

Memorandum

Date: November 16, 2011

To: Policy Board Members and Alternates

From: Robert D. Miller, Director

Subject: Termination Agreement

At the September Policy Board meeting the Board discussed actions that were needed as NRP proceeds to close its office and the Joint Powers Agreement ends. We are working on processing neighborhood plans for approval, closing completed contracts, returning unexpended funds from expired contracts to neighborhoods, addressing the laying off of employees, and terminating existing professional service contracts.

As another step in this process, the Board directed that I work with our counsel to develop a termination agreement that could be proposed to the City. The draft of that agreement is attached for your review. It has also been given to the City Attorney for their information and review.

Our Counsel, Mike Norton, will be at the Board meeting on Monday to help address any questions or concerns that you may have about this agreement.

DRAFT COPY

AGREEMENT

By and Between

**THE CITY OF
MINNEAPOLIS, MINNESOTA**

and

THE NEIGHBORHOOD REVITALIZATION PROGRAM POLICY BOARD

Dated as of: _____, 2011

**AGREEMENT
FOR
THE TRANSITION OF THE NEIGHBORHOOD REVITALIZATION PROGRAM**

THIS AGREEMENT FOR THE TRANSITION OF THE NEIGHBORHOOD REVITALIZATION PROGRAM (“Agreement”) is made and entered into as of the _____ day of _____, 2011, by and between the City OF MINNEAPOLIS, a Minnesota municipal corporation and city of the first class (“City”) and THE NEIGHBORHOOD REVITALIZATION PROGRAM POLICY BOARD, a joint powers entity under the laws of Minnesota (the “Board”) .

ARTICLE I. RECITALS

Section 1.1. Minn. Stat. §469.1831, as amended, authorized “a city of the first class” (Minneapolis) to establish a neighborhood revitalization program (the “NRP Law”).

Section 1.2. In reliance on the NRP Law, the City determined in 90-Or-157, § 1, 6-15-90; 2001-Or-018, § 1, 3-2-01 to establish the Neighborhood Revitalization Program (the “Program”, or the “NRP”) (Minneapolis Code of Ordinances (“MCO”) Chapter 419, as amended, (the “NRP Ordinance”).

Section 1.3. The City and the original constituent governmental entities (the City, Hennepin County, Special School District No. 1, the Minneapolis Park and Recreation Board and the Minneapolis Library Board) entered into the *Joint Powers Agreement Neighborhood Revitalization Board* (the “JPA”), as amended, setting forth the policies and procedures for the governance of the NRP by the Board and to implement the authority in the NRP Law and the NRP Ordinance.

Section 1.4. The NRP has been funded over the years pursuant to the following authority:

a. Program money (“Program Money”), as the term is defined in Minnesota Statutes, Section 469.1781 (“Section 469.1781”);

b. Tax increment and other revenues from the Common Project as set forth in Laws 1990, Chapter 604, Article VII, Section 29, as amended by Laws 1991, Chapter 291, Article X, Section 20 (“Chapter 604 Revenues”); and

c. Tax increment and other revenues from the MCDA’s [now CPED] Common Project to fulfill the City’s obligations under the NRP Ordinance, less the legislatively-mandated property tax/local government aid reduction payments to Hennepin County (the “County”) and Special School District No. 1 (the “School District”).

Section 1.5. As a result, Laws 1990, Chapter 604, Article 7, Section 26, later codified as Minn. Stat. §469.1781 (Commonly referred to as the “Special Law”), required the City to use tax increment funds (“TIF”) from the 1989 refunded TIF bonds of the City (the “Program Money”) for NRP activities approved pursuant to the NRP Law. In addition, Laws 1990, Chapter 604, Article 7, Section 29 (“Section 29”) required the City to “reserve” funds from the “Common Project” through 2009.

Section 1.6. The identified funds have been allocated and spent pursuant to a well-developed process authorized by the NRP Law. Pursuant to the NRP Law, the neighborhoods organize and determine their priorities in the form of neighborhood action plans (a “NAP” or the “NAPs”). The NAPs are reviewed by NRP staff and approved, disapproved, or modified by the NRP Board. Once the NRP Board approves a NAP, the Minneapolis City Council considers the NAP and is authorized by the NRP Law to review, modify, and give final approval in whole or in part to a NAP. Once a NAP is approved, then the funds described in the approved NAP are reserved by the City for expenditure by the respective neighborhood in a fund (01CNR and 01SNR) separate from the other TIF accounts administered by the City and variously described as “the NRP Reserve” or “Fund FNC.” These funds are then held until drawn upon to pay for approved contracts implementing the respective NAP.

