-third (1/3) of the difference; provided, however, to the extent that the Team had advanced funds in excess of its \$130 million share, including the Team Additional Funds, excluding Privately Financed Enhancements, it shall first be repaid such amounts in excess of \$130 million, including the Team Additional Funds, from any savings before such savings are shared by the Parties. In addition, the Parties intend that at least \$390 million shall be spent towards Ballpark Costs. The Parties shall cooperate with each other to assure that as many program elements, amenities and design features as are reasonable for a first class MLB ballpark with an equivalent budget for Ballpark Costs are included in the Ballpark. To that end, as part of the bid documents for the construction of the Ballpark, the Parties shall include a list of agreed to bid alternates that will contain additional amenities and design features that will be added to the Ballpark so long as their addition does not cause the Ballpark Budget to exceed \$390 million.

## Section 5.2 Project Accounts and Termination of Project Accounts.

(a) The Project Accounts shall be established jointly by the Authority and the Team with a financial institution mutually agreeable to the Parties. The Project Accounts shall include separate accounts for the Ballpark Funds, including separate subaccounts for the Team Contribution and the County Ballpark Contribution, and the County Site Acquisition and Public Infrastructure Contribution (including a separate sub-account for the Team Additional Funds), each of which accounts shall be managed or administered pursuant to a trust and escrow agreement or similar agreement with a financial institution mutually acceptable to the Parties. The respective trust and escrow agreements or similar agreements shall contain terms and conditions relating to disbursement, certification and application of funds. To the extent permitted by applicable Laws, interest earned on the Team Contribution shall be included within the Project Accounts and available for disbursement for Ballpark Costs, and interest earned on the Team Additional Funds shall be included within the Project Accounts and available for disbursement, as applicable, for either Ballpark Costs or County Site Acquisition and Public Infrastructure Costs.

(b) Upon certification by the Authority in writing to the financial institution responsible for the Project Accounts that any of one of the following has occurred: (i) all Ballpark construction and Site Acquisition and Public Infrastructure Work has been completed in accordance with this Agreement; (ii) any Party has exercised its termination right under Sections 9.2 or 9.6 hereof; (iii) for any reason whatsoever Site acquisition, Ballpark construction, or Site Acquisition and Public Infrastructure Work has not and will not be commenced, or has been permanently terminated before completion; or (iv) the County, the Authority and/or the Team are a party or parties to litigation regarding disputes resulting in an indefinite suspension of Site acquisition, County Site Acquisition and Public Infrastructure Work or Ballpark construction; and in all cases, all legally owing Ballpark Construction Costs and County Site Acquisition and Public Infrastructure Costs have been fully paid, then the Project Accounts will be terminated.

(c) The Project Accounts shall be terminated by the financial institution in the following manner:

(i) All remaining amounts in the Project Accounts (but not the pledged collateral or Letter of Credit posted by the Team) shall be promptly liquidated.

(ii) If construction of the Ballpark has been completed, then Project Account funds, subject to the Ballpark Cost savings disposition requirements of Section 5.1(d) hereof, shall be allocated and distributed consistent with those requirements as certified by the Authority, and any Project Account funds and interests not subject to such requirements as certified by the Authority shall be distributed and released as follows:

(A) all remaining amounts from County Ballpark Contribution and County Site Acquisition and Public Infrastructure Contribution then held in any Project Account and any remaining funds earned from investment of County Ballpark Contribution and County Site Acquisition and Public Infrastructure Contribution shall be paid from the Project Accounts to the Authority, which shall

use such funds to make a refund to the County if and to the extent required by the Grant Agreement;

(B) all remaining Team Contribution and Team Additional Funds then held in any Project Account and any remaining funds earned from investment of such Team Contribution and Team Additional Funds shall be paid from the Project Accounts to the Team; and

(C) the Letter of Credit or other pledged collateral shall be released and transferred to the owner thereof, in each case as directed in writing to the financial institution by such party.

(iii) If construction of the Ballpark has not been completed and one of the other events set forth in Section 5.2(b)(ii), (iii) or (iv) has occurred then:

(A) all remaining County Ballpark Contributions and County Site Acquisition and Public Infrastructure Contributions then held in any Project Account and any remaining funds earned from investment of County Ballpark Contribution and County Site Acquisition and Public Infrastructure Contribution shall be paid from the Project Accounts to the Authority, which shall use such funds to make a refund to the County if and to the extent required by the Grant Agreement;

(B) all remaining Team Contribution and Team Additional Funds then held in any Project Account and any remaining funds earned from investment of such Team Contribution and Team Additional Funds shall be paid from the Project Accounts to the Team; and

(C) the Letter of Credit or other pledged collateral shall be released and transferred to the owner thereof, in each case as directed in writing to the financial institution by such party.

(d) Disposition of amounts in the Project Accounts and interest as provided under this Agreement shall not satisfy, affect or resolve any claims or rights held or asserted by any Party related to or arising in connection with duties, disputes or performance unrelated to such disposition, arising under this Agreement, the Grant Agreement or any other agreement.

#### Section 5.3 Payment Procedures.

The Team and the Authority shall agree upon the payment procedures that shall be implemented in connection with payments to be made from the Project Accounts and the form of Disbursement Request to be used in requesting payments.

#### Section 5.4 Team Advanced Funds.

(a) Reimbursement to the Team.



(i) The Parties acknowledge that the Team may, upon agreement of the County, the Authority and the Team, each in their respective sole discretion, expend Ballpark Advanced Funds and Public Infrastructure Advanced Funds. The Team may deduct the Ballpark Advanced Funds from the Team Initial Payment to be made on May 7, 2007.

(ii) If this Agreement is terminated by the Team under Sections 9.6(a)(i), (iii), (iv) or (v) hereof or is terminated due to default by the Authority or the County pursuant to Sections 10.1(b) or 10.1(c) hereof, then the County and the Authority shall reimburse the Team within ten (10) days after termination for two-thirds of Ballpark Advanced Funds and all of the Public Infrastructure Advanced Funds.

(iii) If this Agreement is terminated by the County and the Authority under Sections 9.6(b)(i), (ii), (iii) or (vi) hereof, then the County and the Authority shall reimburse the Team within ten (10) days after termination for two-thirds of Ballpark Advanced Funds and all of the Public Infrastructure Advanced Funds.

(iv) If this Agreement is terminated by the County and the Authority under Section 9.6(b)(vii), the County and Authority shall reimburse the Team within ten (10) days for all of the Public Infrastructure Advanced Funds, but the Team shall not be entitled to reimbursement of Ballpark Advanced Funds.

(b) Reimbursement to County. If this Agreement is terminated by the Team pursuant to Section 9.6(a)(ii) hereof or is terminated due to default by the Team pursuant to Section 10.1(a) hereof or is terminated by the County and the Authority pursuant to Section 9.6(b)(iv) or (v), then the Team shall not be entitled to reimbursement of Ballpark Advanced Funds and the Team shall promptly reimburse the Authority, within ten (10) days after the termination, for any expenses paid directly by the Authority or County for Ballpark Costs or County Site Acquisition and Public Infrastructure Costs, except for the acquisition costs of the Site or other real property rights acquired by the County or Authority. The Authority shall pay to the County such amounts it receives pursuant to this Section as required pursuant to the Grant Agreement. The County shall receive ownership of the Site's acquired rights by reversion from the Authority to the extent provided in the Grant Agreement or if such ownership rights were not conveyed, the County shall remain the owner of the Site and the acquired rights.

(c) Reimbursement for Vertical Circulation Building. If this Agreement is terminated for any reason, by any of the Parties, the Team shall pay to the County an amount equal to one-third of the County's commitments regarding the vertical circulation building for light and commuter rail that will be constructed along with the Ballpark.

#### Section 5.5 Cost Overruns.

The Team shall be responsible for payment of any Cost Overrun, which payment shall be made at such time as any portion thereof is legally required to be paid with respect to the Ballpark. So long as the Team is diligently proceeding to complete the Ballpark in accordance with the Contract Documents (including the Master Project Schedule), the County shall not have

the right to incur costs for which the County shall not be liable or to obligate the Team to incur costs without the prior written approval of the Team.

**Section 5.6 Responsibility for Team Provided/CM Managed Public Infrastructure Work and Application of Team Additional Funds.**

(a) The Contract Sum shall include a separate allocation for Team Provided/CM Managed Public Infrastructure Work, including the Construction Manager's contingency of five percent (5%) as adjusted for net buyout savings (the "PI Allocation"), in an amount not to exceed the amount budgeted for Team Provided/CM Managed Public Infrastructure Work in Exhibit O. The Authority shall include in its overall budget for Soft Costs/Contingency in Exhibit O a contingency of at least fifteen percent (15%) of the PI Allocation (the "Authority PI Contingency"). In the event (a) the actual Cost of the Work (terms used in this Section 5.6 not otherwise defined in this Agreement are used as defined in the CM Agreement) for Team Provided/CM Managed Public Infrastructure Work exceeds the PI Allocation, and (b) the Construction Manager is entitled to payment for such overrun (the "PI Overrun") under the CM Agreement, then the Authority and Team shall pay PI Overruns from the following sources, in the following order:

(i) The Authority shall pay up to five percent (5%) of the PI Allocation from the Authority PI Contingency.

(ii) The Team shall pay up to Three Million Dollars (\$3,000,000) from the Team Additional Funds, if any, remaining after application of the Team Additional Funds to mitigate the impact on non-land infrastructure items from acquisition costs for the Site in excess of \$23 million, pursuant to Section 5.1 (a)(vi) of this Agreement.

(iii) The Authority shall pay up to ten percent (10%) of the PI Allocation from the Authority PI Contingency.

(iv) The Team shall contribute up to an additional \$3,000,000 to pay any PI Overrun remaining to be paid, if any.

(v) The Authority shall be responsible for payment of any PI Overrun remaining to be paid, if any.

Notwithstanding the foregoing, before the Authority is required to fund any PI Overrun, the Authority shall have the right to reduce the scope or eliminate one or more items of the Site Acquisition and Public Infrastructure Work, in consultation with the County and Team, as contemplated in Section 2.4(a). The obligation of the County and Authority to fund costs of Site Acquisition and Public Infrastructure Work, including Team Provided/CM Managed Public Infrastructure Work and PI Overrun, shall in no event exceed the \$90,000,000 County Site Acquisition and Public Infrastructure Contribution.

(b) Commencing upon award of Subcontracts representing at least 50% of the PI Allocation, the Authority may use a portion of the Authority PI Contingency for enhancements to the Public Infrastructure Work, with the consent of the County, and in consultation with the Team, provided the Authority shall at all times maintain an Authority PI Contingency in the

minimum amount of fifteen percent (15%) of the PI Allocation for which Subcontracts have not been awarded.

(c) Any portion of the remaining Team Additional Funds after application as provided in this Section 5.6, if any, shall be applied as provided in Section 5.1.

#### Section 5.7 Sales Tax Exemption.

As necessary, the County and the Authority shall cooperate with the Team to utilize the sales tax exemptions for materials and equipment under the Act. The County or the Authority (as applicable) shall execute and deliver all documents and certificates as necessary to assure that the Project takes full advantage of sales tax exemptions for materials and equipment available under the Act. The management of the delivery and installation of such materials and equipment shall be the responsibility of the CM.

#### Section 5.8 Ownership of Ballpark and Infrastructure.

The Team acknowledges and agrees that the Site, together with all real and personal property constructed, installed and placed on the Site, including the Ballpark and the Public Infrastructure, and all right, title and interest thereto and therein, shall be the property of and owned by the Authority, subject, however, to such ownership, right, title and interest as are conferred on the Team pursuant to the Lease Agreement. In furtherance thereof the Team, at the request of the Authority, will execute and deliver a confirmatory quit claim deed or quit claim bill of sale in form and substance reasonably acceptable to the Authority (subject, however, to the rights of the Team under the Lease Agreement). The Authority agrees that the Team shall retain all tax benefits with respect to the Ballpark and related property as set forth in the Lease Agreement.

### ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF AUTHORITY

The Authority hereby represents and warrants to the Team and the County that, as of the date of execution of this Agreement:

#### Section 6.1 Authorization, Validity and Enforceability.

The Authority has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance by the Authority of this Agreement have been duly authorized and approved by all necessary Authority action. This Agreement when executed, shall constitute the valid and legally binding obligations of the Authority, enforceable against it in accordance with its terms.

#### Section 6.2 No Conflicts.

The execution, delivery and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments or decrees to which the Authority is a party, or by which the Authority or its assets may be bound or affected.

Section 6.3 No Violation of Laws.

The Authority has complied in all material respects with all Legal Requirements, and the Authority is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

Section 6.4 Litigation.

To the actual knowledge of the Authority there is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against the Authority seeking to restrain or prohibit, or seeking Damages or other relief in connection with, the execution of this Agreement and the performance of the transactions contemplated herein or the performance of the Authority hereunder.

Section 6.5 Authorization of the Team.

Pursuant to Section 11, subdivision 12 of the Act, the Authority has duly authorized the Team to provide for the design and construction of the Ballpark and related Public Infrastructure and the Authority has obtained the consent of the County to such authorization, except those portions of the Public Infrastructure Work expressly reserved to the Authority or County pursuant to Exhibit K of this Agreement. The Authority shall promptly provide further evidence of such authorization as the Team may reasonably request to demonstrate the Team's authority to third parties.

ARTICLE 7  
REPRESENTATIONS AND WARRANTIES OF TEAM

The Team hereby represents and warrants to the Authority and the County that, as of the date of execution of this Agreement:

Section 7.1 Organization.

The Team is a limited liability company duly organized, validly existing and in good standing under the Laws of State of Delaware and is the owner of the Minnesota Twins MLB franchise.

Section 7.2 Authorization, Validity and Enforceability.

All corporate action necessary for the authorization, execution, delivery and performance of all obligations of the Team under this Agreement has been taken. All consents and approvals of any Person required in connection with the execution of this Agreement have been obtained. This Agreement, when executed, shall constitute valid and legally binding obligations of the Team enforceable against it in accordance with its terms.

Section 7.3 Financial Position.

The Team is able to pay its debts as they mature and possesses sufficient working capital to meet its financial obligations, as they become due, under this Agreement.

Section 7.4 No Conflicts.

The execution, delivery and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, instruments, contracts, judgments or decrees to which the Team is a party or by which the Team or its assets may be bound or affected including the Constitution, by-laws, rules and regulations of Major League Baseball, nor shall the execution, delivery and performance of this Agreement result in the breach of or constitute a default under any loan or credit agreement, or other agreement or instrument to which the Team is a party or by which the Team or its assets may be bound or affected.

Section 7.5 No Violations of Laws.

The Team has complied in all material respects with all Legal Requirements and the Team is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

Section 7.6 Litigation.

To the actual knowledge of the Team there is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against the Team seeking to restrain or prohibit, or seeking Damages or other relief in connection with the execution of this Agreement and the performance of the transactions contemplated herein or the performance of the Team hereunder.

ARTICLE 8  
REPRESENTATIONS AND WARRANTIES OF COUNTY

The County hereby represents and warrants to the Authority and the Team that, as of the date of execution of this Agreement:

Section 8.1 Authorization, Validity and Enforceability.

The County has all requisite power and authority to enter into this Agreement and to carry out the actions contemplated hereby. The execution, delivery, and performance by the County of this Agreement has been duly authorized and approved by all necessary County action. This Agreement, when executed, shall constitute the valid and legally binding obligations of the County, enforceable against it in accordance with its terms.

Section 8.2    No Conflicts.

The execution, delivery and performance of this Agreement shall not result in a violation of, in any material respect, any provision of any other agreements, charters, instruments, contracts, judgments or decrees to which the County is a party, or by which the County or its assets may be bound or affected.

Section 8.3    No Violation of Laws.

The County has complied in all material respects with all Legal Requirements, and the County is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Authority that is in any respect material to the transactions contemplated in and by this Agreement.

Section 8.4    Litigation.

To the actual knowledge of the County, there is no action, suit, proceeding or investigation at law or in equity or by or before any Governmental Authority now pending or threatened against the County seeking to restrain or prohibit, or seeking Damages or other relief in connection with, the execution this Agreement and the performance of the transactions contemplated herein or the performance of the County hereunder.

Section 8.5    Consent to Authorization of the Team.

Pursuant to Section 11, subdivision 12 of the Act, the County has duly consented to the Authority's authorization of the Team to provide for the design and construction of the Ballpark and related Public Infrastructure, except those portions of the Public Infrastructure Work expressly reserved to the Authority or County pursuant to Exhibit K of this Agreement, subject to terms of this Agreement. The County shall promptly provide further evidence of such consent as the Team may reasonably request to demonstrate the Team's authority to third parties.

ARTICLE 9  
ADDITIONAL COVENANTS AND CONDITIONS

Section 9.1    Additional Covenants of the Parties.

(a)    Ballpark Traffic Control. The Authority, with the assistance of the County and the Team, shall enter into an agreement with the City regarding traffic control for the Ballpark during operation of the Ballpark. The traffic control plan shall be subject to the approval of the Team, which approval shall not be unreasonably withheld, conditioned or delayed. The Team, the Authority and the City shall work together and cooperate in handling matters related to transportation, management, traffic control and other operational matters, including entering into appropriate agreements.

(b)    HERC. The County shall operate HERC in accordance with all permits relating to air emissions issued by the Minnesota Pollution Control Agency and in a manner that minimizes any interference with the use of the Ballpark.

(c) Utilities. During the initial thirty (30) year term of the Lease Agreement, the County shall assist the Team in obtaining the long term rates and service for certain utilities from HERC for the Ballpark at rates reflecting cost as determined in a separate agreement between the Team, the Authority and the County. If the County discontinues or terminates its obligations to provide such utilities during the initial thirty (30) year term of the Lease Agreement, the County shall be responsible for any additional one-time costs of securing and connecting to replacement services.

(d) Liquor License. The Authority shall cooperate with the Team, with the assistance of the County, in the Team's (or the Team's concessionaires') efforts to obtain from the City all intoxicating liquor licenses that are reasonably requested by the Team for the Ballpark. These licenses are in addition to the number authorized by law and shall be issued in the name of the Team.

(e) Environmental Impact Statement Mitigation Plan. The Team and the Authority shall cooperate in implementing the Environmental Impact Statements Mitigation Plan that may be adopted for the Project.

(f) County's CapEx Contribution. During the initial thirty (30) year term of the Lease Agreement, the County shall annually deposit into the CapEx Reserve Fund (as defined in the Lease Agreement) One Million One Hundred Thousand Dollars (\$1,100,000), plus annual increases as set forth in the Lease Agreement.

(g) City's Investment in the Ballpark. The County shall, in cooperation with the Authority and the Team, identify areas of investment which should be the responsibility of the City.

(h) Use of References and Logos in Offering Documents. The County, Authority and the Team shall permit references to their respective entities and organizations and the use of their respective logos, if any, in all offering documents of the County related to the issuance of the bonds.

(i) County Public Infrastructure Capital Expense Contribution. During the initial thirty (30) year term of the Lease Agreement, the County shall, as and when needed from sales tax revenues, fund the capital repair and replacement obligations of the Authority with respect to the Public Infrastructure as set forth in the Lease Agreement, excluding obligations of the Team as set forth in the Lease Agreement; it being understood that the County's funding of such obligations of the Authority under the Lease Agreement does not extend to upgrades and enhancements to the Public Infrastructure over which the County has the discretion but not the obligation to fund.

(j) Railroad Legislation. The Parties shall cooperate with each other to seek legislation to establish appropriate limits of liability for the risk exposures associated with the BNSF railroad adjacent to the Site.

(k) MNDOT Lease and License. The Authority intends to enter into a license with MNDOT connecting Third Avenue North to the Field Level Access Road identified on Exhibit J and a lease with MNDOT for the 6th Street North Pedestrian Crossing identified on Exhibit J.

The Authority will pay the present value of the license or lease payments calculated as of the beginning of the license or lease term, as the case may be, over the Initial Term of the Lease Agreement, as defined therein. The Team will pay, as an Operating Expense, all additional charges under the MNDOT license or MNDOT lease arising from activities of the Team in the license or easement areas within the Bridge/Plaza/Connector (as defined in the Lease Agreement) that cause the license or lease payments or other related charges of the Authority to increase.

## **Section 9.2    Execution of Documents.**

(a)        The execution and delivery of the Lease Agreement and the Use Agreement by the Team and the Authority in form and content acceptable to the County shall be a condition precedent to the effectiveness of this Agreement, unless each Party in their respective discretion waives the condition.

(b)        The Parties shall use their respective best efforts, as applicable, to cause the following to occur on or before the respective dates set forth below:

(i)        A letter from Team or its consultant that provisions of the CM Agreement are usual and customary shall be delivered by April 17, 2007, the receipt and sufficiency of which the Parties acknowledge.

(ii)       A letter from Team or its consultant that the provisions of the Architect Agreement are usual and customary shall be delivered by April 17, 2007, the receipt and sufficiency of which the Parties acknowledge.

(iii)      The Team shall have executed and delivered the CM Agreement in form and content acceptable to the County and the Authority on or before May 15, 2007;

(iv)      The Team shall have executed and delivered the Architect Agreement in form and content acceptable to the County and the Authority on or before May 15, 2007;

(v)        The County and the Authority shall have executed the Grant Agreement on or before 12:00 noon (Minneapolis time) April 30, 2007;

(vi)       The Team (or its Affiliate) and the Authority shall have executed and delivered the Option Agreement in form and content satisfactory to the Team (or its Affiliate) and the Authority pursuant to and consistent with any prior agreement as to the terms between the Authority and the Team (or its Affiliate) on or before July 31, 2007;

(vii)      The Team (or its Affiliate) and the Authority shall have executed and delivered the Parking Lot Lease in form and content satisfactory to the Authority and the Team (or its Affiliate) pursuant to and consistent with any prior agreement as to the terms between the Authority and the Team (or its Affiliate) on or before July 31, 2007;

(viii)     The Team shall have executed and delivered an agreement with the Team Representative in form and content acceptable to the County and Authority on or before April 17, 2007, the receipt and sufficiency of which the Parties acknowledge.



(ix) The County shall have approved a bond resolution authorizing the issuance of bonds in amounts sufficient for the County Ballpark Contribution and the County Site Acquisition and Public Infrastructure Contribution on or before May 31, 2007.

(x) The Team shall have executed and delivered a legally-binding agreement, which may be in letter form, between the Team and BNSF in a form and content satisfactory to the County and the Authority in their sole discretion addressing BNSF's liability concerns on or before April 27, 2007.

(c) If any of the documents listed in Section 9.2(b) have not been executed and delivered on or before the respective dates set forth therein, then any Party may terminate this Agreement by written notice to the other Parties, unless the Parties have agreed, in their respective sole discretion, to extend any of the above dates. A notice to terminate is not subject to the cure periods set forth in Section 10.1 hereof. A notice to terminate or notice providing an extension of the termination date must be given on or before 15 days after the applicable date set forth above (as such date may be extended by agreement of the Parties) or the termination right granted under Section 9.2 relating to the particular event shall expire. Any Party may thereafter exercise any right or remedy available under Section 10.1 hereof, not related solely to failure to deliver and execute the document, other than termination.

(d) In the event the Agreement does not become effective under Section 9.2(a) or is terminated by a Party pursuant to Section 9.2(c), no Party shall be entitled to reimbursement of expended funds except that the Team shall receive all amounts of Public Infrastructure Advanced Funds and, in addition, if the Agreement is terminated under Section 9.2(c) because of the County's failure to authorize the bonds as provided in Section 9.2(b)(ix), then the Team shall also receive two-thirds (2/3) of Ballpark Advanced Funds.

### Section 9.3 Authority's Conditions.

The obligations of the Authority to perform this Agreement are subject to the satisfaction of each of the following conditions (any of which may be waived by the Authority, in whole or in part):

(a) Accuracy of Representations. All of the representations and warranties of the Team and the County in this Agreement must have been accurate in all material respects as of their respective dates of execution and delivery.

(b) Performance. All of the covenants and obligations that the Team is required to perform or to comply with pursuant to this Agreement prior to the date of the Authority's performance, as applicable, including the delivery of all documents and notices provided for therein, must have been performed and complied with in all material respects.

(c) No Injunction. There shall not be in effect any Legal Requirements or any injunction or other order that prohibits the consummation of this Agreement.

(d) Delivery of Other Documents. The County and the Team shall have delivered all documents and notices required by this Agreement.

#### Section 9.4 Team's Conditions.

The obligations of the Team to perform this Agreement are subject to the satisfaction of each of the following conditions (any of which may be waived by the Team, in whole or in part):

(a) Accuracy of Representations. All of the Authority's and the County's representations and warranties in this Agreement must have been accurate in all material respects as of the date hereof.

(b) Performance. All of the covenants and obligations that the Authority and the County are required to perform or to comply with pursuant to this Agreement prior to the date of the Team's performance, as applicable, including the delivery of all documents and notices provided for therein, must have been performed and complied with in all material respects.

(c) No Injunction. There must not be in effect any Legal Requirements or any injunction or other order that prohibits the consummation of this Agreement.

(d) Delivery of Other Documents. The Authority and the County shall have delivered all documents and notices required by this Agreement.

#### Section 9.5 County's Conditions.

The obligations of the County to perform this Agreement are subject to the satisfaction of each of the following conditions (any of which may be waived by the County, in whole or in part):

(a) Accuracy of Representations. All of the Authority's and Team's representations and warranties in this Agreement must have been accurate in all material respects as of the date hereof and, unless made as of a specified date.

(b) Performance. All of the covenants and obligations that the Authority and the Team are required to perform or to comply with pursuant to this Agreement prior to the date of the County's performance, as applicable, including the delivery of all documents and notices provided for therein, must have been performed and complied with in all material respects.

(c) No Injunction. There must not be in effect any Legal Requirements or any injunction or other order that prohibits the consummation of this Agreement.

(d) Delivery of Other Documents. The Authority and the Team shall have delivered all documents and notices required by this Agreement.

#### Section 9.6 Termination Rights.

(a) Team Termination Rights. The Team shall be permitted to terminate this Agreement upon written notice to the Authority and the County, if any of the following occurs:

(i) - - failure of County and Authority to provide access to the areas of the Site necessary for commencement of construction in accordance with Exhibit G.

(ii) subject to using reasonable efforts to identify cost savings or alternative sources of funding, including but not limited to Team Additional Funds under Section 5.1, if, prior to August 31, 2007, the Team determines that the anticipated Ballpark Costs exceed the Ballpark Budget or the Site Acquisition and Public Infrastructure Costs exceed the County Site Acquisition and Public Infrastructure Contribution;

(iii) the Funding Date shall not have occurred on or before June 29, 2007;

(iv) any assignment of this Agreement by the County or the Authority in violation of this Agreement, unless such assignment is rescinded upon notice by the Team; or

(v) The imposition of conditions or terms by the City in its resolution acting upon the recommendations of the Ballpark Implementation Committee that are unreasonable to the Team.

(b) County and Authority Termination Rights. The County and the Authority may jointly elect to terminate this Agreement upon written notice to the Team if any of the following occurs:

(i) subject to using reasonable efforts to identify cost savings or alternative sources of funding, including but not limited to available Team Additional Funds under Section 5.1, if, prior to August 31, 2007, the County and the Authority determine the anticipated Ballpark Costs or County Site Acquisition and Public Infrastructure Costs exceed the Ballpark Budget or the County Site Acquisition and Public Infrastructure Contribution respectively and the Team or third party has not agreed in writing to assume such excess costs within seven (7) days after receipt of such written notice;

(ii) the County, prior to August 31, 2007, is unable to acquire the Site or other necessary real property rights at a cost or under conditions acceptable to the County;

(iii) the County is unable to issue bonds for any reason including issuing bonds for an interest rate less than seven percent (7%);

(iv) any assignment of this Agreement by the Team in violation of this Agreement unless such assignment is rescinded upon notice by the County or Authority;

(v) the Team fails to contribute either the Team Initial Payment, the Team Additional Funds or the Team Final Payment when required pursuant to this Agreement;

(vi) the imposition of conditions or terms by the City in its resolution acting upon the recommendations of the Ballpark Implementation Committee that are unreasonable to the County and the Authority;

(vii) the Team is unable to enter into a legally binding final agreement with BNSF regarding liability issues that is acceptable to the County and the Authority prior to July 31, 2007.

(c) Notices and Extensions of Termination. The Parties may agree, each in their respective sole discretion, to extend any of the dates in this Section 9.6. A notice to terminate is not subject to the cure periods set forth in Section 10.1 hereof. A notice to terminate or notice providing an extension of the termination date must be given on or before 15 days after the applicable date set forth above (as such date may be extended by agreement of the Parties) or the termination right granted under this Section 9.6 relating to the particular event shall expire. Any Party may thereafter exercise any right or remedy available under Section 10.1 hereof, not based solely on the occurrence of the event, other than termination.

(d) Remedies upon Termination. In the event of any termination pursuant to this Section 9.6, the Parties shall be entitled to reimbursement of certain expended funds as set forth in Section 5.4 hereof.

## ARTICLE 10 DEFAULT AND REMEDIES

### Section 10.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

(a) Team Event of Default.

(i) The Team's violation or failure to perform or observe any covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the Team by the County or Authority identifying with particularity the failure or violation, provided that if such failure or violation is susceptible to cure within a period of time that does not unreasonably cause risk to achieving the Completion Date but is not reasonably capable of being cured within such thirty (30)-day period, there shall exist no Event of Default provided that the Team promptly advises the County and the Authority of the Team's intention to duly institute all steps necessary to cure such default within a reasonable period and the Team promptly commences cure of such failure or violation, and diligently pursues such cure to completion;

(ii) (A) The Team shall institute voluntary proceedings in bankruptcy, (B) involuntary proceedings in bankruptcy shall be instituted against the Team that are not discharged within ninety (90) days thereafter, (C) any proceedings shall be instituted by or against the Team under any Law relating to insolvency or reorganization, and in the case of an involuntary proceeding, that is not discharged within ninety (90) days after filing, (D) a trustee or receiver shall be appointed for the Team by any court of competent jurisdiction or (E) the Team shall make a general assignment for the benefit of its creditors; and

(iii) Any representation or warranty made by the Team herein shall prove to have been incorrect when made, in any material respect.

(b) Authority Event of Default.

(i) The Authority's violation or failure to perform or observe any covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the Authority by the Team or the County identifying with particularity the failure or violation, provided that, if such failure or violation is susceptible to cure within a period of time that does not unreasonably cause risk to achieving the Completion Date but is not reasonably capable of being cured within such thirty (30)-day period, there shall exist no Event of Default provided that the Authority promptly advises the Team and the County of the Authority's intention to duly institute all steps necessary to cure such default within a reasonable period and the Authority promptly commences cure of such failure or violation, and diligently pursues such cure to completion;

(ii) Any representation or warranty made by the Authority herein shall prove to have been incorrect when made, in any material respect.

(c) County Event of Default.

(i) The County's violation or failure to perform or observe any covenant or condition of this Agreement, which failure or violation shall continue for thirty (30) days after receipt of written notice to the County by the Team or Authority identifying with particularity the failure or violation, provided that, if such failure or violation is susceptible to cure within a period of time that does not unreasonably cause risk to achieving the Completion Date but is not reasonably capable of being cured within such thirty (30)-day period, there shall exist no Event of Default provided that the County promptly advises the Team of the County's intention to duly institute all steps necessary to cure such default within a reasonable period and the County promptly commences cure of such failure or violation, and diligently pursues such cure to completion;

(ii) Any representation or warranty made by the County herein shall prove to have been incorrect when made, in any material respect.

Section 10.2 Injunctive Relief; Specific Performance.

The Parties acknowledge that the rights conveyed by this Agreement and the covenants of the Parties are of a unique and special nature, and that any violation of this Agreement shall result in immediate and irreparable harm to the Team, the Authority or the County, as the case may be, and that in the event of any actual or threatened breach or violation of any of the provisions of this Agreement, the affected Party shall be entitled as a matter of right to an injunction or a decree of specific performance from any equity court of competent jurisdiction. Each Party waives the right to assert the defense that such breach or violation can be compensated adequately in an action at law.

Section 10.3 Remedies Cumulative; Waiver.

All rights and remedies set forth in this Agreement are cumulative and in addition to the Parties' rights and remedies at law or in equity. A Party's exercise of any such right or remedy

shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any rights or remedies shall not constitute a waiver of any such rights, remedies or obligations. No Party shall be deemed to have waived any default unless such waiver is expressly set forth in an instrument signed by such Party. If a Party waives in writing any default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver. Neither payment of a lesser amount than the sum due hereunder nor endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction, and the other Party may accept the same without prejudice to the right to recover the balance of such sum or to pursue any other remedy.

#### Section 10.4 Risk of Certain Losses.

Force Majeure. The nonoccurrence of any condition under this Agreement shall not give rise to any right otherwise provided in this Agreement when such failure or non-occurrence is the County, the Authority and the Team. However, failure to agree to a proposed extension of time for performance shall not be deemed grounds for delay or failure to timely cure an Event of Default under this Agreement.

#### Section 10.5 Limited Recourse Obligations of County and Authority; Rights of Team.

(a) Notwithstanding and prevailing over any contrary provision or implication of this Agreement, any and all duties, liabilities and obligations of the County under this Agreement relating to the construction of the Project shall be required to be paid or performed by the County only to the extent that Project Funds, any funds relating to monetary recovery of third parties, insurance proceeds or other funds in the Project Accounts are available, and no duties, liabilities, or obligations of the County with respect to this Agreement relating to the construction of the Project shall be required to be satisfied from any other funds, revenues or reserves of the County; provided that the County shall have complied in all material respects with the terms and conditions within its control in order to obtain the County Ballpark Contribution and the County Site Acquisition and Public Infrastructure Contribution. All covenants, stipulations, promises, agreements and obligations of the County contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the County and not of any member, director, officer, employee or agent of the County in his or her individual capacity or any other Governmental Authority, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee or agent of the County or any other Governmental Authority in such capacity.

(b) Notwithstanding and prevailing over any contrary provision or implication of this Agreement, any and all duties, liabilities and obligations of the Authority under this Agreement

relating to the construction of the Project shall be required to be paid or performed by the Authority only to the extent that Project Funds, any funds relating to monetary recovery of third parties, insurance proceeds or other funds in the Project Accounts are available, and no duties, liabilities, or obligations of the Authority with respect to this Agreement relating to the construction of the Project shall be required to be satisfied from any other funds, revenues or reserves of the Authority. All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Authority and not of any member, director, officer, employee or agent of the Authority in his or her individual capacity or any other Governmental Authority, and no recourse shall be had for any Claim hereunder against any member, director, officer, employee or agent of the Authority or any other Governmental Authority in such capacity.

(c) Notwithstanding and prevailing over any contrary provision or implication of this Agreement, in addition to the Team Additional Funds, if the County Site Acquisition and Public Infrastructure Costs exceed the County Site Acquisition and Public Infrastructure Contribution (plus any other funds or grants available for payment of the County Site Acquisition and Public Infrastructure Costs), the Team shall have the right (but not the obligation), in its sole discretion, to pay into the applicable Project Accounts any additional funds needed to pay the County Site Acquisition and Public Infrastructure Costs; provided that such right must be exercised within seven (7) days following notice from the County that the County Site Acquisition and Public Infrastructure Costs exceed the County Site Acquisition and Public Infrastructure Contribution.

## ARTICLE 11 INDEMNIFICATION

### Section 11.1 Indemnification and Payment of Damages by Team.

The Team shall indemnify, defend and hold harmless the County Indemnified Persons and the Authority Indemnified Persons for, and shall pay to the County Indemnified Persons and the Authority Indemnified Persons from a third party claim, the amount of any Damages arising, directly or indirectly, from or in connection with:

(a) any breach of any representation or warranty made by the Team in this Agreement or exhibit attached hereto or any other certificate or document delivered by the Team to the County or the Authority pursuant to this Agreement; and

(b) any breach by the Team of any covenant or obligation of the Team in this Agreement.

If the Team fails to make any payment of any sums payable by the Team to the County Indemnified Persons or the Authority Indemnified Persons on the date due, which failure shall continue for thirty (30) days, then such payment shall bear interest at a rate of interest equal to the lesser of four percent (4%) above the Prime Rate or the highest rate permitted by Law, payable from the date such payment was due to the date of payment thereof.

#### Section 11.2 Indemnification and Payment of Damages by Authority.

The Authority shall indemnify, defend and hold harmless the Team and the Team Indemnified Persons for, and shall pay to the Team Indemnified Persons the amount of Damages from a third party claim arising, directly or indirectly, from or in connection with:

- (a) any breach of any representation or warranty made by the Authority in this Agreement or in any schedule or exhibit attached hereto or any other certificate or document delivered by the Authority to the Team pursuant to this Agreement; and
- (b) any breach by the Authority of any covenant or obligation of the Authority in this Agreement.

If the Authority fails to make any payment of any sums payable by the Authority to the Team Indemnified Persons on the date due, which failure shall continue for thirty (30) days, then such payment shall bear interest at a rate of interest equal to the lesser of four percent (4%) above the Prime Rate or the highest rate permitted by Law, payable from the date such payment was due to the date of payment thereof.

#### Section 11.3 Indemnification and Payment of Damages by County.

The County shall indemnify, defend and hold harmless the Team and the Team Indemnified Persons for, and shall pay to the Team Indemnified Persons the amount of Damages from a third-party claim arising, directly or indirectly, from or in connection with:

- (a) any breach of any representation or warranty made by the County in this Agreement or in any exhibit attached hereto or any other certificate or document delivered by the County to the Team pursuant to this Agreement; and
- (b) any breach by the County of any covenant or obligation of the County in this Agreement.

If the County fails to make any payment of any sums payable by the County to the Team Indemnified Persons on the date due, which failure shall continue for thirty (30) days, then such payment shall bear interest at a rate of interest equal to the lesser of four percent (4%) above the Prime Rate or the highest rate permitted by Law, payable from the date such payment was due to the date of payment thereof.

### ARTICLE 12 MISCELLANEOUS

#### Section 12.1 No Actions to Interfere with Tax-Exempt Bonds.

If the County determines, based upon the written notice of nationally recognized bond counsel, that any action under this Agreement creates a significant risk that interest on the bonds issued by the County for the Ballpark or the Site Acquisition and Public Infrastructure Work will not be excludable from gross income for federal income tax purposes, the Parties shall negotiate



in good faith to agree on alternative action to avoid such a result. In no event shall the foregoing agreement require any Party to amend or modify any material term of this Agreement.

#### Section 12.2 Survival of Covenants, Agreements, Representations and Warranties.

No action taken pursuant to or related to this Agreement, including, without limitation, any investigation by or on behalf of a Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition or agreement in this Agreement.

#### Section 12.3 Additional Documents and Approval.

The Parties, whenever and as often as each shall be reasonably requested to do so by one of the other Parties, shall execute or cause to be executed any further documents and take any further actions as may be reasonably necessary or expedient and within their lawful obligation in order to consummate the transactions provided for in, and to carry out the purpose and intent of, this Agreement. Furthermore, the County and the Authority shall take all ministerial actions and proceedings reasonably necessary or appropriate to remedy any apparent invalidity, lack or defect in authorization, or illegality, or to cure any other defect that has been asserted or threatened.

#### Section 12.4 Good Faith.

In exercising its rights and fulfilling its obligations under this Agreement, each of the Parties acknowledges that the other Parties have acted to date in good faith and each Party agrees to continue to act in good faith. Each Party acknowledges that in each instance under this Agreement where a Party is obligated to exercise good faith or to use good faith, diligent or other similar efforts, such Party shall not be required to expend any funds, or grant any other consideration of any kind, in the performance of such undertaking, and each Party further acknowledges that the obligation of any Party to act in good faith, or undertake good faith, diligent or other similar efforts does not constitute a warranty, representation or other guaranty that the result that the Parties are attempting to achieve shall be successfully achieved and no Party shall be liable for any failure to achieve the result or results intended so long as the Party has complied with its obligation to act in good faith. In consideration of the mutual undertakings set forth in this Agreement, each Party agrees and stipulates that up through and including the date of this Agreement, (1) there have been unique challenges presented in meeting the obligations imposed by the Act within the legislative timetables and budget, including but not limited to acquiring property interests, arranging financings, hiring appropriate architects, construction managers and other consultants, conducting environmental review, obtaining necessary local approvals, constituting a new governmental ballpark authority and developing necessary contracts and other documents; (2) each Party has acted in good faith and with due care in addressing its obligations; (3) even with each Party acting in good faith and with due care it is possible that the unique challenges involved in this undertaking to date may result in delay and harm to the interests of one or more of the Parties; (4) there have been no facts and circumstances to date, known or unknown, that would give rise to a Claim by any Party against any other Party in tort or contract or otherwise for breach of any obligation, express or implied, that may run from one Party to another; and (5) with respect to any and all acts or omissions to

date, each Party hereby fully releases and discharges the other Parties from any and all claims, actions, causes of action, suits, liabilities, judgments, and demands of any nature whatsoever, whether for damages or otherwise, in law or in equity, contractual, tortuous, or otherwise, known or unknown, arising under the law of any jurisdiction.