Section 1.7. Until the identified funds leave the NRP Reserve, they are tax increment funds administered *solely* by the then-MCDA and now CPED on behalf of the City. Once expended, however, the funds cease to be TIF funds, lose their status as tax increment funds administered by the City, and become “NRP Funds”, subject to the expenditure requirements of the NRP Law, NRP Board policies and rules.

Section 1.8. The neighborhood support costs of the NRP have been funded through City approved annual budgets and revenues generated by NRP. The unspent balance in fund 42300 shall be used to pay for administrative costs for NRP and expenses required to close down the NRP Office.

Section 1.9. Over the history of the NRP and in reliance on the NRP Law, the NRP Ordinance, the JPA and administrative policies, procedures and approvals of the City and the Board (collectively the “NRP Authority”) developed and approved neighborhood improvement strategies through processes which ultimately have resulted in a remaining balance of \$ 45.3 million in the NRP Reserve as of September 30, 2011.

Section 1.10. The JPA terminates pursuant to its terms on December 31, 2011.

Section 1.11. The City and the Board desire to enter into this Agreement to address the transition of the Program to the City, and to ensure that the NRP Reserve continues to be allocated and spent pursuant to the NRP Law (collectively, “NRP Transition”).

Section 1.12. The Recitals in this Article I are fully incorporated into and made a part of this Agreement.

ARTICLE II. NRP PROGRAM TRANSITION

Section 2.1. The City and the Board agree that subsequent to December 31, 2011, the balance of the funds as of that date that were reserved or obligated for NRP by the City of Minneapolis in Funds 01CNR, 01SNR and 42300 in accordance with the State of MN Statutes and City of Minneapolis Ordinances referenced above and defined as the “NRP Reserve” and any future Program Income funds generated by neighborhoods or NRP investments and expenditures initiated prior to December 31, 2011, whether held by the City on behalf of the neighborhoods or by the neighborhoods and their contractors, must be spent pursuant to the NRP Authority.

Section 2.2. The City and the Board agree that the City will take all steps necessary to insure that the program is administered as required by the NRP Law subsequent to December 31, 2011, when the JPA expires.

Section 2.3. The City will take all actions necessary to create a multi-jurisdictional policy board which continues to exercise the authority of the NRP Law to “review, modify where appropriate, and approve, in whole or part, the neighborhood action plans and forward its recommendation for final action to the governing bodies represented on the policy board.”, as required by the NRP Law. The constituent members and the legal form of this board shall be at the discretion of the City, but the new board shall have the composition and functions required by the NRP Law.

Section 2.4. The City will ensure that the process required by the NRP Authority for allocation and expenditure of funds from the NRP Reserve and NRP Funds will be followed:

Pursuant to the NRP Law, the neighborhoods will continue to organize and determine their priorities in the form of neighborhood action plans (a “NAP” or the “NAPs”). The NAPs are reviewed by City staff assigned to advise neighborhoods and administer the Program. The NAPs are approved, disapproved, or modified by the NRP Board. Once the NRP Board approves a NAP, the Minneapolis City Council considers the NAP and is authorized by the NRP Law to review, modify, and give final approval in whole or in part to a NAP. Once a NAP is approved, then the funds described in the approved NAP are reserved by the City for expenditure by the respective neighborhood in the NRP Reserve or such other separate fund as designated by the City. These funds are then held until drawn upon to pay for approved contracts or other obligations necessary to implement the respective NAP.

Section 2.5. The City shall develop and adopt administrative procedures based on the current NRP policies and procedures to the greatest extent practical for processing, approving and amending NAPs, and addressing neighborhood concerns as to Program administration.

Section 2.6. At the time that the NRP Reserve balance allocated to the implementation of NAPs is \$1.5 million or less, the City may transfer any remaining un-allocated funds in the Reserve to any City fund from which tax increment expenditures may be made for any purpose allowed by law. Prior to that time, the City shall take all steps necessary to develop a transition

program to insure that neighborhoods receiving services from the City relating to approved expenditures in a NAP from the NRP Reserve or NRP Funds can reasonably implement the NAP. At that time any remaining NRP Funds in the possession of the City shall be turned over to the respective neighborhood for expenditure by that neighborhood consistent with the NAP. For any neighborhood which has retained control of NRP Funds, the City will authorize that neighborhood to expend retained NRP Funds consistent with the NAP. The City shall develop agreements with each neighborhood as necessary to implement the objective that all funds from the NRP Reserve and NRP Funds be used for the goals stated in the NRP Law.