Section 12.5 Notice of Matters.

In the event that any Party receives knowledge about any matter that may constitute a breach of any of its warranties or covenants set forth in this Agreement that arises after the date of this Agreement, it shall promptly notify the other Parties of the same in writing.

Section 12.6 Form of Notices; Addresses.

All notices, requests, consents or other communications required under this Agreement shall be in writing and shall be deemed to have been properly given if served personally, or if sent by United States registered or certified mail, or overnight delivery service to the Parties as follows (or at such other address as a Party may from time to time designate by notice given pursuant to this Section):

To the Team:	<u>Minnesota Twins, LLC</u> Attn: President Hubert H. Humphrey Metrodome 34 Kirby Puckett Place Minneapolis, MN 55415
With a Copy to:	Kaplan, Strangis and Kaplan, P.A. Attn: Ralph Strangis 90 South 7 <sup>th</sup> Street, #5500 Minneapolis, MN 55402
To the Authority:	<u>Minnesota Ballpark Authority</u> Attn: Executive Director Suite 390 400 South Fourth Street Minneapolis, MN 55415
With a Copy to:	McGrann Shea Anderson Carnival Straughn & Lamb, Chartered Attn: Kathleen M. Lamb 800 Nicollet Mall, Suite 2600 Minneapolis, MN 55402
To the County:	<u>Hennepin County</u> Attn: County Administrator A-2300 Government Center Minneapolis, MN 55487

With a Copy to:

Hennepin County  
Attn: County Attorney  
C-2000 Hennepin County Government Center  
Minneapolis, MN 55487

Each notice shall be deemed given and received on the date delivered if served personally or by overnight delivery service, or, if sent by United States registered or certified mail, then one (1) Business Day after its delivery to the address of the respective Party, as provided in this Article, except that with respect to the notices pertaining to matters that are to be accomplished within less than three (3) Business Days (e.g., requests for consent when the Person whose consent is sought has one (1) Business Day to respond in the granting or denying of such consent), notice shall be deemed given simultaneously with its delivery. Notices sent by a Party's counsel shall be deemed notices sent by such Party.

**Section 12.7 Calculation of Time.**

Unless otherwise stated, all references to "day" or "days" shall mean calendar days. If any time period set forth in this Agreement expires on other than a Business Day, such period shall be extended to and through the next succeeding Business Day.

**Section 12.8 Time is of the Essence.**

Time is of the essence of this Agreement. The Parties shall cause the work contemplated by this Agreement to meet the Master Project Schedule, which shall not be altered except by a Change Order.

**Section 12.9 Incorporation by Reference.**

All exhibits, schedules or other attachments referenced in this Agreement are hereby incorporated into this Agreement by such reference and are deemed to be an integral part of this Agreement.

**Section 12.10 Entire Agreement.**

Except as otherwise provided in this Agreement, this Agreement contains the sole and entire agreement between the Parties with respect to their subject matter and supersedes any and all other prior written or oral agreements between them with respect to such subject matter.

**Section 12.11 Amendment.**

No amendment, modification or termination of this Agreement shall be valid unless in writing and duly executed by the Parties.

Section 12.12 Binding Effect; Assignment.

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereof. None of the County, the Authority or the Team shall assign its respective interests under this Agreement without the prior written consent of the other Parties.

Section 12.13 Headings.

The headings contained in this Agreement are for convenience of reference only, and shall not limit, extend or otherwise affect the meaning hereof.

Section 12.14 No Presumption Against Drafter.

This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party had been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

Section 12.15 Severability.

If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it was held invalid or unenforceable, shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.

Section 12.16 Third Party Beneficiaries.

Nothing in this Agreement, express or implied, is intended to (a) confer upon any Person other than the Parties and their permitted successor(s) and assigns any rights or remedies under or by reason of this Agreement as a third-party beneficiary or otherwise except as specifically provided in this Agreement; or (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement.

Section 12.17 Governing Law.

This Agreement shall be governed by and construed in accordance with the Laws of the State of Minnesota, notwithstanding its conflicts of law or choice of law provisions.

Section 12.18 Counterparts.

This Agreement may be executed and delivered in three or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one Agreement.

Section 12.19 Relationship of Parties.

It is agreed that nothing contained in this Agreement shall be deemed or construed as creating a partnership or joint venture among the Parties.

Section 12.20 No Waiver of County or Authority Immunity or Liability.

Nothing contained in this Agreement, including but not limited to provisions regarding the County or Authority obtaining insurance or otherwise being insured, shall in any way affect or impair the County's or Authority's immunity or the immunity of the County's or Authority's employees or consultants or independent contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing contained in this Agreement, including but not limited to provisions regarding the County or Authority obtaining insurance or otherwise being insured, shall in any way affect or impair the limitations on the County's or the Authority's liability or the liability of the County's or Authority's employees or consultants or independent contractors, set forth in Minnesota Statutes Chapter 466. By entering into this Agreement, the County and the Authority do not waive any rights, protections or limitations provided for the County or the Authority or their employees or consultants or independent contractors under the various rules of governmental immunity or under Minnesota Statutes Chapter 466.

ARTICLE 13  
DISPUTE RESOLUTION

Section 13.1 Arbitration.

For purposes of this Section only, the term "Claim" shall mean any Claim other than for specific performance or injunctive relief between or among the Parties and that is not an Expedited ADR Dispute under Section 13.2. All Claims under this Section shall be submitted to non-binding mediation administered in accordance with the Construction Industry Claim Resolution Procedures of the American Arbitration Association (AAA) then in effect. Unless the Parties otherwise agree, within seven (7) days after the selection of the mediator, the Parties in dispute and the mediator shall participate in a pre-mediation conference to determine the time and place of the mediation and the procedures that will govern the mediation. The cost and expense of the mediator shall be equally shared by the Parties in dispute and each such Party shall submit to the mediator any information or position papers that the mediator may request to assist in resolving the Claim. If a Claim has not been resolved within sixty (60) days after submission of the Claim to mediation, then any of the Parties in dispute may submit the Claim to binding arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. All arbitration proceedings shall be held in Minneapolis, Minnesota. Demand for arbitration shall be filed in writing with the other Party or Parties in dispute and with the American Arbitration Association. The demand for arbitration may be filed at the same time as the demand for mediation but the arbitration proceedings shall be stayed until the time period for the mediation proceedings referenced above has expired. The demand for arbitration shall be made within a reasonable time after the Claim, but in no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statutes of limitations. The prevailing party or parties in the

arbitration proceeding shall be entitled to recover their reasonable, costs, expenses and attorneys' fees as part of the award. The award rendered by the arbitrator or arbitrators shall be final and judgment may be entered upon it in accordance with applicable Law in any court having jurisdiction thereof. The agreement to arbitrate under this Section shall be specifically enforceable under applicable Law in any court having jurisdiction thereof.

### Section 13.2 Expedited Alternative Dispute Resolution.

(a) Disputes or deadlocks among the County Representative, Team Representative and Authority Representative under Article 2 or Article 4 (each, an "Expedited ADR Dispute") shall be submitted to expedited alternative dispute resolution ("Expedited ADR") under this Section 13.2; provided that no matters which require the approval of the Board of County Commissioners or the Board of the Authority may be an Expedited ADR Dispute. The County, Authority and Team shall mutually agree upon a person qualified to resolve Expedited ADR Disputes, and is therefore designated as the Person (the "Neutral") to whom Expedited ADR Disputes are to be submitted for resolution under this Section 13.2.

(b) If the person chosen by the Parties refuses, or for any other reason is unable to serve or otherwise becomes reasonably unacceptable to either the County, Authority or the Team, as the Neutral with respect to a given Expedited ADR Dispute, the County, Authority and Team shall promptly designate another individual to serve as the Neutral with respect to such Expedited ADR Dispute. Such other individual shall be independent of the County, Authority and Team (and their respective Affiliates) and shall hold no financial interest in, or have any material financial or personal relationship with, any of the County, Authority and Team (or their respective Affiliates). If such other individual has not been designated as the Neutral within five (5) days after any of the County, Authority and Team gives the other notice of the event that requires such designation, the County, Authority and Team each shall have the right to request that the designation of such other individual as the Neutral for such Expedited ADR Dispute shall be made by the regional vice president (or his/her equivalent) of the AAA with authority over Minneapolis, Minnesota. Such request shall be accompanied by a copy of this Section 13.2, and a copy of such request shall be given to the other party to the Expedited ADR Dispute. The County, Authority and Team agree that the individual to be designated by the AAA as such Neutral shall, to the extent reasonably possible, have experience in the design and/or construction of ballparks or stadiums.

(c) The Expedited ADR shall be conducted by the Neutral at a time and location in Hennepin County, Minnesota selected by the Neutral. The Neutral shall give the County, Authority and Team reasonable notice of the Expedited ADR, and shall make reasonable efforts to accommodate the schedules of the County, Authority and Team in a manner that does not delay the prompt resolution of the issue(s) to be decided by the Neutral. The Neutral shall conduct the Expedited ADR in such manner as the Neutral deems appropriate, consistent with the provisions of this Section 13.2. The County, Authority and Team intend that the Neutral have the sole and exclusive authority and power to resolve Expedited ADR Disputes. In providing resolution to an Expedited ADR Dispute, the Neutral shall look first to compliance with the Act, except to the extent that this Agreement diverges from the Act in a legally permitted manner, to the terms of this Agreement itself and then to generally accepted principles in the appropriate area, such as design, construction, accounting or finance. The Neutral shall

not have the power or authority to award any damages or require any payments other than those described in the last paragraph of this Section 13.2.

(d) There shall be no discovery permitted with respect to any Expedited ADR other than that required by the Neutral, and each of the County, Authority and Team shall present its position with respect to the issue(s) to be determined by such Expedited ADR by an oral presentation to the Neutral. Each of the County, Authority and Team shall be given the opportunity to hear and orally respond to the other's presentation to the Neutral, and to present documents to the Neutral in support of such party's position. The Neutral shall have the right to limit the documents presented to the Neutral to assure a prompt resolution of the issue(s) to be determined by the Neutral. The County, Authority and Team may have its counsel present at such Expedited ADR, but there shall be no examination or cross-examination of witnesses other than required or permitted by the Neutral.

(e) The County, Authority and Team shall cooperate in good faith to permit a conclusion of the Expedited ADR within five (5) days following the submission of the Expedited ADR Dispute to the Neutral.

(f) The County, Authority and Team shall use Expedited ADR exclusively, rather than litigation, as a means of resolving all Expedited ADR Disputes. The written award by the Neutral shall be the binding, final determination on the merits of the Expedited ADR Dispute, and shall preclude any subsequent litigation on such merits. The County, Authority and Team agree that any disputes which arise out of such a written award shall be resolved exclusively by Expedited ADR pursuant to this Section 13.2, provided that the County, Authority or Team may institute legal proceedings in a court of competent jurisdiction to enforce judgment upon an Expedited ADR award in accordance with Legal Requirements. The fees and costs of the Neutral shall be borne as directed by the Neutral; provided, however that the prevailing party in Expedited ADR shall be entitled to reimbursement for any costs of such proceedings, reasonable attorneys' fees, reasonable costs of investigation and any other expenses incurred in connection with such Expedited ADR in the manner directed by the Neutral.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;  
SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Development Agreement as of the date stated in the first paragraph of this Agreement.

TEAM:

**MINNESOTA TWINS, LLC,**  
a Delaware limited liability company

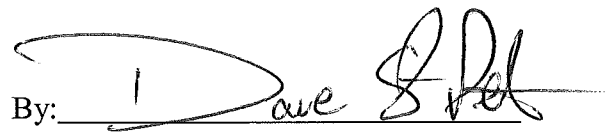
ATTEST:

By: 

Name: DONALD E. BENSON

Title: VICE PRESIDENT

Dated: 4-26-07

By: 

Name: Dave St. Peter

Title: President

Dated: 4-26-07

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]



AUTHORITY:

**MINNESOTA BALLPARK AUTHORITY,**  
a public body and political subdivision of the  
State of Minnesota

ATTEST:

By: Joan Campbell  
Name: Joan Campbell  
Title: Secretary  
Dated: 4-26-07

[SEAL]

By: Steve Cramer  
Name: Steve Cramer  
Title: Chair  
Dated: 4-26-07

By: Daniel Renney  
Name: Daniel Renney  
Title: Executive Director  
Dated: 4-26-07

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

COUNTY:

**HENNEPIN COUNTY,**  
a political subdivision of the State of  
Minnesota

ATTEST:

By: Kay Mitchell

Name: Kay Mitchell

Title: Clerk of the Board

Dated: 5/3/07

[SEAL]

By: Gail A. Dorfman

Name: Gail A. Dorfman

Title: Vice-Chair, Hennepin County Board

Dated: 5/3/07

[SIGNATURE PAGE TO DEVELOPMENT AGREEMENT]

## EXHIBIT A

### Description of the Site

The Authority, with the assistance of the County, will register title to the Site with the Hennepin County Registrar of Titles and will plat the Site (using a subdivision plat or a registered land survey) to conform to the as-built Ballpark and Public Infrastructure. Upon such platting, the description of the Site as set forth below will be modified to conform to the plat.

The Site is described as follows:

#### AREAS TO BE OWNED IN FEE:

##### Fee Area 1:

**(The following legal description is for the land commonly known as the Land Partners II Property and is the legal description used in the condemnation proceedings, excluding the temporary construction easements. This includes portions of the property legally described in Title Commitment OR-10410555 and all of the property described in Title Commitment OR-1041214, both prepared by Old Republic National Title Insurance Company ("Old Republic")).**

All those parts of the following described properties:

##### Parcel 9:

That part of Section 22, Township 29, Range 24, part of Blocks 4, 5, 9, 85 HOAG'S ADDITION TO MINNEAPOLIS, part of vacated 5th and 6th Streets North, and part of vacated 4th Avenue North, formerly Dakota Street, all described as follows:

Beginning at the intersection of a line drawn parallel with and 25 feet Southeasterly from the centerline of the East bound track of the Burlington Northern Railroad and a line drawn 43 feet Northeasterly from and concentric with a curve, hereinafter referred to as Curve "A", described as commencing at a point on the centerline of 2nd Avenue North distant 12.15 feet Northeasterly from its intersection with the centerline of 7th Street North; thence Northwesterly, deflecting 88 degrees 00 minutes 48 seconds, measured from Northeast to Northwest, from said centerline of 2nd Avenue North, a distance of 849.63 feet to the actual point of beginning of said Curve "A", thence Northwesterly 295.14 feet along a tangential curve concave to the Southwest, having a radius of 11,459.16 feet and a central angle of 01 degree 28 minutes 32 seconds and said Curve "A" there terminating; thence Southeasterly along said line drawn concentric with said Curve "A" to its intersection with a radial line drawn Northeasterly passing through the point of beginning of said Curve "A"; thence Southeasterly tangent to said line drawn concentric with Curve "A" to the following described Line "A",

Line "A" is described as commencing at the most Southerly corner of the Northeasterly 210 feet of said Block 4; thence Northwesterly along the Southwesterly line of said Northeasterly 210 feet a distance of 258.36 feet; thence Southwesterly, deflecting to the left 83 degrees 51 minutes 10 seconds 105.6 feet, being the actual point of beginning of said Line "A"; thence Southwesterly, deflecting to the left 06 degrees 06 minutes 50 seconds to the Northeasterly line of said vacated 6th Street North; thence Southwesterly

deflecting to the right 17 degrees 29 minutes 10 seconds to the Southwesterly line of said vacated 6th Street North; thence Southwesterly, deflecting to the left 02 degrees 54 minutes 44 seconds a distance of 156.74 feet to a point hereinafter referred to as Point "A"; thence Southwesterly 5.49 feet along a non-tangential curve concave to the Northwest, having a radius of 5,779.58 feet and a chord which deflects 10 degrees 13 minutes 52 seconds to the left, from the last-described line; thence Southwesterly, deflecting to the right 08 degrees 01 minutes 42 seconds from the chord of the last-described curve, a distance of 235 feet and said Line "A" there terminating.

Thence Northeasterly along said Line "A" to said Point "A"; thence Northeasterly along a curve concave to the Northwest, having a radius of 5,779.58 feet to a point on said Southwesterly line of said vacated 6th Street North distant 30 feet Northwesterly from its intersection with said Line "A"; thence Southeasterly along said Southwesterly line of vacated 6th Street North to said Line "A"; thence Northeasterly along said Line "A" to the point of beginning of said Line "A"; thence Northeasterly to a point on the Northeasterly line of said Block 4 distant 268.14 feet Northwesterly from the most Easterly corner of said Block 4; thence Northeasterly to a point on the Southwesterly line of said Block 85 distant 267.56 feet Northwesterly from the most Southerly corner of said Block 85; thence Northeasterly to a point on the Northeasterly line of said Block 85 distant 265.87 feet Northwesterly from the most Easterly corner of said Block 85; thence Northwesterly along the last-described Northeasterly line to the most Northerly corner of said Block 85; thence Northwesterly to the most Easterly corner of said Block 9; thence Northwesterly along the Northeasterly line of said Block 9 to said line drawn parallel with and 25 feet Southeasterly from the centerline of the East bound track of the Burlington Northern Railroad; thence Southwesterly along the last-described parallel line to the point of beginning.

Being registered land as is evidenced by Certificate of Title No. 1056073.

Which lies southwesterly of the following described line:

Beginning at the most westerly corner of said Block 9; thence southeasterly along the southwesterly line of said Block 9 to the most southerly corner of said Block 9; thence southeasterly to the most westerly corner of said Block 85; thence southeasterly along the southwesterly line of said Block 85 to the most southerly corner of said Block 85 and said line there terminating.

Together with:

Parcel 1:

That part of Section 22, Township 29, Range 24, and that part of Lots 1, 2, 3, 4 and 5, Block 4, Hoag's Addition to Minneapolis, and that part of vacated or abandoned Sixth Street North, all described as follows:

Commencing at a point in the Southeasterly line of Lot 7, Block 2, "Rearrangement of Blocks Two (2) and Three (3) of Camp and Walkers Addition to Minneapolis", distant 15 feet Northeasterly from the most Southerly corner of said Lot 7; thence Northwesterly parallel with the Southwesterly line of said Lot 7 a distance of 160.74 feet to the actual point of beginning of the tract of land to be described; thence Northeasterly, deflecting 104 degrees 14 minutes 55 seconds to the right, 118.20 feet; thence Northeasterly 149.64 feet along a tangential curve to the left, having a radius of 885.53 feet; thence Northeasterly 167.30 feet along a line tangent to said curve; thence Southeasterly, deflecting 85 degrees 34 minutes to the right, 34.62 feet; thence Easterly 69.55 feet along a non-tangential curve, concave to the South, having a radius of 154.85 feet, to a point on the Southeasterly line of Block 4, Hoag's Addition to Minneapolis, distant 468 feet Northeasterly from the point of commencement; thence Northeasterly along the Southeasterly line of said Block 4 a distance of 60.58 feet to the most Southerly corner of the Northeasterly 210 feet of said Block 4; thence Northwesterly along the Southwesterly line of the Northeasterly 210 feet of said Block 4 a distance of 258.36 feet; thence Southwesterly, deflecting 83 degrees 51 minutes 10 seconds to the left, a distance of 105.60 feet; thence Southwesterly, deflecting 6 degrees 06 minutes 50 seconds to the left, a distance of 25 feet to the Northeasterly line of said vacated Sixth Street North; thence Southwesterly 86.46 feet, deflecting 17 degrees 29 minutes 10 seconds to the right, to the Southwesterly line of said vacated Sixth Street North; thence Southwesterly, deflecting 2 degrees 54 minutes 44 seconds to the left, 156.74 feet; thence Southwesterly 5.49 feet along a non-tangential curve concave to the Northwest, having a radius of 5779.58 feet, and a chord which deflects 10 degrees 13 minutes 52 seconds to the left from the last described line; thence Southwesterly 235 feet, deflecting 8 degrees 01 minutes 42 seconds to the right from the chord of the last described curve; thence Southwesterly 50.67 feet along a non-tangential curve concave to the Northwest, having a radius of 5751.58 feet, and a chord which deflects 5 degrees 25 minutes 48 seconds to the left from the last described line; thence Southwesterly tangent to the last described curve, a distance of 245.95 feet to an intersection with the Northerly extension of the East line of Block 3, Wilson, Bell & Wagners Addition to Minneapolis; thence Southerly along said extension and along the East line of said Block 3 a distance of 57.21 feet; thence Easterly to the most Westerly corner of Lot 13, Block 3, "Rearrangement of Blocks Two (2) And Three (3) Of Camp and Walkers Addition to Minneapolis"; thence Northerly along the extension of the West line of the last mentioned Block 3 a distance of 5.86 feet; thence Northeasterly a distance of 125 feet along a non-tangential curve, concave to the Southeast, having a radius of 2056.04 feet and a chord which deflects 69 degrees 12 minutes 41 seconds to the right from the northerly extension of the West line of the last mentioned Block 3; thence Northeasterly a distance of 173.34 feet to a point on the Northwesterly extension of the Northeasterly line of Lot 9, Block 3, "Rearrangement of Blocks Two (2) and Three (3) of Camp and Walkers Addition to Minneapolis", distant 231.30 feet Northwesterly from the most Easterly corner of said

Lot 9; thence Southeasterly along the last described extension a distance of 23 feet; thence Northeasterly a distance of 92.59 feet to the actual point of beginning;

EXCEPT

That part of Lots 1, 2, 3 and 4, Block 4, Hoag's Addition to Minneapolis, described as beginning at the most Southerly corner of the Northeasterly 210 feet of said Block 4; thence Northwesterly along the Southwesterly line of the Northeasterly 210 feet of said Block 4 a distance of 201 feet; thence Southerly deflecting to the left 135 degrees 00 minutes, a distance of 70.71 feet to the Southwesterly line of the Northeasterly 260 feet of said Block 4; thence Southeasterly along the last mentioned Southwesterly line to the Southeasterly line of said Block 4; thence Northeasterly along said Southeasterly line to the point of beginning.

ALSO EXCEPT;

That part thereof lying Southwesterly of a line drawn parallel with and 36 feet Northeasterly of the Northwesterly extension of the Northeasterly line of the Southwesterly 15 feet of Block 2, "Rearrangement of Blocks Two (2) and Three (3) of Camp and Walkers Addition to Minneapolis".

Also together with:

Parcel 2:

That part of Block 4, Hoag's Addition to Minneapolis, described as commencing at the most Southerly corner of the Northeasterly 210 feet of said Block 4; thence Northwesterly along the Southwesterly line of the Northeasterly 210 feet of said Block 4 a distance of 258.36 feet to the actual point of beginning; thence Southwesterly, deflecting to the left 83 degrees 51 minutes 10 seconds, a distance of 105.60 feet; thence northeasterly to a point on the Northeasterly line of said Block 4 distant 268.14 feet Northwesterly from the most Easterly corner of said Block 4; thence Southeasterly along the northeasterly line of said Block 4 a distance of 12 feet; thence Southwesterly, deflecting to the right 90 degrees 02 minutes, a distance of 203 feet; thence Southwesterly, deflecting to the right 6 degrees 06 minutes, a distance of 7.05 feet to the actual point of beginning.

Also together with:

Parcel 3:

That part of Section 22, Township 29, Range 24, described as commencing at the most Southerly corner of the Northeasterly 210 feet of Block 4, Hoag's Addition to Minneapolis; thence Northwesterly along the Southwesterly line of the Northeasterly 210 feet of said Block 4 a distance of 258.36 feet; thence Southwesterly, deflecting to the left 83 degrees 51 minutes 10 seconds, a distance of 105.60 feet; thence Southwesterly, deflecting to the left 6 degrees 06 minutes 50 seconds, a distance of 25 feet to the Northeasterly line of vacated Sixth Street North; thence Southwesterly, deflecting to the right 17 degrees 29 minutes 10 seconds, a distance of 86.46 feet to the Southwesterly line of vacated Sixth Street North, said point being the actual point of beginning; thence Southwesterly, deflecting to the left 2 degrees 54 minutes 44 seconds, a distance of 156.74 feet; thence Northeasterly along a non-tangential curve, concave to the Northwest, having a radius of 5779.58 feet, to a point on the Southwesterly line of vacated Sixth Street North distant 30 feet Northwesterly from the actual point of beginning; thence Southeasterly along said Southwesterly line to the actual point of beginning.

Also together with:

Parcel 6:

That part of vacated or abandoned Fifth Street North described as beginning at a point on the Northeasterly line of Block 4, Hoag's Addition to Minneapolis, distant 268.14 feet Northwesterly from the most Easterly corner of said Block 4; thence Northeasterly to a point on the Southwesterly line of Block 85, Hoag's Addition to Minneapolis, distant 267.56 feet Northwesterly from the most Southerly corner of said Block 85; thence Southeasterly along said Southwesterly line a distance of 131.12 feet, more or less, to a point 2.64 feet Northwesterly from the most Southerly corner of Lot 3, in said Block 85; thence Southwesterly along the extension of the Northwesterly line of the Southeasterly 2.64 feet of said Lot 3 to the Northeasterly line of said Block 4; thence Northwesterly along said Northeasterly line to the point of beginning.

Also together with:

Parcel 7:

Lots 8, 9 and 10, and that part of Lots 1, 2, 3, 4 and 7, Block 4, Hoag's Addition to Minneapolis, all as described as beginning at the most Easterly corner of said Block 4; thence Northwesterly along the Northeasterly line of said Block 4 a distance of 256.14 feet; thence Southwesterly, deflecting to the left 89 degrees 58 minutes a distance of 203 feet; thence Southwesterly deflecting to the right 6 degrees 06 minutes, a distance of 7.05 feet to the Southwesterly line of the Northeasterly 210 feet of said Block 4; thence Southeasterly along said Southwesterly line, a distance of 258.3 feet to a point on the Southeasterly line of said Block 4; thence Northeasterly along said Southeasterly line, 210 feet to the point of beginning.

Said Lots 9 and 10 do not include as a part thereof any interest in that part of Fifth St., now Fifth Street North, platted in Hoag's Addition to Minneapolis described as beginning

at a point on the Northeasterly line of Block 4, Hoag's Addition to Minneapolis distant 31 feet Northwesterly along the Northeasterly line of said Block 4 from the most Easterly corner of said Block 4; thence Northwesterly along the Northeasterly line of said Block 4 a distance of 92.35 feet; thence Northeasterly at right angles to the Northeasterly line of said Block 4 to the center line of Fifth Street North; thence Southeasterly along the center line of Fifth Street North a distance of 92.35 feet to the intersection with a line drawn at right angles to the Northeasterly line of said Block 4 from the point of beginning; thence Southwesterly to the point of beginning.

Also together with:

Parcel 8:

All that part of Lots 1, 2, 3 and 4, Block 4, Hoag's Addition to Minneapolis, that lies Southwesterly of the Southwesterly line of the Northeasterly 210 feet of said Block 4, and that lies Northeasterly of the following described line: Beginning at a point on said Southwesterly line of the Northeasterly 210 feet of said Block 4, distant 201 feet Northwesterly, as measured along said Southwesterly line, from the Southeasterly line of said Block 4; thence Southerly along a line that forms an angle of 45 degrees 00 minutes measured clockwise from said Southwesterly line of the Northeasterly 210 feet of said Block 4 a distance of 70.71 feet to a point on the Southwesterly line of the Northeasterly 260 feet of said Block 4; thence Southeasterly along the last mentioned Southwesterly line 151.32 feet to a point on the Southeasterly line of said Block 4 for the end of the described line.

Being registered land as is evidenced by Certificate of Title No. 737144.

Parcel 11:

That part of the Northeast Quarter of the Southwest Quarter of Section 22, Township 29 North, Range 24 West, 4<sup>th</sup> Principal Meridian, that part of Block 4, Hoag's Addition to Minneapolis, that part of vacated Sixth Street North adjacent to Blocks 4 and 5, Hoag's Addition, and that part of Block 3, Wilson, Bell and Wagner's Addition to Minneapolis, all in Hennepin County, Minnesota, described as follows:

Commencing at the most Southerly corner of the Northeasterly 210 feet of said Block 4, Hoag's Addition; thence Northwesterly along the Southwesterly line of the Northeasterly 210.00 feet of said Block 4, a distance of 258.36 feet; thence Southwesterly, deflecting 83 degrees 51 minutes 10 seconds to the left, a distance of 105.60 feet to the point of beginning of the parcel to be described; thence Southwesterly, deflecting 06 degrees 06 minutes 50 seconds to the left, a distance of 25 feet to the Northeasterly line of said vacated Sixth Street North; thence Southwesterly 86.46 feet, deflecting 17 degrees 29 minutes 10 seconds to the right, to the Southwesterly line of said vacated Sixth Street North; thence Southwesterly, deflect 02 degrees 54 minutes 44 seconds to the left 156.74 feet, thence Southwesterly 5.49 feet along a non-tangential curve concave to the Northwest, having a radius of 5779.58 feet, and a chord which deflects 10 degrees 13 minutes 52 seconds to the left from the last described line; thence Southwesterly 235 feet, deflecting 08 degrees 01 minutes 42 seconds to the right from the chord of the last described curve; thence Southwesterly 50.67 feet along a non-tangential curve concave to the Northwest, having a radius of 5751.58 feet, and a chord which deflects 05 degrees 25



minutes 48 seconds to the left from the last described line; thence Southwesterly tangent to the last described curve, a distance of 588.12 feet; thence Northeasterly a distance of 253.37 feet to a point on a line which is parallel with and 25 feet Southeasterly of the centerline of the Eastbound main track of Burlington Northern Railroad, said point being distant 851.34 feet Southwesterly of the Northeasterly line of vacated Sixth Street North; thence Northeasterly along said line which is parallel with and 25 feet Southeasterly of said Eastbound main track a distance of 851.34 feet to a point on said Northeasterly line of vacated Sixth Street North which is 65.55 feet Northwesterly of the most Southerly corner of said Block 5, Hoag's Addition to Minneapolis; thence Southeasterly along said Northeasterly line a distance of 145.55 feet to the most Westerly corner of said Block 4; thence Northeasterly along the Northwesterly line of said Block 4, a distance of 339.91 feet to the most Northerly corner of said Block 4; thence Southeasterly along the Northeasterly line of said Block 4, a distance of 79.06 feet, to a point on said line which is 268.14 feet Northwesterly of the most Easterly corner of said Block 4; thence Southwesterly 314.99 feet to the point of beginning.

Except that part of Section 22, Township 29 North, Range 24 West, described as follows:

Commencing at the most Southerly corner of the Northeasterly 210 feet of Block 4, Hoag's Addition to Minneapolis; thence Northwesterly along the Southwesterly line of the Northeasterly 210 feet of said Block 4, a distance of 258.36 feet; thence Southwesterly, deflecting to the left 83 degrees 51 minutes 10 seconds, a distance of 105.60 feet; thence Southwesterly, deflecting to the left 06 degrees 06 minutes 50 seconds, a distance of 25 feet to the Northeasterly line of vacated Sixth Street North; thence Southeasterly, deflecting to the right 17 degrees 29 minutes 10 seconds, a distance of 86.46 feet to the Southwesterly line of vacated Sixth Street North, said point being the actual point of beginning; thence Southwesterly, deflecting to the left 02 degrees 54 minutes 44 seconds, a distance of 156.74 feet, thence Northeasterly along a non-tangential curve, concave to the Northwest having a radius of 5779.58 feet, to a point on the Southwesterly line of vacated Sixth Street North, distant 30 feet Northwesterly from the actual point of beginning; thence Southeasterly along said Southwesterly line to the actual point of beginning.

Which lies Southwesterly of a line run parallel with and distant 43 feet Southwesterly of the hereinafter described Line 2:

Line 1: Beginning at a point on the centerline of Second Avenue North, distant 12.15 feet Northeasterly of its intersection with the centerline of Seventh Street North; thence run Northwesterly at an angle of 88 degrees 00 minutes 48 seconds from the centerline of said Second Avenue North (measured from Northeast to Northwest) for 849.63 feet; thence deflect to the left on a tangential curve having a radius of 11459.16 feet and a delta angle of 1 degree 28 minutes 32 seconds for 295.14 feet; thence on tangent to said curve for 325.41 feet and there terminating.

Line 2: From the point of termination of Line 1 described above, run Southwesterly at right angles to said Line 1 for 55 feet; thence deflect to the left at an angle of 90 degrees 00 minutes 00 seconds for 100 feet to tangent spiral point; thence deflect to the right on a spiral curve of decreasing radius (spiral angle 15 degrees 00 minutes 00 seconds) having a length of 250 feet for 57.49 feet to the point of beginning of Line 2 to be described; thence continue Southeasterly on the last described spiral curve for 192.51 feet to spiral

curve point; thence deflect to the right on a curve having a radius of 477.46 feet and a delta angle of 19 degrees 48 minutes 32 seconds for 165.08 feet; thence on tangent to said curve for 200 feet and there terminating.

#### Abstract Property

Also together with:

That part of the southwesterly half of Fifth Street North adjacent to Block 4, HOAG'S ADDITION TO MINNEAPOLIS, Hennepin County, Minnesota, which lies northwesterly of the northwesterly line of Third Avenue North and which lies southeasterly of the following described line:

Beginning at a point on the Northeasterly line of said Block 4 distant 31 feet Northwesterly of the most Easterly corner of said Block 4; thence Northeasterly at right angles measured from said Northeasterly line of said Block 4 to the Southwesterly line of Block 85, HOAG'S ADDITION TO MINNEAPOLIS and said line there terminating.

Also together with:

All those parts of the following described properties:

#### Parcel 4:

Lot 8, Block 85;

That part of Block 85, described as beginning at a point on the Southwesterly line of said Block 85 distant 255.56 feet Northwesterly from the most Southerly corner of said Block 85; thence Northwesterly along said Southwesterly line a distance of 12 feet; thence Northeasterly to a point on the Northeasterly line of said Block 85 distant 265.87 feet Northwesterly from the most Easterly corner of said Block 85; thence Southeasterly along said Northeasterly line a distance of 12 feet; thence Southwesterly to the point of beginning;

and;

That part of Lots 2 and 9, Block 85, lying Southeasterly of a line drawn from a point on the Southwesterly line of said Block 85 distant 255.56 feet Northwesterly from the most Southerly corner of said Block 85 to a point on the Northeasterly line of said Block 85 distant 253.87 feet Northwesterly from the most Easterly corner of said Block 85; Except those parts of said Lots 8 and 9 and of said part of Block 85 lying Northeasterly of a line drawn parallel with and 43 feet Southwesterly of the following described line: Commencing at a point on the center line of Second Avenue North distant 5.5 feet Northeasterly of its intersection with the center line of Fourth Street North; thence Northwesterly, parallel with the center line of Fourth Street North, a distance of 308.11 feet; thence Northwesterly a distance of 794.64 feet along a tangential curve concave to the Southwest, having a radius of 5729.58 feet and a central angle of 7 degrees 56 minutes, 47 seconds, all in Hoag's Addition to Minneapolis;

and

Parcel 5:

Lot 3, except the Southeasterly 2.64 feet of the Southwesterly 132.25 feet thereof, Block 85, Hoag's Addition to Minneapolis;

and

Parcel 10

That part of Lots 8 and 9, Block 85, Hoag's Addition to Minneapolis lying Northeasterly of a line drawn parallel with and 43 feet Southwesterly of a line described as follows: Commencing at a point on the center line of Second Avenue North distant 5.5 feet Northeasterly of its intersection with the center line of Fourth Street North; thence Northwesterly, parallel with the center line of Fourth Street North, a distance of 308.11 feet; thence Northwesterly a distance of 794.64 feet along a tangential curve concave to the Southwest, having a radius of 5729.58 feet and a central angle of 7 degrees, 56 minutes 47 seconds and there terminating.

Except that part of said Lot 9 lying Northwesterly of a line drawn Southwesterly radial to the above described curve from a point on the above described line distant 438.19 feet Southeasterly of the point of termination of said line.

Being registered land as is evidenced by Certificate of Title No. 823433.

Described as follows:

The southeasterly 64.00 feet of Lots 3 and 8 in said Block 85;

EXCEPT the Southeasterly 17.64 feet of the Southwesterly 132.25 feet of said Lot 3;

AND EXCEPT the southeasterly 38 feet of said Lots 3 and 8 which lie Northeasterly of a line 181.7 feet Southwesterly of and parallel with the northeasterly line of said Block 85.

The northwesterly line of said southeasterly 64.00 feet of said Lots 3 and 8 in Block 85 being described as follows: Commencing at the most westerly corner of said Block 85; thence on an assumed bearing of South 44 degrees 59 minutes 51 seconds East, along the southwesterly line of said Block 85 for 148.27 feet to the actual point of beginning; thence North 44 degrees 43 minutes 45 seconds East for 340.00 feet to the northeasterly line of said Block 85 and there terminating.

Fee Area 2:

**(This legal description is for property known as the City of Minneapolis Property and it includes Parcel 1 of the property described in Title Commitment OR-1040602 prepared by Old Republic)**

Parcel 1

That part of Tracts A and B described below:

Tract A:

Lots 1, 2, 3, 4, 5, 6 and 7, Block 2, Rearrangement of Blocks 2 and 3 of Camp and Walkers Addition to Minneapolis, according to the plat thereof on file and of record in the office of the County Recorder in and for Hennepin County, Minnesota; except that part of said Lot 7 taken for widening of Seventh Street North; the title thereto being registered as evidenced by Certificate of Title No. 1192194.

Tract B:

That part of Lots 1 and 2, Block 4, Hoag's Addition to Minneapolis, according to the plat thereof and of record in the Office of the County Recorder in and for Hennepin County, Minnesota, that part of vacated 6th Street North, and that part of the unplatted portion of the Northeast Quarter of the Southwest Quarter and the Northwest Quarter of the Southeast Quarter, both in Section 22, Township 29 North, Range 24 West, of said County, contained within the following described tract; Beginning at a point on the northwesterly line of Third Avenue North, distant 483 feet northeasterly of the most southerly corner of Lot 7, Block 2, Rearrangement of Blocks 2 and 3 of Camp and Walkers Addition to Minneapolis; thence run southwesterly along said northwesterly line of Third Avenue North to the most easterly corner of said Rearrangement; thence westerly on the northerly line of said Rearrangement to an intersection with a line run parallel with and distant 15 feet northeasterly of the southwesterly line of Block 2, said Rearrangement; thence northwesterly on an extension of said 15 foot parallel line to a point distant 160.74 feet northwesterly (measured along said 15 foot parallel line) of the northwesterly line of said Third Avenue North; thence deflect to the right at an angle of 104 degrees 14 minutes 55 seconds for 118.2 feet; thence deflect to the left on a tangential curve having a radius of 885.53 feet for 149.64 feet; thence on tangent to said curve for 167.3 feet; thence deflect to the right at an angle of 85 degrees 34 minutes 00 seconds for 34.62 feet; thence easterly on a curve concave to the south, having a radius of 154.85 feet, for 69.55 feet to the point of beginning.

Which lies Northerly of Line 1 as described below:

Beginning at the easterly corner of Lot 10, Block 4, said Hoag's Addition to Minneapolis; thence run southwesterly at an azimuth of 224 degrees 07 minutes 00 seconds along the southeasterly line of said Block 4 for 270.59 feet; thence on an azimuth of 235 degrees 53 minutes 52 seconds for 245.16 feet; thence on an azimuth of 246 degrees 06 minutes 27 seconds for 212.09 feet; thence on an azimuth of 316 degrees 06 minutes 27 seconds for 50 feet and there terminating.

**Fee Area 3:**

**(This area is a portion of the property known as the State of Minnesota property and includes Parcel 6 described in Title Commitment OR-1040584 prepared by Old Republic)**

Parcel 6

That part of Tracts A and B described below:

Tract A:

Lots 1, 2, 3, 4, 5, 6 and 7, Block 2, Rearrangement of Blocks 2 and 3 of Camp and Walkers Addition to Minneapolis, according to the plat thereof on file and of record in the office of the County Recorder in and for Hennepin County, Minnesota; except that part of said Lot 7 taken for widening of Seventh Street North;

Tract B:

That part of Lots 1 and 2, Block 4, Hoag's Addition to Minneapolis, according to the plat thereof and of record in the Office of the County Recorder in and for Hennepin County, Minnesota, that part of vacated 6th Street North, and that part of the unplatted portion of the Northeast Quarter of the Southwest Quarter and the Northwest Quarter of the Southeast Quarter, both in Section 22, Township 29 North, Range 24 West, of said County, contained within the following described tract; Beginning at a point on the northwesterly line of Third Avenue North, distant 483 feet northeasterly of the most southerly corner of Lot 7, Block 2, Rearrangement of Blocks 2 and 3 of Camp and Walkers Addition to Minneapolis; thence run southwesterly along said northwesterly line of Third Avenue North to the most easterly corner of said Rearrangement; thence westerly on the northerly line of said Rearrangement to an intersection with a line run parallel with and distant 15 feet northeasterly of the southwesterly line of Block 2, said Rearrangement; thence northwesterly on an extension of said 15 foot parallel line to a point distant 160.74 feet northwesterly (measured along said 15 foot parallel line) of the northwesterly line of said Third Avenue North; thence deflect to the right at an angle of 104 degrees 14 minutes 55 seconds for 118.2 feet; thence deflect to the left on a tangential curve having a radius of 885.53 feet for 149.64 feet; thence on tangent to said curve for 167.3 feet; thence deflect to the right at an angle of 85 degrees 34 minutes 00 seconds for 34.62 feet; thence easterly on a curve concave to the south, having a radius of 154.85 feet, for 69.55 feet to the point of beginning.