ARTICLE III. NRP STAFF TRANSITION

Section 3.1. The City will offer existing NRP staff the opportunity to be hired as staff with the entity the City assigns to administer the Program (such as the NCRD), in positions and with duties, salary and benefits comparable to those presently available as employees under the NRP.

Section 3.2. Final accrued NRP sick leave balances, and NRP seniority, years of service and vacation accrual rates shall transfer with the employees.

Section 3.3. Current NRP staff who choose not to transfer to the City shall be terminated as of January 1, 2012, and shall receive severance pay and termination benefits consistent with the policies of the NRP Board.

Section 3.4. The NRP Board shall transfer administrative or other funds to the City sufficient to cover severance pay and termination benefits described in this Article III for any NRP employee terminated without cause on December 31, 2011.

ARTICLE IV. ADMINISTRATIVE MATTERS

Section 4.1. The City shall appoint a city representative (the "City Representative") to coordinate all NRP Transition issues with the NRP Executive Director.

Section 4.2. The NRP shall consult with the City representative as necessary on any topic relating to NRP transition, including pending litigation involving the NRP. The City shall take all necessary action to promptly substitute itself as the party in interest on pending litigation as disclosed by the NRP Executive Director.

Section 4.3. The NRP shall terminate all existing professional services contracts as of December 31, 2011, unless the City agrees to take over the responsibility and liability for such contracts and the provider(s) consent to such substitution.

Section 4.4. The City shall execute a defense and indemnification agreement prior to December 31, 2011 in a form satisfactory to the City and the NRP Board. The defense and indemnification agreement shall require the City to defend and indemnify all past and present

employees, board members, consultants, and agents of the NRP to the fullest extent permitted by applicable law.

Section 4.5. The NRP shall make current NRP staff and consultants available to the City Representative to assist in the NRP Transition at no charge to the City through December 31, 2011, or until such employee or consultant is terminated prior to December 31, 2011. Thereafter, in the event on-going assistance is necessary to implement NRP Transition activities, the City shall employ such former NRP employee or consultant on such terms as the City and former NRP employee or consultant may agree.

ARTICLE V. DISPOSITION OF NRP ASSETS AND RECORDS

Section 5.1. The NRP shall dispose of the physical assets of the Program (i.e., office furniture, computers, phones, work stations and related materials) pursuant to Article IX, Section 3, of the JPA.

Section 5.2. The NRP shall require its employees to remove all personal effects and materials from the NRP offices, and shall among other actions collect all office keys, loaned cell phones or other equipment and parking permits not later than December 31, 2011.

Section 5.3. The NRP shall terminate all equipment leases and return such leased equipment to the respective lessor not later than December 31, 2011, unless the City agrees to take over the responsibility and liability for such leases, and the lessor(s) consent to such substitution.

Section 5.4. Subsequent to the NRP vacating the NRP Office not later than December 31, 2011, the City shall be responsible for the lease and determining the use of the office space.

Section 5.5. The NRP shall organize its contract files and the materials that directly relate to those files in file cabinets in the NRP Office that are clearly marked as contract and plan files. Historic documents, such as Policy Board minutes, approved plans etc. will be retained in a labeled file cabinet in the NRP Office. Other program related materials will be organized and stored by the NRP at a safe and secure public access location.

ARTICLE VI. DEFENSE AND INDEMNIFICATION

Section 6.1. Subsequent to December 31, 2011, the City agrees to defend and indemnify present or former NRP Policy Board members, NRP employees, any volunteer of the NRP, or any consultant or agent of the NRP against any claims brought or actions filed against any of them subsequent to December 31, 2011, or for any claims or pending litigation against any of them if then known and disclosed to the City prior to December 31, 2011, of any nature what so ever, or for injury to, death of, damage to the property of any third person or persons, or other potentially compensable claim arising out of the performance and provision of services through or by any of them on behalf of the NRP.

IN WITNESS WHEREOF, the City and the Board have entered into this Agreement as of the date first above written.