Which lies Southerly of Line 1 as described below:

Beginning at the easterly corner of Lot 10, Block 4, said Hoag's Addition to Minneapolis; thence run southwesterly at an azimuth of 224 degrees 07 minutes 00 seconds along the southeasterly line of said Block 4 for 270.59 feet; thence on an azimuth of 235 degrees 53 minutes 52 seconds for 245.16 feet; thence on an azimuth of 246 degrees 06 minutes 27 seconds for 212.09 feet; thence on an azimuth of 316 degrees 06 minutes 27 seconds for 50 feet and there terminating.

The title to that portion of Tract A being registered land as evidenced by Certificate of Title No. 1192195.

**Fee Area 4:**

**(The following land is City of Minneapolis land described as Parcel 8 in Title Commitment OR-1040691)**

The Southwesterly 15 feet of Lot 7, Block 2, Rearrangement of Blocks 2 and 3 of Camp and Walkers Addition to Minneapolis, according to the recorded plat thereof, and situate in Hennepin County, Minnesota (said property now contained in existing 7th Street North).

**Fee Area 5:**

A portion of the State of Minnesota property identified as Parcel 6 in Title Commitment OR-1040691 prepared by Old Republic.

**Fee Area 6:**

The Union Pacific Railroad Company property identified as Parcel 1 in Title Commitment ORTE701664 prepared by Old Republic.

**Fee Area 7:**

**(The following land described within the following title commitments, located within the area of the Site as depicted on Exhibit J as the Southwest Parking Facility)**

Hennepin County Regional Railroad Authority Land (Title Commitment OR-1040649 prepared by Old Republic)

City of Minneapolis Land (Title Commitment OR-1040691 prepared by Old Republic)

State of Minnesota Land (Title Commitment OR-1040584 and Title Commitment OR-1040663, each prepared by Old Republic)

BNSF Railway Company Gap Parcel 3.1 (Title Commitment ORTE702438)

Union Pacific Railroad Company Parcel (Parcel 2 in Title Commitment ORTE701664)

See also all of Parcel 11 of the Fee Area 1 described above.

## **SUPPORT AND AIR RIGHTS EASEMENT AREAS:**

### **Easement Area 1:**

BNSF Railway Company will grant an easement to the County and the Authority for support and air rights over and across portions of those parcels described in Title Commitments OR-1040612 and ORTE701661 prepared by Old Republic and any adjacent gap parcels, together with an easement for support and air rights over and across parcels conveyed to BNSF by the County (as referenced in Title Commitment OR1040786) for relocation of BNSF railroad tracks generally located northwest of the BNSF property, as more particularly described in the final easement document. Such easements will be adequate for the construction and operation of the Ballpark in a manner consistent with a first-class MLB Ballpark facility. The general area of these support and air rights easements is depicted in Exhibit J this Agreement.

### **Easement Area 2:**

The State of Minnesota, Minneapolis Community Development Agency and Butler Properties, LLC will grant easements to the County and the Authority for support and air rights over and across portions of their respective parcels described in Title Commitments OR-1040691, OR-1040584 and ORTE701791 prepared by Old Republic, as more particularly described in the easement document(s). Such easements will be adequate for the construction and operation of the Ballpark in a manner consistent with a first-class MLB Ballpark facility. The general area of the support and air rights easements is depicted in Exhibit J to this Agreement as the Sixth Street North Pedestrian Crossing.

## **ACCESS RIGHTS**

### **Access Area 1:**

Ingress and egress rights to the portion of the Site depicted on Exhibit J as the Southwest Parking Facility.

### **Access Area 2:**

An Agreement with the Minnesota Department of Transportation giving access rights from the access road located on a portion of the property known as the Land Partners II site to Third Avenue North, to be specifically described in the Agreement.

EXHIBIT B

Ballpark and Public Infrastructure Advanced Funds  
Paid by the Minnesota Twins  
Through March 31, 2007

Vendor	Ballpark Advanced Funds	Public Infrastructure Advanced Funds	Combined Ballpark and Infrastructure <sup>1</sup>	Total Amount Paid
HOK Sport	\$ -	\$ -	\$ 1,393,000	\$ 1,393,000
Hammel, Green & Abrahamson, Inc.			320,867	320,867
M.A. Mortenson Company	460,462	-	-	460,462
SRF Consulting Group, Inc.	-	233,123	-	233,123
Project Management Consultants	-	-	194,582	194,582
Kimley-Horn and Associates, Inc.	-	99,988	-	99,988
Land Partners II – Surface Repaving	-	9,594	-	9,594
Minnesota Pollution Control Agency	-	3,150	-	3,150
	<u>\$460,462</u>	<u>\$345,855</u>	<u>\$1,908,449</u>	<u>\$2,714,766</u>

<sup>1</sup>Requires further allocation by each of the vendors.



EXHIBIT C

Ballpark Concept Design

October 16, 2006 Concept Design Plans prepared by the Architect

## **EXHIBIT D**

The Team, County and Authority agree that the following costs related to the Ballpark shall be Ballpark Costs:

1. Architect/Engineering Fees.
2. Construction Management Preconstruction Fees.
3. Insurance and insurance broker fees, (Willis of Minnesota, Inc.).
4. Project Accounting and Management Service Fees (Deloitte and Touche).
5. Fees relating to testing/inspections, commissioning and environmental testing.
6. Fees for preparing geotechnical reports and evaluations necessary to support the design of the Ballpark.
7. Contract Sum payable under the CM Agreement.
8. Consultant service fees of Project Management Consultants, LLC related to (i) procuring design and construction management services; (ii) procuring project insurance and insurance consulting services; and (iii) providing on-going consulting services with respect to Project administration and claims review.
9. Building permits and construction survey fees to the extent not included in the Contract Sum.
10. Furniture, fixtures and equipment to the extent not included in the Contract Sum or related to office space of the Authority.
11. Ballpark Costs specifically include piling, pile caps, grade beams, excavation and backfill, provided Ballpark Costs shall not include the cost of evaluation, treatment, removal, transportation and disposal of contaminated soils, to the extent such costs exceed the ordinary cost of excavation of clean soils otherwise required for construction of the Ballpark, or other environmental remediation costs, which costs shall be a County Site Acquisition and Public Infrastructure Cost.
12. Ballpark Costs specifically include soils correction work (including excavation) but do not include evaluation, treatment, removal, transportation and disposal of contaminated soils, or other environmental remediation which shall be a County Site Acquisition and Public Infrastructure Cost.
13. Contingencies.
14. Ballpark Costs include the costs associated with the design and construction of a vertical circulation building for light rail and commuter rail that will be constructed along with the Ballpark.

All other costs shall be excluded from Ballpark Costs. Ballpark Costs shall not include the costs of (a) Site Acquisition and Public Infrastructure Work, (b) capital improvements reserves, (c) bond reserves, (d) capitalized interest, or (e) financing costs.

## EXHIBIT E

### Ballpark Design Documents

1. February 2, 2007 Schematic Design Submittal prepared by HOK Sport, Inc. (the "Architect")
  - 1.1 floor plans
  - 1.2 building sections
  - 1.3 building elevations
  - 1.4 finish legend
  - 1.5 program summary
2. March 27, 2007 Schematic Design Estimate prepared by M.A. Mortenson ("MAM") (the "CM")
  - 2.1 building data summary
  - 2.2 ballpark estimate- exterior enclosure
3. April 6, 2007 Schematic Design Estimate; Value Analysis/Project Alternatives prepared by MAM
4. April 16, 2007 County/Authority ("MBA") Modifications

Modifications to the February 2, 2007 Schematic Design Submittal  
prepared by HOK Sport

April 16, 2007

Since the February 2, 2007 Schematic Design Submittal was issued by HOK Sport, the County, MBA and Minnesota Twins have collectively requested several design modifications that would improve the functionality, value and overall quality of the Project.

These modifications, listed below, are currently under study by HOK and have not been finalized or formally incorporated into an addendum to the February 2, 2007 submittal.

The Hennepin County Board of Commissioners and MBA are requested to approve the documents included in this Exhibit, contingent upon the mutual resolution of these modifications by the County, MBA and Minnesota Twins.

1. Review the LF and RF bleacher seats to determine options for future seating upgrades.
2. Confirm that the ticket office located on 7<sup>th</sup> Street and 3<sup>rd</sup> Avenue has been redesigned in a manner to avoid circulation conflicts between pedestrians and fans waiting in line to purchase tickets.
3. Ensure the addition of a ticket or will call window at the home plate entrance to the ballpark.
4. Redesign the two vertical circulation ramps on 5<sup>th</sup> and 7<sup>th</sup> Streets in order to provide better circulation.
5. Redesign the stairs serving the center field bleachers so as to not conflict with fan/general public circulation along the main concourse between 5<sup>th</sup> Street and the 6<sup>th</sup> Street Bridge.
6. Confirm final bathroom fixture counts and distribution of men's and women's restrooms.
7. Confirm that phenolic partitions and screens or acceptable substitute are retained. (C1.18, of MAM April 6, 2007 Value Analysis Report)
8. Confirm that a field heating system is included and designed in a manner acceptable to the County/MBA and the Twins.
9. Confirm that main concourse floor systems and finishes are included (C1.1, C1.2 of MAM April 6, 2007 Value Analysis Report) and final design acceptable by the County/Authority and the Twins.
10. Confirm that the exterior enclosure materials included in the Schematic Design Estimate included herein represent a base quality level.
11. Confirm that brick rather than burnished block veneer or acceptable substitute is retained. (B2.32 of MAM April 6, 2007 Value Analysis Report)

12. Confirm that a penetrating sealer at stadia seating is included subject to further value analysis. (C3.7 of MAM April 6, 2007 Value Analysis Report)

Confirm that site plan designs and materials are for illustrative and cost estimating purposes only, with final design and materials to be reviewed during subsequent design and cost estimating phases

## EXHIBIT F

The Team, County and Authority agree that the following costs related to the County Site Acquisition and Public Infrastructure Work shall be County Site Acquisition and Public Infrastructure Costs:

1. Architect/Engineering Fees.
2. Construction Management Preconstruction Fees.
3. Insurance and insurance broker fees, (Willis of Minnesota, Inc.).
4. Project Accounting and Management Service Fees (Deloitte and Touche).
5. Fees relating to testing/inspections, commissioning and environmental testing.
6. Fees for preparing geotechnical reports and evaluations necessary to support the design of the Public Infrastructure.
7. Contract Sum payable under the CM Agreement.
8. Consultant service fees of Project Management Consultants, LLC related to (i) procuring design and construction management services; (ii) procuring project insurance and insurance consulting services; and (iii) providing on-going consulting services with respect to Project administration and claims review.
9. Building permits and construction survey fees to the extent not included in the Contract Sum.
10. Environmental remediation including evaluation, treatment, removal, transportation and disposal shall be a County Site Acquisition and Public Infrastructure Cost, but soils correction work (including excavation) shall be a Ballpark Cost. To the extent cost of soils correction and excavation exceed the ordinary cost of correction and excavation of clean soils otherwise required for construction of the Ballpark, such excess costs shall be County Site Acquisition and Public Infrastructure Cost.
11. Contingencies.
12. Design and construction costs related to reconfiguration of 5th Street Bridge and re-alignment of BNSF trackage.
13. Acquisition costs of land and Air Rights and Easements, excluding costs relating to appraisals, accounting, title and survey fees, and attorneys fees.

Site Acquisition and Public Infrastructure Costs shall not include Ballpark Work, capital improvements reserves, bond reserves, capitalized interest, or financing costs.

EXHIBIT G

Milestone Dates for Real Property

Property to be Acquired (as identified on Exhibit J)	Date Access is Required for Construction	Outside Acquisition Date
Ballpark	June 1, 2007	August 31, 2007
Field level access road	June 1, 2007	August 31, 2007
Southwest Parking Facility	June 1, 2007	August 31, 2007
Fifth Street Abutment	June 1, 2007	N/A
BNSF Easement and Air Rights	June 1, 2007	August 31, 2007
6th Street Pedestrian Crossing Easement and Air Rights	August 15, 2007	August 31, 2007



## EXHIBIT H

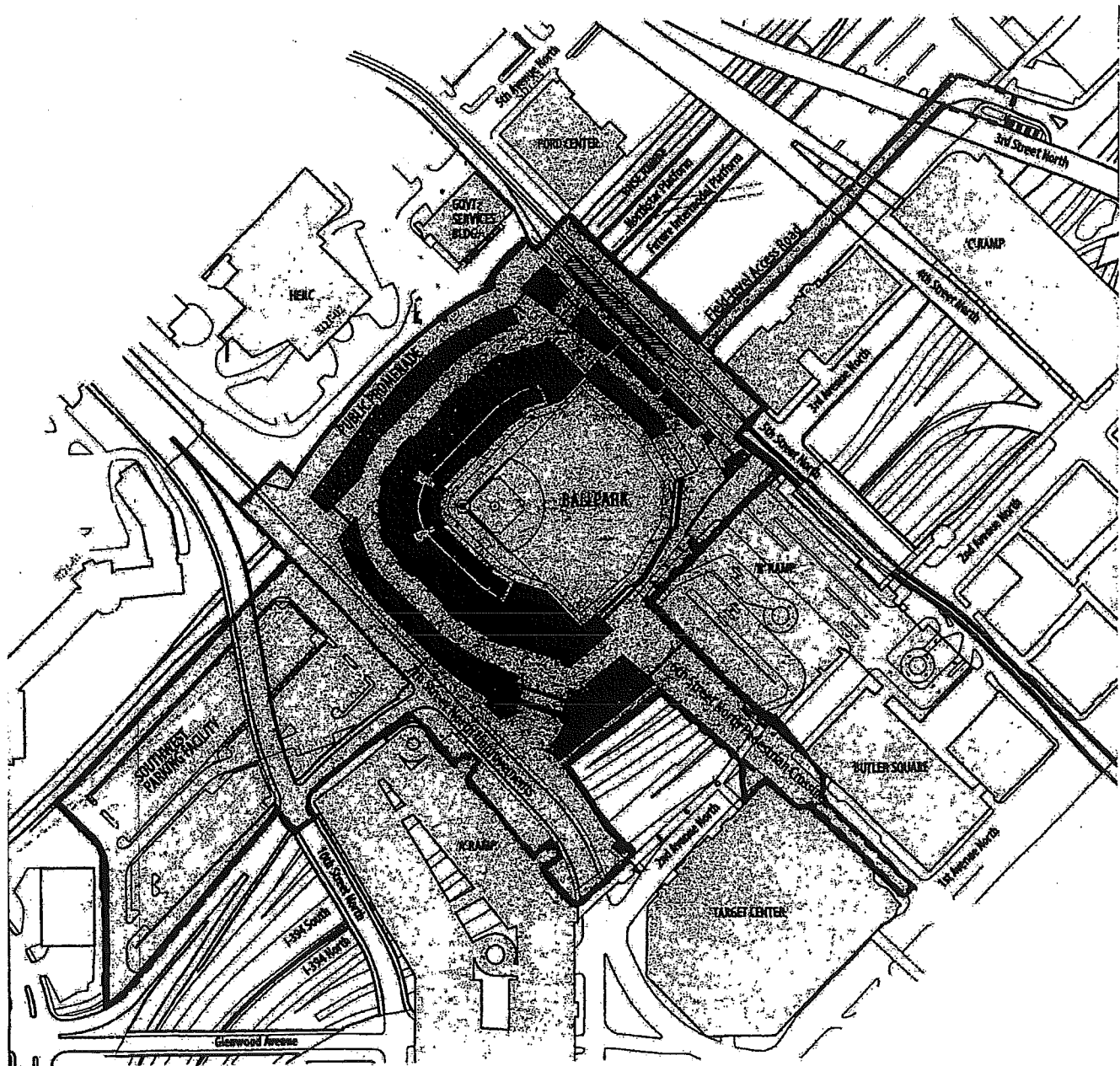
### Infrastructure Design Documents

1. February 2, 2007 Schematic Design Submittal prepared by HOK Sport, Inc. (the "Architect")
  - 1.1 Site materials plan
  - 1.2 Landscape plan
  - 1.3 Site sections - 6th and 7th Street bridges

## EXHIBIT I

### Permitted Encumbrances

Permitted Encumbrances are all those encumbrances on title to the Site that (i) do not interfere with the efficient construction of the Ballpark or the efficient operation of the Ballpark in a manner consistent with a first-class MLB Ballpark facility; (ii) do not constitute liens that subject the Site to a risk of forfeiture (except to the extent such liens are caused by the Team or the Authority or the County with consent of the Team); (iii) are liens that have been unconditionally subordinated to the interest of the County and Authority in the property that is subject to the lien or unconditionally consented to by the holder of the lien or subordinated or consented to by the holder of the lien upon such conditions as are satisfactory to the Team, in its sole and absolute discretion, (iv) encumber any property rights obtained by the County or Authority from BNSF, and (v) as to encumbrances created after April 26, 2007, do not increase the cost of construction of the Ballpark or the cost of operation of the Ballpark over what the cost of construction of the Ballpark and cost of operation of the Ballpark would have been without such encumbrances.

Site

## EXHIBIT K

### Team Provided/CM Managed Public Infrastructure Work

Team Provided/CM Managed Public Infrastructure shall consist of all public infrastructure work other than district streetscape, public art, surface parking and any environmental mitigation improvements as set forth in the Final EIS.

EXHIBIT L

Bid Package No. 1

Bid Package No. 1 consists of site demolition, utility relocation and mass grading as described in Bid Package No.1 issued for bidding on March 21, 2007 and associated addenda, including Addendum No. 1, dated April 2, 2007; Addendum No. 2, dated April 6, 2007; and Addendum No. 3, dated April 11, 2007

## EXHIBIT M

### Minority and Female Owned Business Plan

# **MORTENSON®**

## **Minnesota Twins Ballpark Community Participation Program**

Mortenson has a national reputation for the inclusion of women and minority owned businesses and workers in a significant and meaningful way on its projects. Mortenson's community participation plan is a multi-faceted program to achieve meaningful participation in the project by people of color; women, minority and women owned businesses, and other targeted members of the community. The major features of Mortenson's Community Participation Program include the following:

- A. Maximizing SWMBE Contracting
- B. Workforce Diversity
- C. Community Outreach
- D. Resource Center

### **I. Maximizing SWMBE Contracting**

Mortenson is committed to providing SWMBE firms the opportunity and access to participate in the procurement and construction of the Minnesota Twins Ballpark project. After a careful analysis of the market availability of small, female and minority businesses; the SWMBE goal established for the project is 30% with the following breakdown:

- Small Business.....8%
- Minority Business.....10%
- Woman Business.....12%

### SWMBE Definition

"SWMBE" means a business that qualifies as a Minority Business Enterprise, a Women Business Enterprise, or a Small Business Enterprise as outlined herein.

A. "Minority Business Enterprise" means a minority-owned business, which is a continuing, independent, for profit business which performs a commercially useful function, and is at least 51 percent owned and controlled by one or more minority individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned and controlled by one or more minorities; and whose management and daily business operations are controlled by one or more such individuals.

B. "Women Business Enterprise" means a women-owned business, which is a continuing, independent, for-profit business which performs a commercially useful function, and which is at least 51 percent owned and controlled by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned and controlled by one or more women; and whose management and daily business operations are controlled by one or more such individuals.

C. "Small Business Enterprise" means a business, which is a continuing, independent, for-profit business which performs a commercially useful function, and is certified as such by the Hennepin County Central Certification Program (CERT).

#### Minority and Women Business Enterprise Certification

M/WBE firms will be considered eligible and meeting the requirements for M/WBE participation credit if they are able to show proof of certification by the U.S. Small Business Administration's 8a Program, the Central Certification Program, or existing minority purchasing councils, states, cities, municipalities, airport authorities, state departments of transportation, and transit authorities.

Initiatives for maximizing participation will include:

A. Structuring bid packages to allow for maximum participation by local small, women, and minority owned businesses, including targeting specific scopes of work for SWMBE firms.

B. Collaborating with women and minority business organizations to identify firms for participation in the project, including:

- National Association of Minority Contractors (NAMC)
- Association of Women Contractors (AWC)
- American Indian Chamber of Commerce (AICOC)
- Hispanic Chamber of Commerce
- Metropolitan Economic Development Association (MEDA)

C. Establishing aggressive subcontracting goals for each trade contract based on the availability of SWMBE firms (contractors and suppliers) in that specific division of work.

#### **II. Workforce Diversity**

Mortenson is also committed to maximizing the employment opportunities for women and minorities on the project and proposes the following workforce goals to enable the citizens of Hennepin County to be actively involved in the construction of the Minnesota Ballpark. The workforce utilization goals established for the project are:

- Minority.....~~20%~~ **25%**
- Female.....5%

The goals are expressed as a percentage of the total work hours of the project.

"Minority" means a person who is:

1. Black (a person having origins in any of the black racial groups of Africa);
2. Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

3. Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

4. Native American Indian or Alaskan Native (a person having origins in any of the original peoples of North America).

Mortenson will undertake the following initiatives to maximize workforce participation in the construction of the Minnesota Twins Ballpark.

A. Collaborate with community based organizations for the recruitment and referral of women and minorities to the project. Organizations to be involved include, but are not limited to:

- American Indian OIC
- Minneapolis Urban League
- Summit Academy
- Construction Careers Coalition
- African American Men's Project
- Sentence to Serve

B. Community Workforce Program – The Community Workforce Program will educate the emerging workforce regarding viable career options in the construction trades and provide “hands on” industry experience from which participants can learn and identify a career path should they desire to pursue opportunities within the construction industry. Mortenson’s goal is to have 40-50 Hennepin County residents employed on the project through the community workforce program throughout the life of the project.

C. Internship Program - Mortenson’s internship program offers high school students the opportunity to participate in paid summer internships that will expose them to the construction industry and provide students the opportunity to gain experience in varied aspects of the construction business. The project team (Mortenson, HGA, Hennepin County and the Ballpark Authority) will offer a summer internship each summer to a student of a Hennepin County high school.

### **III. Community Outreach.**

Mortenson's outreach approach is aimed at identifying, attracting and building interest and enthusiasm for the project to the local and SWMBE contracting community. We will accomplish this through the following strategies:

A. Conducting contractor open houses to explain the bid packages, procurement schedule and process to interested bidders. We will host contractor open houses throughout the procurement process, in concert with the trade contractor bidding process.



B. Conduct pre-bid informational meetings to inform and advise local and SWMBE contractors on the potential opportunities on the project. These sessions would be regularly scheduled throughout the procurement process.

C. Meet regularly with SWMBE contractor organizations to update them on the project. We will maintain liaison with the following organizations:

- National Association of Minority Contractors (NAMC)
- Association of Women Contractors (AWC)
- American Indian Chamber of Commerce (AICOC)
- Hispanic Chamber of Commerce
- Metropolitan Economic Development Association (MEDA)

D. Communicate outreach meetings via faxes, e-mail and advertisement in local papers, and web based information posting. The publications will include, among others:

- Minneapolis Spokesman
- Women's Press
- Insight News
- LaPrensa
- Latino Midwest News

#### **IV. SWMBE Resource Center**

To address capacity building of small, women and minority businesses, Mortenson developed a SWMBE Resource Center as a tool to strengthen and expand small, women and minority businesses in the Twin Cities metropolitan area. The Resource Center provides a knowledge base and technical assistance in all facets of the construction business, with Mortenson personnel. These individuals will be supported by technical consultants including personnel from Faegre & Benson, Willis, Deloitte, and Franklin National Bank. The services of the Resource Center are concentrated around business development, business administration, project management and technical services for SWMBE firms to develop and enhance their capabilities and competencies for future growth. The Resource Center will be available for qualified firms involved with the Minnesota Twins Ballpark project.

#### **V. Reporting Procedures**

Mortenson will report periodically to the Ballpark Authority, Twins and Hennepin County on the performance of the Community Participation Program in maximizing the use of SWMBE firms and employing Hennepin County residents in the construction of the Minnesota Twins Ballpark. The periodic reports will be given in a form and frequency acceptable to the Ballpark Authority, Twins and Hennepin County. The SWMBE report will list, as a minimum, all subcontractors; the SWMBE goal for each subcontractor; identify all SWMBE firms; and the contract amount for each firm. The workforce report will list, as a minimum, all subcontractors performing work on the project, the total number of hours worked and the hours worked by females and people of color.

Addendum To Mortenson/Minnesota Twins Ballpark Community Participation Program

Mortenson acknowledges that the Ballpark Authority will engage the Metropolitan Economic Development Association (MEDA) to expand access and to increase the capacity of Women and Minority contractors to successfully compete and perform on projects for the Ballpark. Mortenson will coordinate and cooperate with the Ballpark Authority and MEDA in these efforts.

Mortenson acknowledges that the Ballpark Authority will contract with Summit Academy OIC to provide construction training in key trades for minority individuals who can then engage in skilled trades work on the Project. Mortenson will coordinate and cooperate with the Ballpark Authority and Summit Academy in these efforts.

Mortenson acknowledges that the Ballpark Authority will engage an appropriate public agency independent of the Ballpark Authority to monitor goal achievement. Mortenson will cooperate with such public agency and the Ballpark Authority in providing requested information and otherwise assessing goal achievement.

## EXHIBIT N

### Project Labor Agreement

7 MON 09:51 FAX 6123309809 MINNESOTA TWINS

002/017

## **PROJECT LABOR AGREEMENT**

### **ARTICLE I. PURPOSE**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, its successors or assigns ("Project Contractor") and the Minneapolis Building and Construction Trades Council (hereinafter "Council"), acting on their own behalf and on behalf of their respective affiliates and members whose names are subscribed hereto and who have, through their duly authorized officers, executed this Agreement, hereinafter collectively called the "Union or Unions," with respect to the construction of the [name of the Project], hereinafter "Project."

The term "Contractor" shall include all Contractors and subcontractors of whatever tier engaged in on-site construction work within the scope of this Agreement, including the Project Contractor when it performs construction work within the scope of this Agreement. Where specific reference to [name of Project Contractor] alone is intended, the term "Project Contractor" is used.

The Parties to this Project Labor Agreement acknowledge that the construction of the Project is important to the development of [description of Project and the specific needs it will serve]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the establishment of a framework for labor management cooperation and stability.

The Contractor(s) and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts, possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craftworkers for the construction of the Project.

Further, the parties desire to mutually establish and stabilize wages, hours and working conditions for the craftworkers on this construction project, to encourage close cooperation between the Contractor(s) and the Unions to the end that a satisfactory, continuous and harmonious relationship will exist between the parties to this Agreement.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to abide by the terms and conditions in this Agreement, and to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise. Further, the Contractor(s) and all contractors of whatever tier agree not to engage in any lockout, and the Unions agree not to engage in any strike, slowdown, or interruption or other disruption of or interference with the work covered by this Agreement.

## ARTICLE II. SCOPE OF AGREEMENT

Section 1. This Project Agreement shall apply and is limited to the recognized and accepted historical definition of construction work under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: [list all aspects of the construction work involved]

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It is agreed that the Project Contractor shall require all Contractors of whatever tier, who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and

conditions of any and all other national, area, or local Collective Bargaining Agreements, except that the work of the International Union of Elevator Constructors on this Project shall be performed under the terms of its' National Agreements, with the exception of Article VIII. Work Stoppages and Lockouts, IX. Disputes and Grievances, and X. Jurisdictional Disputes of this Project Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone Agreement and that by virtue of having become bound to this Project Agreement, neither the Project Contractor nor Contractors will be obligated to sign any other local area, or national agreement.

**Section 2.** Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work, or function, which may occur at the Project site or be associated with the development of the Project.

**Section 3.** This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.

**Section 4.** The owner and/or the Project Contractor have the absolute right to select any qualified bidder for the award of Contractors on this Project, without reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement; provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.

**Section 5.** Items specifically excluded from the scope of this Agreement include, but are not limited to the following: [list all items to be excluded].

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**Section 6.** The provisions of this Project Agreement shall not apply to \_\_\_\_\_ ("Owner"), and nothing contained herein shall be construed to prohibit or restrict "Owner" or its employees from performing work not covered by this Project Agreement on the Project site. As areas and systems of

the Project are inspected and construction tested by the Project Contractor or Contractors and accepted by the Owner, the Project Agreement will not have further force or effect on such items or areas, except when the Project Contractor or Contractors are directed by the Owner to engage in repairs, modifications, check-out, and warranty functions required by its contract with the Owner during the term of this Agreement.

**Section 7.** It is understood that the Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Project at any time.

**Section 8.** It is understood that the liability of any employer and the liability of the separate unions under this Agreement shall be several and not joint. The unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner, Contractor(s) or any employer.

**Section 9.** It is understood and agreed, that all project work must be performed by employees of employers bound by the terms of this Agreement.

### **ARTICLE III. UNION RECOGNITION**

**Section 1.** The Contractors recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees within their respective jurisdictions working on the Project within the scope of this Agreement.

**Section 2.** The hiring of employees shall be governed by the procedures set forth in the Agreements which form Schedule A, except that employers not party to any Agreements which form Schedule A, will be entitled to retain up to 15% of the employer's employees when commencing work on the project. It's further agreed that there shall be no discrimination against any employee or applicant for employment because of his or her membership or non-membership in a union or based on race, creed, color, sex, age or national origin of such employee or applicant.

Section 3. All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable Agreement in Schedule A.

#### ARTICLE IV. UNION REPRESENTATION

Section 1. Authorized representatives of the Union shall have access to the Project, provided they do not interfere with the work of employees, and further provided that such representatives fully comply with the posted visitor, security, and safety rules of the Project.

Section 2. Stewards. Each signatory Local Union shall have the right to designate a working journeyman as a steward, and shall notify the Construction Manager, in writing, of the identity of the designated steward prior to the assumption of his or her duties as steward. Such designated steward shall not exercise any supervisory functions. There will be no non-working stewards. Stewards will receive the regular rate of pay of their respective crafts.

#### ARTICLE V. WAGES AND BENEFITS

Section 1. All employees covered by this Agreement shall be classified in accordance with work performed, and paid the base hourly wage rates for those classifications as specified in the attached Schedule A.

Section 2. The Contractors agree to pay contributions to the established employee's benefit funds in the amounts designated in the appropriate Schedule A; provided however, that the Contractors and the Union agree that only such bona fide employee benefits as accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation, apprenticeship and training funds, etc.) shall be included in this requirement and paid by the Contractors on the Project. Bona fide jointly trusted fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added.

Contractors that are not signatory to a collective bargaining agreement beyond the scope of this Agreement ("Project Contractor") may select to participate in

the legally established industry health reimbursement arrangement ("HRA") plan, in lieu of contributing to the respective bona fide benefit funds as designated in Schedule A. The amount of the contribution is based on the difference between the contribution amount of the bona fide Schedule A benefit funds and the cost of the PLA Contractor's bona fide non-discretionary plans. Contributions must be made on behalf of named employees. Participating Contractors will submit to the Trustees of the HRA trust and plan, a copy of their plan, summary plan description, and the premium structure for workers covered under the PLA Contractor's bona fide, non-discretionary plans. The value of the PLA Contractor's benefit plans is subject to confirmation by the Trustees of the HRA trust and plan. This may include an independent audit according to a policy as established by the Trustees. Contractors are required to submit certified payroll reports to the Trustees or authorized Administrator, in order to confirm compliance with the terms of the HRA trust and plan.

The Contractors adopt and agree to be bound by the written terms of the legally-established Trust Agreements (or in lieu thereof, the aforementioned HRA plan and trust, including any policies) specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds. The Contractors authorize the parties to such Trust Agreements to appoint trustees and successor trustees to administer the Trust Funds, and hereby ratify and accept the Trustees so appointed as if made by the Contractors.

## **ARTICLE VI. HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS**

- Section 1.** The work week and workday shall be determined as set forth in the applicable Schedule A Agreement.
- Section 2.** Overtime pay shall be established by reference to the applicable Schedule A Agreement.
- Section 3.** It shall not be a violation of this Agreement if the Construction Manager considers it necessary to suspend all or a portion of the job to protect the life



and safety of an employee. In such cases, employees will be compensated only for the actual time worked; provided however, that where the employer requests employees to remain at the site and available for work, the employees will be compensated for the standby time at their base hourly rate of pay.

**Section 4.** Shift work will be performed in accordance with the currently existing Schedule A Agreement.

**Section 5.** Recognized holidays on this Project shall be those in the local Collective Bargaining Agreements in existence for the appropriate Local Unions on the date of this Project Agreement as contained in the attached Schedule A. There shall be no change in the established holiday schedules and the days upon which those holidays are celebrated, except by mutual agreement.

## **ARTICLE VII. MANAGEMENT'S RIGHTS**

The Project Contractor and Contractors of whatever tier retain full and exclusive authority for the management of their operations. Except as otherwise limited by the terms of this Agreement, the Contractors shall direct their working forces at their prerogative, including, but not limited to, hiring, promotion, transfer, lay-off or discharge for just cause. No rules, customs, or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees. The Contractors shall utilize the most efficient method or techniques of construction, tools, or other labor saving devices. There shall be no limitations upon the choice of materials or design, nor shall there be any limit on production by workers or restrictions on the full use of tools or equipment. There shall be no restriction, other than may be required by safety regulations, on the number of employees assigned to any crew or to any service.

## **ARTICLE VIII. WORK STOPPAGES AND LOCKOUTS**

**Section 1.** During the term of this Agreement, there shall be no strike, picketing, work stoppages, slowdowns or other disruptive activity for any reason by the Council, a Local Union or by any employee, and there shall be no lockout by the

**Contractor. Failure of the Council, Local Union or employee to cross any picket line established at the Project site, is a violation of this Article.**

**Section 2. The Council and Local Unions shall not sanction, aid or abet, encourage or continue any work stoppage, strike, picketing or other disruptive activity at the Contractor's project site, and shall undertake all reasonable means to prevent or to terminate any such activity. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities which interfere with the normal operation of the Project shall be subject to disciplinary action, including discharge, and if justifiably discharged for the above reasons, shall not be eligible for rehire on the Project for a period of not less than ninety (90) days.**

**Section 3. Neither the Council nor any Local Union shall be liable for acts of employees for whom it has no responsibility. The Building Trades Council Business Manager will immediately instruct, order and use the best efforts of his office to cause the Local Union or Unions to cease any violations of this Article. By complying with this obligation, the Building Trades Council shall not be liable for unauthorized acts of a Local Union. The principal officer or officers of a Local Union will immediately instruct, order and use the best efforts of his or her office to cause the employees the Local Union represents, to cease any violations of this Article. A Local Union complying with this obligation shall not be liable for unauthorized acts of employees it represents. The failure of the Contractor to exercise its right in any instance shall not be deemed a waiver of its right in any other instance.**

## **ARTICLE IX. DISPUTES AND GRIEVANCES**

**Section 1. This Agreement is intended to provide close cooperation between management and labor. Each of the Unions will assign a representative to this Project for the purpose of completing the construction of the Project economically, efficiently, continuously, and without interruptions, delays, or work stoppages.**

**Section 2.** The Contractor, Unions; and employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of the work of the Project, and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

**Section 3.** Any question or dispute arising out of and during the term of this Project Agreement (other than trade jurisdictional disputes) shall be considered a grievance and subject to resolution under the following procedures:

**Step 1.**

- a) When any employee, subject to the provisions of this Agreement, feels he or she is aggrieved by a violation of this Agreement, he or she through his or her local union Business Representative or job steward, shall, within five (5) working days after the occurrence of the violation, give notice to the work-site representative of the involved Contractor, stating the provision(s) alleged to have been violated. The Business Representative of the local union or the job steward and the work-site representative of the involved Contractor and the Project Contractor shall meet and endeavor to adjust the matter within three (3) working days after timely notice has been given. The representative of the Contractor shall keep the meeting minutes and shall respond to the Union representative in writing (copying the Project Contractor) at the conclusion of the meeting, but not later than two (2) working days thereafter. If they fail to resolve the matter within the prescribed period, the grieving party may, within two (2) working days thereafter, pursue Step 2 of the Grievance Procedure, provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short description thereof, the date on which the grievance occurred, and the provision(s) of the Agreement alleged to have been violated.
- b) Should the Local Union(s) or the Project Contractor or any Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within three (3) working days, the dispute may be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

**Step 2.**

The Business Manager of the Council and the involved Contractor shall meet Within seven (7) working days of the referral of a dispute to this second step, to arrive at a satisfactory settlement thereof. If the parties fail to reach an agreement, the dispute may be appealed in writing, in accordance with the provisions of Step 3 within seven (7) calendar days hereafter.

**Step 3.**

- a) If the grievance has been submitted but not adjusted under Step 2, either party may request in writing, within seven (7) calendar days thereafter, that the grievance be submitted to an Arbitrator mutually agreed upon by them. The Contractor and the involved Union shall attempt mutually to select an Arbitrator, but if they are unable to do so, they shall request the Federal Mediation and Conciliation Service to provide them with a list of seven (7) Arbitrators residing in the state of Minnesota from which the Arbitrator shall be selected by the parties alternatively striking names from the list. The first strike shall be determined by the toss of a coin. The decision of the Arbitrator shall be final and binding on all parties. The fee and expenses of such Arbitration shall be borne equally by the Contractor and the involved Local Union(s).
- b) Failure of the grieving party to adhere to the time limits established herein shall render the grievance null and void. The time limits established herein may be extended by written consent of the parties involved, at the particular step where the extension is agreed upon. The Arbitrator shall have the authority to make decisions only on issues presented to him or her, and he or she shall not have authority to change, amend, add to or detract from any of the provisions of this Agreement.

**Section 4.** The Project Contractor and Owner shall be notified of all actions at Steps 2 and 3, and shall, upon their request, be permitted to participate in all proceedings at these steps.

## **ARTICLE X. JURISDICTIONAL DISPUTES**

- Section 1.** The assignment of work will be solely the responsibility of the Contractor performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.
- Section 2.** All Jurisdictional disputes on this Project between or among Building and Construction Trades Unions and employees parties to this Agreement, shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractors and Unions parties to this Agreement.
- Section 3.** All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slowdown of any nature, and the Contractor's assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.
- Section 4.** Each Contractor will conduct a pre-job conference with the appropriate representative of the Council and local union prior to commencing work. The Project Contractor and the Owner will be advised, in advance, of all such conferences and may participate if they wish.

## **ARTICLE XI. SUBCONTRACTING**

The Project Contractor agrees that neither it nor any of its Contractors or Subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any Contractor or Subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform all work under the terms of this Agreement.

## **ARTICLE XII. SAVINGS AND SEPARABILITY**

It is not the intention of Owner, Contractors, or the Union parties to violate any laws governing the subject matter of this Agreement. The parties hereto agree that in the event any provisions of the Agreement are finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the Agreement shall remain in full force and effect unless the part or parts so found to be void are wholly inseparable from the remaining portions of this Agreement. Further, the Contractors and Union agree that if and when any and all provisions of this Agreement are finally held or determined to be illegal or void by Court or competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision, for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

## **ARTICLE XIII. DURATION OF THE AGREEMENT**

The Project Labor Agreement shall be effective \_\_\_\_\_, and shall continue in effect for the duration of the Project construction work described in Article I and II hereof. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segment has been turned over to the Owner, and has received the final acceptance from the Owner's representative.

Schedule A attached to this Project Agreement shall continue in full force and effect until the Contractor and/or Union parties to the Collective Bargaining Agreements, which are the basis for such Schedule A, notify the Construction Manager in writing of the mutually agreed upon changes in those provisions of such Agreements which are applicable to the Project, and their effective date(s), which shall become the effective date(s) under this Agreement.

The Union agrees that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity affecting the Project by any Union involved in the negotiations of such Local Collective Bargaining Agreements and the resulting Schedule A's; nor shall there be any lockout on this Project affecting the Union during the course of such negotiations.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the day and year above written.

**FOR THE UNION**

Minneapolis Building & Construction  
Trades Council

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Please Print Name & Title

**FOR THE PROJECT OWNER**

\_\_\_\_\_  
\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Please Print Name & Title

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**ATTACHMENT "A"**

**LETTER OF ASSENT**

\_\_\_\_\_ **[Name of Contractor]** \_\_\_\_\_ hereby agrees  
to accept and be bound by the terms and conditions of the Project Labor  
Agreement between \_\_\_\_\_ **[Name of Owner]** \_\_\_\_\_  
and the MINNEAPOLIS BUILDING AND CONSTRUCTION TRADES  
COUNCIL, dated and effective \_\_\_\_\_ **[Project Start Date]** \_\_\_\_\_, with  
respect to all construction work at the site of the construction and during  
the course of the construction as those terms are used or defined in the  
Project Labor Agreement.

\_\_\_\_\_ **[Contractor Name & Address]** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

Completion Date of Project: \_\_\_\_\_



ATTACHMENT B  
HEALTH REIMBURSEMENT ARRANGEMENT  
EMPLOYER SUBSCRIBER AGREEMENT

The undersigned hereby adopt the Trust Agreement known as the Minnesota State Building Trades Health Reimbursement Trust Fund, hereinafter referred to as "Trust" and agree to be bound by the terms thereof. The undersigned Employer Subscriber and Unions hereby grant Powers of Attorney to the Board of Trustees now holding office, or to the successors, to administer the Trust as representatives of the Employer Subscriber and Unions respectively, with full power and authority to act for the Employer Subscriber and Unions in all matters of administration of the Trust. In no event shall the Unions or Employer Subscriber be responsible for any act or omission of the Trustees nor shall the Unions or Employer Subscriber have any liability for any debt or liability of the Trust or its Trustees.

Commencing on the first day of work under the attached Project Labor Agreement, and payable not later than the 15<sup>th</sup> day of each month thereafter, the Employer Subscriber shall pay to the Trust the amount specified by the Project Labor Agreement for all hours worked under the Project Labor Agreement by the employees of the Employer Subscriber for which contributions to the Trust are required by the Project Labor Agreement. The undersigned Employer Subscriber acknowledges that the failure by the Employer Subscriber to timely remit required contributions will result in liquidated damages being payable under the Trust Agreement to which the Employer Subscriber is hereby bound.

The undersigned represents and warrants that he/she/they is (are) authorized to execute this Employer Subscriber Agreement on behalf of the Employer Subscriber and that by he/she/their respective execution of this Subscriber Agreement his/her/their organization is fully bound hereto and the provisions of the Trust Agreement.

\_\_\_\_\_  
Employer/Subscriber

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Name and Title

**MINNEAPOLIS BUILDING & CONSTRUCTION TRADES COUNCIL****SCHEDULE A**

- A-1 Asbestos Workers No. 34
- A-2 Boilermakers No. 647
- A-3 Bricklayers and Allied Craftworkers No. 1
- A-4 Cabinet Makers & Millmen No. 1865
- A-5 Carpenters No. 851  
Carpenters & Floorlayers No. 1644  
Dock Builders & Pile Drivers No. 1847
- A-6 Carpet, Linoleum, & Resilient Tile Layers No. 596
- A-7 Cement Masons No. 633
- A-8 Teamsters No. 120:
  - 1) Highway Heavy
  - 2) Container
  - 3) Concrete
- A-9 Electrical Workers  
IBEW/NECA LEA Agreement
- A-10 Elevator Constructors No. 9
- A-11 Glaziers & Glassworkers No. L-1324
- A-12 Iron Workers No. 512
- A-13 Construction & General Laborers No. 563
- A-14 Lathers No. 9190L
- A-15 Millwrights No. 548
- A-16 Operating Engineers No. 49
- A-17 Painters No. 386
- A-18 Pipe Fitters No. 539
- A-19 Plasterers No. 265
- A-20 Plaster Tenders No. 563 – REFER TO LABORERS #563
- A-21 Plumbers No. 15
- A-22 Roofers No. 96
- A-23 Sheet Metal Workers No. 10
- A-24 Sign, Display & Screen Process No. 880
- A-25 Sprinkler Fitters No. 417
- A-26 Tile Layers, Finishers, Shopmen, & Terrazzo Workers – REFER TO BRICKLAYERS #1

EXHIBIT O

Project Budget

<u>Ballpark</u>	<u>Budget</u>
Ballpark Construction / FF&E	\$328,042,813
Soft Costs	43,918,750
Ballpark Contingency	18,038,437
Total Budget	\$390,000,000

<u>County Site Acquisition and Public Infrastructure Costs</u>	<u>Budget</u>
Site Acquisition	\$23,000,000
Team Provided/CM Managed Infrastructure	29,000,000
Other County Construction	24,000,000
Soft Costs/Contingency	14,000,000
Total Budget	\$90,000,000

Basis of Budget:

- 1) Documents dated February 2, 2007 prepared by HOK & Consultants supplemented by proposed and accepted Value Analysis & Project Alternates
- 2) Based upon County Estimates and M.A. Mortenson Company March 27, 2007 Schematic Design Estimate

AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT (this "Amendment") is made as of the 21st day of April, 2008, by and among MINNESOTA BALLPARK AUTHORITY, a public body and political subdivision of the State of Minnesota (the "Authority"), HENNEPIN COUNTY, a political subdivision of the State of Minnesota (the "County"), and MINNESOTA TWINS, LLC, a Delaware limited liability company (the "Team").

BACKGROUND

The Authority, the County and the Team are Parties to that certain Development Agreement dated as of April 26, 2007 (the "Agreement") and wish to modify certain provisions of the Agreement to document the agreement of the Parties with respect to: (i) the revised Project Budget reflecting the increases for the acquisition cost of the Site, the contribution of Team Additional Funds for certain non-land public infrastructure costs and the contribution by the Team of additional funds for certain Ballpark Costs, including Team funded Ballpark enhancements; (ii) the scope of, and amount budgeted for, the Team Provided/CM Managed Public Infrastructure Work based on the GMP Documents; (iii) the allocation of certain general conditions costs under the CM Agreement; and (iv) the allocation of certain soft costs of the Project. In addition, this Amendment will confirm the Authority's and the County's approval of the definitive CM Agreement, as amended by the GMP Amendment of even date herewith, and the definitive Architect Agreement.

NOW, THEREFORE, in consideration of the above premises and the agreements herein contained, the Agreement is hereby amended as follows:

1. Definitions.

(a) All capitalized terms used herein shall have the meaning ascribed to them in the Agreement unless otherwise specifically defined or amended herein.

(b) The following new definitions are hereby added to Section 1.1 of the Agreement:

(1) "Authority Contingency" shall have the meaning set forth in Section 5.6(a) of the Agreement.

(2) "Authority LEED Contribution" shall have the meaning set forth in Section 5.1(e) of the Agreement.

(3) "Ballpark FF&E" shall have the meaning set forth in Section 5.1(f) of the Agreement.

(4) "Ballpark Work" shall have the same meaning as set forth in the CM Agreement.

(5) "Change Order Request" shall mean a request for a Change Order that includes (1) a written description of the requested change, (2) the proposed cost, (3) the proposed allocation of the cost of the requested change between the Ballpark Work and the Team Provided/CM Managed Public Infrastructure Work, and (4) reasonable documentation supporting each proposed cost issue.

(6) "CM Cost Allocation Percentage" shall have the meaning set forth in Section 4.1(f) of the Agreement.

(7) "Construction Funds Trust Agreement" shall have the meaning set forth in Section 5.1(a)(vi) of the Agreement.

(8) "Cost of the Work" shall have the same meaning as set forth in the CM Agreement.

(9) "Disbursing Agent" shall have the same meaning as set forth in the Construction Funds Trust Agreement.

(10) "GMP" shall have the same meaning as set forth in the GMP Amendment to the CM Agreement.

(11) "GMP Amendment" shall mean the Amendment to the Construction Management Agreement dated April 21, 2008, by and between the Team and Construction Manager.

(12) "Material Change Order Request" shall mean any Change Order Request that materially alters the design concepts set forth in the Design Documents or that would result in a cost increase or decrease to the Contract Sum of Fifty Thousand Dollars (\$50,000) or more.

(13) "Pledge Agreement" shall have the same meaning as set forth in the Construction Funds Trust Agreement.

(14) "Schedule of Values" shall have the same meaning as set forth in the GMP Amendment to the CM Agreement.

(15) "Team Ballpark Enhancement Contribution" shall have the meaning set forth in Section 5.1(a)(vii) of the Agreement.

(16) "Team LEED Contribution" shall have the meaning set forth in Section 5.1(e) of the Agreement.

(c) The following defined terms appearing in Section 1.1 of the Agreement are hereby amended and restated as follows:

(1) “Cost Overrun” shall mean any Ballpark Costs in excess of the sum of \$412,529,185 plus interest accrued in the Project Accounts relating to the Team Contribution, excluding costs otherwise arising out of negligent actions or omissions of the Authority or the County or breach of the Agreement by the County or Authority.

(2) “Team Contribution” shall mean One Hundred Fifty-Two Million Five Hundred Twenty-Nine Thousand One Hundred Eighty-Five Dollars (\$152,529,185).

2. Amendments.

(a) Exhibits.

(1) Ballpark Costs. Exhibit D to the Agreement is hereby deleted in its entirety and replaced with the revised Exhibit D attached to this Amendment, which, as revised, includes certain document printing and other soft costs as Ballpark Costs.

(2) County Site Acquisition and Public Infrastructure Costs. Exhibit F to the Agreement is hereby deleted in its entirety and replaced with revised Exhibit F attached to this Amendment, which, as revised, includes certain document printing and other soft costs as County Site Acquisition and Public Infrastructure Costs.

(3) Team Provided/CM Managed Public Infrastructure Work. Exhibit K to the Agreement is hereby deleted in its entirety and replaced with revised Exhibit K to this Amendment, which, as revised, identifies the scope of the Team Provided/CM Managed Public Infrastructure Work as described in the GMP Documents and Schedule of Values attached to the GMP Amendment.

(4) Project Budget. Exhibit O to the Agreement is hereby deleted in its entirety and replaced with revised Exhibit O to this Amendment, which, as revised, reflects adjustments to the Project Budget to include the actual acquisition cost of the Site, the contribution of the Team Additional Funds, and the Team Ballpark Enhancement Contribution.

(5) Authority Requested Change Directives. A new Exhibit P, in the form attached to this Amendment, is hereby added to the Agreement, which form shall be used to document Authority Change Directives under revised Section 4.1(d) of the Agreement.

(6) Soft Cost Allocation. A new Exhibit Q, in the form attached to this Amendment, is hereby added to the Agreement, which exhibit identifies certain soft costs of the Project to be allocated between the Ballpark Costs and the County Site Acquisition and Public Infrastructure Costs as provided under new Section 4.8 of the Agreement.

(7) Vertical Circulation Building. A new Exhibit R, in the form attached to this Amendment, is hereby added to the Agreement, which exhibit describes the estimated costs for the design and construction of the Vertical Circulation Building.

(b) Section 4.1(d) of the Agreement is hereby amended in its entirety and replaced with the following:

“(d) Change Orders.

“(i) In order to expedite the Change Order process, the Team shall promptly submit to the Authority Representative for its review and approval all Change Order Requests and shall submit to the County Representative any Material Change Order Requests. The County Representative and Authority Representative shall review the Change Order Requests, as applicable, in an expeditious manner so that the Team shall have sufficient time to respond within the period of time provided in the CM Agreement for responding to Change Orders. The failure of the Authority Representative, or the County Representative, if applicable, to respond within five (5) Business Days shall constitute a deemed approval unless the Authority Representative or the County Representative, if applicable, reasonably requests additional time not to exceed five (5) Business Days, in which case the period for action shall be extended for such additional time. The Authority Representative and the County Representative, if applicable, shall exercise good faith efforts to respond as diligently and expeditiously as possible to any Change Order Requests. In considering whether to approve a Material Change Order Request, the County Representative shall consider (A) whether the requested change is a proper use of public funds, and (B) whether the requested change addresses public needs while not being in excess of what is normal for a similar ballpark. In the event that the County Representative or Authority Representative disapproves a Change Order Request, the County Representative or Authority Representative shall state, with specificity, the reason for disapproval.

(ii) If the execution of any Change Order Request relates to a Privately Financed Enhancement or results in a Cost Overrun, then the Team, prior to executing the Change Order, shall deposit into the Project Accounts containing the Ballpark Funds an amount equal to such Privately Financed Enhancement or Cost Overrun, as the case may be. In addition, the County Representative and Authority Representative shall review for approval, which approval shall not be unreasonably withheld or conditioned, a Change Order Request for a Privately Financed Enhancement unless such Change Order Request is for enhancements to

Team administrative spaces (including offices and conference rooms), suites, locker rooms, training area, press box, media room, or the bullpen, in which case approval by the County or Authority shall not be required.

(iii) The Team shall be authorized to sign all Change Orders that incorporate items set forth in any Change Order Request or Material Change Order Request that has been approved, or deemed approved, in accordance with the procedures set forth in this Section 4.1(d). Notwithstanding the foregoing, any Change Order signed by the Team shall be limited to, and not deviate from, the items set forth in an approved Change Order Request or Material Change Order Request. The Team shall provide the County and the Authority with a copy of all Change Orders.

(iv) Any Change Order initiated by the Authority shall be submitted to the Team in writing, substantially in the form of new Exhibit P to the Agreement (the "Authority Change Directive"). The Team Representative and the County Representative shall review any Authority Change Directive during the same time period provided for under this Section 4.1(d) for any other Change Order. The cost of the additional work requested in any Authority Change Directive shall be the responsibility of the Person or Persons designated in the fully executed Authority Change Directive and the payment thereof shall be made by the designated Person(s) at such time as any portion thereof is legally required to be paid with respect to the Ballpark Work or Team Provided/CM Managed Public Infrastructure Work, as the case may be."

(c) Section 4.1 of the Agreement is hereby amended by adding the following new subsection (f) to provide as follows:

"(f) Allocation of Certain Costs under CM Agreement. The Parties acknowledge that certain costs under the CM Agreement cannot readily be assigned specifically to Team Provided/CM Managed Public Infrastructure Work or Ballpark Work and hereby agree that such costs shall be allocated 89.0% to the Ballpark Work and 11.0% to the Team Provided/CM Managed Public Infrastructure Work (the "CM Cost Allocation Percentage"). The CM Cost Allocation Percentage shall be applied to all "General Conditions/Site Services," "Building Permit," "Construction Contingency," "Bonds," and "Liability Insurance," as reflected in the Schedule of Values submitted and accepted in connection with the GMP Amendment.

(d) Section 4.7(d) of the Agreement is hereby amended by adding the following new sentence to be inserted at the end of subsection (d):

"The cost of the builder's risk insurance for the Ballpark shall be allocated 89.0% to Ballpark Costs and 11.0% to County Site Acquisition and Public Infrastructure Costs."



(e) Article 4 of the Agreement is hereby amended by adding the following new Section 4.8 to provide as follows:

“Section 4.8 Allocation of Certain Project Soft Costs. The Parties acknowledge that certain soft costs incurred for the Project are not included in the GMP and cannot readily be assigned as a County Site Acquisition and Public Infrastructure Cost or a Ballpark Cost and hereby agree that such soft costs shall be allocated and paid based on the percentages set forth in Exhibit Q attached to the Agreement.”

(f) Section 5.1(a) of the Agreement is hereby amended by adding the following text to be inserted at the end of subsection (vi):

“The Parties hereby acknowledge and agree that the amount of the Team Additional Funds referred to in this subsection (vi) is \$15,000,000, all of which funds shall be applied to the cost of non-land infrastructure budget items as reflected on revised Exhibit O to the Agreement. With respect to the Team’s obligation to contribute the Team Additional Funds, collateral has been provided (and shall be maintained) by the Team pursuant to the terms of that certain Agreement and Declaration of Trust for Ballpark Construction Funds Trust dated as of May 7, 2007 (the “Construction Funds Trust Agreement”), by and among the Authority, the Team and Wells Fargo Bank, National Association, as Trustee.”

(g) Section 5.1(a) of the Agreement is hereby amended by adding the following new subsection (vii) to provide as follows:

“(vii) The Team will make a further contribution of up to \$22,529,185 to fund certain Ballpark Costs, including overall Ballpark enhancements (the “Team Ballpark Enhancement Contribution”), as agreed upon by the Parties and reflected on revised Exhibit O attached to the Agreement; the Parties expressly acknowledge and agree that the overall Ballpark enhancements funded by the Team Ballpark Enhancement Contribution are not, and shall not be deemed to be, Privately Financed Enhancements. The Parties hereby acknowledge and agree that, with the Team Ballpark Enhancement Contribution, the aggregate amount of the Team Contribution available for Ballpark Costs has increased from \$130,000,000 to \$152,529,185 and, accordingly, the aggregate amount of the Ballpark Funds has increased from \$390,000,000 to \$412,529,185, as reflected on revised Exhibit O to the Agreement. The Team shall deposit the Team Ballpark Enhancement Contribution at the same time that the Team Final Payment is required to be deposited, as provided in Section 5.1(a)(ii) of the Agreement, and, when deposited, shall be credited to the Team Contribution Ballpark Account established in accordance with the terms of the Construction Funds Trust Agreement. On or before the date of this Amendment, or such later date as agreed upon by the Parties, the Team shall provide a Letter of Credit in an amount equal to the Team Ballpark Enhancement Contribution or other pledged collateral

in an amount satisfactory to the County and Authority, in form and substance reasonably acceptable to the County and Authority, and which shall permit the Authority to make draws thereunder upon presentment of a draw certificate.”

(h) Section 5.1(d) of the Agreement is hereby amended and restated in its entirety to provide as follows:

“(d) Ballpark Cost Savings. The Parties hereby acknowledge and agree that in order to assure that as many program elements, amenities and design features as are reasonable for a first class MLB ballpark are included in the Ballpark, the Ballpark Budget is hereby increased from \$390,000,000 to \$412,529,185 and that such increase in the Ballpark Budget shall be funded with the Team Ballpark Enhancement Contribution as provided for under subsection 5.1(a)(vii) above. The Parties intend that \$412,529,185 shall be spent towards Ballpark Costs. In the event the actual Ballpark Costs are less than \$412,529,185 but greater than \$390,000,000, the Team shall be entitled to the repayment of Ballpark Funds actually advanced by the Team in excess of \$390,000,000, including the Team Additional Funds and the Team Ballpark Enhancement Contribution, but excluding any Privately Financed Enhancements, from the Ballpark Funds on hand in the Project Accounts. If Ballpark Costs are less than \$390,000,000, the difference between \$390,000,000 and the actual Ballpark Costs shall be shared pro rata between the Authority and the Team, with the Authority receiving two-thirds (2/3) of the difference for repayment to the County to the extent provided in the Grant Agreement and the Team receiving one-third (1/3) of the difference.”

(i) Section 5.1 of the Agreement is hereby amended by adding the following new subsections (e) and (f) to provide as follows:

“(e) Funds Provided for LEED-Related Project Costs. The Parties acknowledge that grant funds, if any, obtained by the Authority (as contemplated in Section 2.1(d) of the Agreement) will be insufficient to cover the entire cost of the LEED-related design elements in the Project. The Parties agree to continue to work with the Architect and the Construction Manager to develop the overall plan and budget for seeking LEED certification and, in furtherance of that objective, hereby agree to provide a source of funds for LEED-related design elements that are finally agreed to by the Parties and incorporated into the Project, as follows:

(i) Funds Provided by Authority for LEED. The Authority has authorized and will contribute up to \$1,000,000 of Authority, funds either directly or through sponsorship, grants or other third party commitments facilitated by the Authority (in addition to the County Ballpark Contribution and County Site Acquisition and Public Infrastructure Contribution) for LEED-related County Site Acquisition and Public Infrastructure Costs (the “Authority LEED Contribution”). The timing and amounts of advances of the Authority LEED Contribution shall be as determined by the Chair and Vice Chair of the Authority (or their authorized designee(s)) in their discretion; provided, however, such

amounts shall be deposited into the Project Accounts not later than the time payment is legally required to be made with respect to any portion of the LEED-related County Site Acquisition and Public Infrastructure Costs. The funds actually received through grant or sponsorship for LEED-related County Site Acquisition and Public Infrastructure Costs shall be credited against the amount of the Authority LEED Contribution provided for in this subsection (i).

(ii) Funds Provided by Team for LEED. The Team has authorized and will contribute up to \$1,500,000 of Team funds, either directly or through sponsorship, grants or other third party commitments facilitated by the Team (in addition to the Team Contribution and the Team Additional Funds) for LEED-related Ballpark Costs (the "Team LEED Contribution"). The timing and amounts of advances of the Team LEED Contribution shall be as determined by the Team Representative (or his authorized designee); provided, however, such amounts shall be deposited into the Project Accounts not later than the time payment is legally required to be made with respect to any portion of the LEED-related Ballpark Costs. The funds actually received through grant or sponsorship for LEED-related Ballpark Costs shall be credited against the amount of the Team LEED Contribution provided for in this subsection (ii).

(iii) LEED Certification. The Parties acknowledge and agree that their respective funding commitments provided for in subsections (i) and (ii) above will be applied exclusively to LEED-related Project Costs, but that even with such additional funding there can be no assurance that LEED certification, the final determination of which is made by an independent third party, can or will be achieved. When the final LEED-related design elements have been determined, as identified in the submission for LEED certification, the Team will promptly prepare for the Authority's review and approval a final reconciliation of the funding for LEED-related Project Costs as provided for in this subsection (e), which reconciliation shall include an accounting of (i) the funds actually advanced by the Authority for LEED-related County Site Acquisition and Public Infrastructure Costs or by the Team for LEED-related Ballpark Costs, and (ii) the funds received by the Authority or the Team, as applicable, through grant or sponsorship and credited against their respective funding commitments. In the event the LEED-related Project Costs reflected in the final reconciliation are less than \$2,500,000, the difference between \$2,500,000 and the actual LEED-related Project Costs shall be shared, with the Authority receiving 40% of the difference and the Team receiving 60% of the difference.

(f) Final Determination of Certain FF&E Costs. The Parties acknowledge that the Ballpark Budget identified on revised Exhibit O to the

Agreement includes estimated amounts for Ballpark furniture, fixtures and equipment (the "Ballpark FF&E") in the "Soft Costs/FF&E" line item, the precise determination and cost of which remain subject to further refinement. The Team agrees to provide a written progress report to the County and the Authority, not later than March 31, 2009, identifying the Ballpark FF&E and the estimated cost thereof, which progress report will be subject to the reasonable approval of the Authority Representative and County Representative, such approval not to be unreasonably withheld, conditioned or delayed. The County and the Authority acknowledge that the provision of and funding for Ballpark FF&E may be made or provided by the use of contingency, obtaining of sponsorships, and reuse of existing furniture, fixtures and equipment. To the extent the estimated or actual Ballpark FF&E costs exceed the funds then available therefor within the Ballpark Budget, the Parties agree that such excess Ballpark FF&E costs shall constitute a Cost Overrun and the Team shall promptly deposit an amount equal to such excess Ballpark FF&E costs into the Project Accounts containing the Ballpark Funds."

(j) Section 5.2(a) of the Agreement is hereby amended by adding the following new subsections (i), (ii) and (iii) to provide as follows:

"(i) The Project Accounts referred to in this Section 5.2(a) shall also include a separate subaccount for the Team Contribution in the aggregate amount of \$3,960,000 (the "Team Contribution—Vertical Circulation Subaccount"), which subaccount shall be used exclusively to fund the costs for the design and construction of the Vertical Circulation Building; provided, however, it is expressly understood and agreed by the Parties that the designation of the Team Contribution—Vertical Circulation Subaccount from funds within the Project Account relating to the Team Contribution will not increase in any manner the Project Budget, the amount of any Party's required contribution thereto or the financing of the Project as set forth in Article 5 of the Agreement. The Parties acknowledge and agree that the costs of the Vertical Circulation Building, an estimate of which is attached as Exhibit R to this Agreement, are Ballpark Costs, except as otherwise provided in Exhibit D to this Agreement. Funds for the costs of the Vertical Circulation Building shall be transferred or deposited by the Team into the Team Contribution—Vertical Circulation Subaccount when and as needed, but in no event later than the date on which the Team Final Payment is required to be deposited as provided in Section 5.1(a)(ii) of the Agreement.

(ii) To the extent the funds in the Team Contribution—Vertical Circulation Subaccount exceed the actual costs required for the design and construction of the Vertical Circulation Building, such excess funds will be returned to the Project Account for the Team Contribution and will be used to fund other Ballpark Costs.

(iii) To the extent the funds in the Team Contribution—Vertical Circulation Subaccount are less than the actual costs required for the design and

construction of the Vertical Circulation Building, such shortfall will be funded by a further transfer from the Project Account for the Team Contribution to the Team Contribution—Vertical Circulation Subaccount.

(k) Given the designation of the Team Contribution—Vertical Circulation Subaccount memorialized in this Amendment, Section 5.4(c) of the Agreement is hereby deleted in its entirety.

(l) Section 5.5 of the Development Agreement is hereby amended by deleting the first sentence thereof and replacing it with the following two sentences:

“The Team is solely responsible for all Ballpark Costs in excess of the Ballpark Funds, and the Team shall deposit an amount equal to any Cost Overrun into the Project Accounts containing the Ballpark Funds as soon as the amount of the Cost Overrun is known to exist, as evidenced by (i) the execution of a Change Order or (ii) Schedule 2 attached to a Team requisition certificate submitted to the Disbursing Agent that, in either case, reflects Ballpark Costs in excess of the Ballpark Funds. The Team’s deposit of any Cost Overrun amount may be in the form of a Letter of Credit in such amount, other pledged collateral in an amount required under the terms of the Construction Funds Trust Agreement and the Pledge Agreement, or cash.”

(m) Section 5.6 of the Agreement is hereby amended and restated in its entirety to read as follows:

“Section 5.6. Responsibility for Team Provided/CM Managed Public Infrastructure Work and Application of Team Additional Funds.

(a) The Contract Sum includes a separate allocation for Team Provided/CM Managed Public Infrastructure Work in the aggregate amount of \$44,527,465, of which \$1,668,825 is the portion of the Construction Manager’s contingency under the CM Agreement allocated to the Team Provided/CM Managed Public Infrastructure Work (the "Authority CM Contingency"). The Authority CM Contingency is subject to reduction as follows:

(i) On or about August 1, 2008, the Parties shall calculate the amount of the Authority CM Contingency that has not been used to pay for the actual cost of the Team Provided/CM Managed Public Infrastructure Work (the "Unused Authority CM Contingency"). If, at that time, the Unused Authority CM Contingency exceeds (A) \$1,200,000 plus (B) an amount equal to the reasonable estimate of Identified Claims (as defined in the CM Agreement") with respect to the Team Provided/CM Managed Public Infrastructure Work, then the Authority may reallocate such excess amounts, if any, to other items within the Public Infrastructure Budget; and

(ii) On March 1, 2009, the same calculation as is set forth in Section 5.6(a)(i) above shall be performed, except that the calculation shall use the amount of \$990,000 in Section 5.6(a)(i)(A) instead of \$1,200,000, and the Authority may reallocate the excess amounts resulting from such calculation, if any, to other items within the Public Infrastructure Budget.

In addition, the Authority's overall budget for Soft Costs/Contingency in the amount of \$13,418,496, as identified in revised Exhibit O attached to the Agreement, includes a contingency of \$2,250,000 (the "Authority Contingency"), which funds are to be used by the Authority in the event the actual Cost of the Work for Team Provided/CM Managed Public Infrastructure Work exceeds the \$44,527,465 budgeted ("PI Overrun"). Notwithstanding the foregoing, before the Authority is required to fund any PI Overrun, the Authority shall have the right to reduce the scope or eliminate one or more items of the Site Acquisition and Public Infrastructure Work, in consultation with the County and Team, as contemplated in Section 2.4(a).

(b) At the time that all of the Subcontracts have been awarded for Team Provided/CM Managed Public Infrastructure Work, the Authority may reallocate the Authority Contingency to other items within the Public Infrastructure Budget, provided the Authority shall at all times remain responsible for payment of the actual cost of the Team Provided/CM Managed Public Infrastructure Work.

(c) The obligation of the County and the Authority to fund costs of Site Acquisition and Public Infrastructure Work, including the Team Provided/CM Managed Public Infrastructure Work, shall in no event exceed the \$90,000,000 County Site Acquisition and Public Infrastructure Contribution; provided, however, the Parties hereby acknowledge and agree that with the Team's contribution of Team Additional Funds in the amount of \$15,000,000 the aggregate amount of funds available to fund the costs of Site Acquisition and Public Infrastructure Work has increased from \$90,000,000 to \$105,000,000 as reflected on revised Exhibit O to the Agreement.

3. Approval of and Consent to CM Agreement and Architect Agreement. By executing this Amendment, the Authority and the County approve the CM Agreement, dated May 18, 2007, as amended by the GMP Amendment, executed by the Team and the Construction Manager and the Architect Agreement dated May 1, 2007, executed by the Team and the Architect. The Authority and the County acknowledge receipt from the Team of copies of the executed CM Agreement, as amended, and the executed Architect Agreement, together with all exhibits and attachments thereto.

4. Effect on the Agreement. Except as specifically amended herein, all of the provisions of the Agreement remain in full force and effect, and all such provisions of the Agreement are hereby ratified and confirmed.

5. References. All references in the Contract Documents, the Lease Agreement, the Use Agreement and other similar documents entered into to complete the Project shall mean the Agreement as amended by this Amendment.

6. Counterparts. This Amendment may be executed by each party in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one binding document.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGES FOLLOW.]**

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to Development Agreement as of the date stated in the first paragraph hereof.

ATTEST:

By: 

Name: LYNETTE GITTINS

Title: Exec. Asst.

Dated: April 21, 2008

TEAM:

**MINNESOTA TWINS, LLC,**

a Delaware limited liability company

By: 

Name: Dave St. Peter

Title: President

Dated: April 21, 2008

[SIGNATURE PAGE TO AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT]



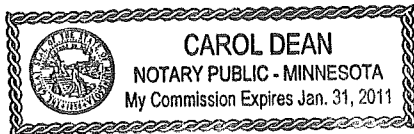
IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to Development Agreement as of the date stated in the first paragraph hereof.

AUTHORITY:

**MINNESOTA BALLPARK AUTHORITY,**  
a public body and political subdivision of the  
State of Minnesota

ATTEST:

By: Carol Dean  
Name: Carol Dean  
Title: \_\_\_\_\_  
Dated: April 21, 2008  
[SEAL]



By: Steve Cramer  
Name: Steve Cramer  
Title: Chair  
Dated: April 21, 2008  
By: Daniel Kenney  
Name: Daniel Kenney  
Title: Executive Director  
Dated: April 21, 2008

[SIGNATURE PAGE TO AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to Development Agreement as of the date stated in the first paragraph hereof.

COUNTY:  
**HENNEPIN COUNTY,**  
a political subdivision of the State of  
Minnesota

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_  
[SEAL]

By: Richard P. Johnson  
Name: Richard P. Johnson  
Title: County Administrator  
Dated: 4-21-08

*Reviewed as to form:*

Howard R. O'D  
*Assistant County Attorney*

4/21/08  
*Date*

[SIGNATURE PAGE TO AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT]

## EXHIBIT D

The Team, County and Authority agree that the following costs related to the Ballpark shall be Ballpark Costs:

1. Architect/Engineering Fees and printing costs of related plans, specifications and other contract documents.
2. Construction Management Preconstruction Fees and printing costs of construction bid packages and other contract documents.
3. Insurance and insurance broker fees (Willis of Minnesota, Inc.).
4. Project Accounting and Management Service Fees (Deloitte and Touche).
5. Fees relating to testing/inspections, commissioning and environmental testing.
6. Fees for preparing geotechnical reports and evaluations necessary to support the design of the Ballpark.
7. Contract Sum payable under the CM Agreement.
8. Consultant service fees of Project Management Consultants, LLC related to (i) procuring design and construction management services; (ii) procuring project insurance and insurance consulting services; (iii) providing on-going consulting services with respect to Project administration and claims review; and (iv) providing consulting services with respect to BNSF Railway Company negotiations and agreement.
9. Building permits and construction survey fees to the extent not included in the Contract Sum.
10. Furniture, fixtures and equipment to the extent not included in the Contract Sum or related to office space of the Authority.
11. Ballpark Costs specifically include piling, pile caps, grade beams, excavation and backfill, provided Ballpark Costs shall not include the cost of evaluation, treatment, removal, transportation and disposal of contaminated soils, to the extent such costs exceed the ordinary cost of excavation of clean soils otherwise required for construction of the Ballpark, or other environmental remediation costs, which costs shall be a County Site Acquisition and Public Infrastructure Cost.
12. Ballpark Costs specifically include soils correction work (including excavation) but do not include evaluation, treatment, removal, transportation and disposal of contaminated soils, or other environmental remediation which shall be a County Site Acquisition and Public Infrastructure Cost.

13. Contingencies.

14. Ballpark Costs include the costs associated with the design and construction of a vertical circulation building for light rail and commuter rail that will be constructed along with the Ballpark, provided that Ballpark Costs shall not include the cost of a second elevator for the vertical circulation building.

All other costs shall be excluded from Ballpark Costs. Ballpark Costs shall not include the costs of (a) Site Acquisition and Public Infrastructure Work, (b) capital improvements reserves, (c) bond reserves, (d) capitalized interest, or (e) financing costs.

## **EXHIBIT F**

The Team, County and Authority agree that the following costs related to the County Site Acquisition and Public Infrastructure Work shall be County Site Acquisition and Public Infrastructure Costs:

1. Architect/Engineering Fees and printing costs of related plans, specifications and other contract documents.
2. Construction Management Preconstruction Fees and printing costs of construction bid packages and other contract documents.
3. Insurance and insurance broker fees (Willis of Minnesota, Inc.).
4. Project Accounting and Management Service Fees (Deloitte and Touche).
5. Fees relating to testing/inspections and environmental testing.
6. Fees for preparing geotechnical reports and evaluations necessary to support the design of the Public Infrastructure.
7. Contract Sum payable under the CM Agreement.
8. Consultant service fees of Project Management Consultants, LLC related to (i) procuring design and construction management services; (ii) procuring project insurance and insurance consulting services; (iii) providing on-going consulting services with respect to Project administration and claims review; and (iv) providing consulting services with respect to BNSF Railway Company negotiations and agreement.
9. Building permits and construction survey fees to the extent not included in the Contract Sum.
10. Environmental remediation including evaluation, treatment, removal, transportation and disposal shall be a County Site Acquisition and Public Infrastructure Cost, but soils correction work (including excavation) shall be a Ballpark Cost. To the extent cost of soils correction and excavation exceed the ordinary cost of correction and excavation of clean soils otherwise required for construction of the Ballpark, such excess costs shall be County Site Acquisition and Public Infrastructure Cost.
11. Contingencies.
12. Design and construction costs related to reconfiguration of 5th Street Bridge and re-alignment of BNSF trackage.
13. Acquisition costs of land and Air Rights and Easements, excluding costs relating to appraisals, accounting, title and survey fees, and attorneys fees.

Site Acquisition and Public Infrastructure Costs shall not include Ballpark Work, capital improvements reserves, bond reserves, capitalized interest, or financing costs.

## **EXHIBIT K**

### **Team Provided/CM Managed Public Infrastructure Work**

Team Provided/CM Managed Public Infrastructure shall consist of all public infrastructure work other than district streetscape, public art, surface parking and any environmental mitigation improvements as set forth in the Final EIS. The Team Provided/CM Managed Public Infrastructure Work is more particularly described in the GMP Documents and Schedule of Values that are attached to the GMP Amendment dated April 21, 2008, by and between the Team and the Construction Manager.

## EXHIBIT O

### Project Budget

<u>Ballpark</u>	<u>Budget</u>
Ballpark Construction	\$346,490,748
Soft Costs/FF&E	48,000,000
Ballpark Contingency	18,038,437
Total Budget	\$412,529,185*

<u>County Site Acquisition and Public Infrastructure Costs</u>	<u>Budget</u>
Site Acquisition	\$40,840,790
Team Provided/CM Managed Infrastructure	44,527,465**
Other County Construction	6,213,249
Soft Costs/Contingency	13,418,496
Total Budget	\$105,000,000

\* Includes Team Ballpark Enhancement Contribution of \$22,529,185

\*\* Includes Team Additional Funds of \$15,000,000

### Basis of Budget:

- 1) The GMP Documents referenced in the GMP Amendment dated April 21, 2008, by and between the Team and the Construction Manager.
- 2) The allocation of the Cost of the Work as set forth in the GMP Amendment, dated April 21, 2008, by and between the Team and the Construction Manager.



## EXHIBIT P

### CHANGE DIRECTIVE GIVEN BY MINNESOTA BALLPARK AUTHORITY

Authority Change Directive No. \_\_\_\_\_

Minnesota Twins, LLC (the "Team") is hereby directed to cause M.A. Mortenson Company (the "Construction Manager"), to expand the scope of the Ballpark or Team Provided/CM Managed Infrastructure Work (as defined in the Development Agreement dated April 26, 2007, as amended April 21, 2008), to include the work described below:

Change Directive Work Applies to (check appropriate box): ☐ Ballpark Work \_\_\_\_\_%

☐ Public Infrastructure Work \_\_\_\_\_%

Description of Change Directive Work:

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Estimated Cost of Change Directive Work: \$ \_\_\_\_\_

Payment responsibility for the actual cost of the work requested under this Authority Change Directive shall be as follows (check appropriate box):

☐ Sole responsibility of \_\_\_\_\_

☐ Allocated as follows: \_\_\_\_\_ % to \_\_\_\_\_ and  
\_\_\_\_\_ % to \_\_\_\_\_

MINNESOTA BALLPARK AUTHORITY:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

The foregoing Directive is hereby acknowledged and accepted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

MINNESOTA TWINS, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT Q

### Soft Cost Allocation

<u>Description of Cost</u>	<u>Cost Allocation Percentage</u>	
	<u>Ballpark Costs</u>	<u>County Site Acquisition and Public Infrastructure Costs</u>
Costs of the “owner controlled” insurance program, including Net OCIP Savings <sup>1</sup>	81.25%	18.75%
Printing Costs, including contract documents, plans, specifications and bid packages	81.25%	18.75%
Costs for testing/inspection services <sup>2</sup>	50.00%	50.00%
Professional Service Contracts, including:	81.25%	18.75%
<ul style="list-style-type: none"> <li>• Project insurances and insurance broker fees (Willis of Minnesota),</li> <li>• Project accounting services (Deloitte and Touche) and</li> <li>• Certain project management services (Project Management Consultants, LLC)</li> </ul>		

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<sup>1</sup>“Net OCIP Savings” shall be an amount equal to the “OCIP Savings” minus the “CM Bonus.” For purposes of this calculation, such terms are defined as follows:

- “OCIP Savings” is an amount equal to (x) the Contractor Insurance Deducts (as defined in Exhibit Q to the CM Agreement) minus (y) the Total Costs (as defined in Exhibit Q to the CM Agreement); and
- “CM Bonus” is an amount equal to the product of 20% multiplied by (.35 x OCIP Savings).

<sup>2</sup> This cost allocation percentage shall apply to all fees incurred for testing/inspections services in an amount up to and including \$2,600,000; all fees for such services in excess of \$2,600,000 shall be allocated 89.00% to Ballpark Costs and 11.0% to County Site Acquisition and Public Infrastructure Costs.

## **EXHIBIT R**

### **Vertical Circulation Building—Estimated Costs**

See attached.



*with Thor Construction*

April 2, 2008

Dick Strassburg  
Minnesota Twins  
33 South 6th Street - Suite 4610  
Minneapolis, MN 55402

M. A. Mortenson Company  
With Thor Construction  
1100 3<sup>rd</sup> Ave. N.  
Minneapolis, MN 55403

Telephone: (763) 287-5900  
Facsimile: (763) 287-5930  
[www.mortenson.com](http://www.mortenson.com)

**RE: NEW MINNESOTA BALLPARK  
Value of Vertical Access Building**

Dear Mr. Strassburg,

The approximate construction value of the North star/LRT Vertical Circulation Building (Core Building) located within the Northwest quadrant of the Minnesota Twins Ballpark is \$3,960,000. This value includes deep foundations, structure, enclosure, interiors, mechanical, electrical, two elevators, two escalators, and roof. This value does not include the value of the ticket sales office & concession stand, the patron loading platform, track work, site work or soft costs.

Should you have any questions, please do not hesitate to contact me directly at 763-287-5291.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel C. Mehls".

Daniel C. Mehls  
M.A. Mortenson Company

DCM/dcm

Cc: Ed Hunter, Ballpark Authority  
Rick Johnson, Hennepin County  
Troy Blizzard, Mortenson