

Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: March 28, 2019

TITLE: Approving agreement with Hennepin County for Natural Resources Opportunity Grant, Arden Park Restoration Project

RES.NUMBER: 19-037

PREPARED BY: Laura Domyancich

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TELEPHONE: (952) 641-4582

REVIEWED BY: Administrator Counsel Program Mgr.: Michael Hayman
 Board Committee Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date):_____	<input type="checkbox"/> Refer to taskforce or committee (date):_____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Requesting final action March 28, 2019	

PURPOSE or ACTION REQUESTED:

Authorization to execute a grant agreement with Hennepin County for Natural Resources Opportunity Grant funding for ecological improvements as part of the Arden Park restoration project.

PROJECT/PROGRAM LOCATION:

Arden Park, Edina, MN

PROJECT TIMELINE:

October 25, 2018 Grant application submitted
January 3, 2019 Project selected for funding through Natural Resources Opportunity Grant
February 5, 2019 Grant period begins
December 31, 2021 Grant period closes

PROJECT/PROGRAM COST:

Fund name and number: 54th Street Stream Restoration (300-3147)
Current Budget: \$4,081,971
Expenditures to date: \$1,433,996
Requested amount of funding: \$0

SUMMARY:

In 2016, the Board of Managers appointed an Investment Task Force to initiate planning to increase the volume of outside funds supporting MCWD's capital improvement program. With Board concurrence, the Task Force established the following goals:

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Resolutions are not final until approved by the Board and signed by the Board Secretary.**

1. Obtain ongoing supplemental funding (larger than one-time project specific grants) to implement landscape scale restoration and implementation objectives identified within priority focal subwatershed plans, such as Minnehaha Creek.
2. Increase one-time funding for specific capital improvements identified through responsive track planning.
3. Obtain one-time or ongoing supplemental funding for MCWD programs, historically funded through levy resources (land management, data collection, education and communications, permitting, operations)

Accordingly, staff continues to target one-time, project specific, supplemental funding for priority activities. Each year, staff evaluates the District's Capital Improvement Plan to determine which projects are well-positioned to apply for grant funding, and the Arden Park restoration project was identified as being aligned with the Hennepin County Natural Resources Opportunity Grant Program.

The Hennepin County Natural Resources Opportunity Grant Program provides non-competitive grants up to \$100,000 for projects that address an identified natural resources management problem or need and/or undertake assessments that directly lead to the siting of projects that meet common natural resource management goals. Evaluation criteria focus on projects proposing improvements to water quality, preservation or restoration of the County's natural resource corridors, greenways, and designated open spaces, or reduce erosion and sedimentation. Based on the combination of stormwater improvements and stream and upland habitat restoration planned for Arden Park, in October 2018 staff applied for funding to the Hennepin County Natural Resources Opportunity Grant program for work to be undertaken as part of the Arden Park project. After the submissions were reviewed, the project was selected for funding in the amount of \$32,500 based on Hennepin County's desire to fund as many worthy projects as possible.

As part of the application process, MCWD staff submitted a work plan detailing plans to construct stormwater infrastructure, remeander and restore the creek, and complete upland habitat improvements within the creek corridor. This work continues earlier successful creek, wetland, and riparian restoration along Minnehaha Creek in St. Louis Park and Hopkins, and further downstream in Edina and Minneapolis. It is the goal of MCWD and the City of Edina to engage in restoration from a systems approach and consider how to ensure discrete elements of the project align to attain maximum improvements to both habitat and water quality.

The grant program is administered on a reimbursement basis, which requires implementation documentation, a final report, and an operations and maintenance plan covering the life of the practice.

The grant agreement is effective from the date of contract execution through December 31, 2021 which aligns with the construction and warranty maintenance period for the Arden Park Restoration project.

Staff recommends the District Board of Managers approve the grant agreement and authorize its execution by the Board President.

Attachments

1. Draft Hennepin County Natural Resources Opportunity Grant Agreement and attachments

NATURAL RESOURCES GRANT AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487, on behalf of the Hennepin County Environment and Energy Department (“DEPARTMENT”), 701 Fourth Avenue South, Minneapolis, Minnesota 55415 (“COUNTY”), and Minnehaha Creek Watershed District, 15320 Minnetonka Boulevard, Minnetonka, Minnesota 55345 (“GRANTEE”), a watershed district with purposes and powers set forth at Minnesota Statutes Chapters 103B and 103D.

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

GRANTEE shall furnish services to COUNTY commencing February 5, 2019, and expiring December 31, 2021, unless cancelled or terminated earlier in accordance with the provisions herein. Costs incurred by the GRANTEES after the board approval date shall be eligible for reimbursement upon execution of the agreements; and that the Controller be authorized to disburse funds as directed.

GRANTEE shall be paid in an amount not to exceed Thirty-Two Thousand Five Hundred Dollars (\$32,500.00).

Items of cost for which reimbursement is claimed on the Voucher and Practice Certification Summary Form (Attachment A) are to be supported by invoices/receipts for payments and will be verified by the DEPARTMENT as practical and reasonable. The DEPARTMENT has the authority to make adjustments to the costs submitted for reimbursement. Attachment A with all necessary supporting documentation can only be submitted to the DEPARTMENT on a monthly basis for reimbursement.

In no case shall the DEPARTMENT provide cost-share assistance to the GRANTEE for the reapplication of a practice that was removed by the GRANTEE during its effective life, as defined in Attachment B, without consent of the DEPARTMENT or that failed due to improper maintenance. Attachments A and B are attached and incorporated by this reference.

Reimbursable expenses are limited to activities relating to the preparation of project specifications and designs and related site construction and restoration work of the installed practices, in kind services, operation and maintenance plans and related consulting and inspection for the Arden Park Restoration Project as identified in the Minnehaha Creek Watershed District Hennepin County Opportunity Grant application by the Minnehaha Creek Watershed District as submitted October 25, 2018.

2. PRACTICES TO BE IMPLEMENTED

GRANTEE shall provide the following services: Expenses incurred in performing activities specified in the Hennepin County Natural Resource Grant Application submitted by the GRANTEE and as is further described in Attachment B to this Agreement or as approved by the County. Administrative costs incurred by GRANTEE are not eligible for reimbursement.

The conservation practice category for which cost-share is provided is more fully described in Attachment B. COST-SHARE PAYMENT

Cost-share payment shall be made directly to GRANTEE after completion of the practice(s) and upon the presentation of a claim as provided by law governing the COUNTY's payment of claims and/or invoices. The GRANTEE shall submit invoices for services related to the implementation of practices. Payment shall be made within 45 days from receipt of the invoice.

GRANTEE shall not provide services under this Agreement without receiving a purchase order or purchase order number supplied by the COUNTY. All invoices shall display the COUNTY purchase order number and be sent to the central invoice receiving address supplied by the COUNTY.

4. PROFESSIONAL CREDENTIALS

INTENTIONALLY OMITTED

5. INDEPENDENT CONTRACTOR

GRANTEE shall select the means, method, and manner of performing the services. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting GRANTEE as the agent, representative, or employee of COUNTY for any purpose. GRANTEE is and shall remain an independent contractor for all services performed under this Agreement. GRANTEE shall secure at its own expense all personnel required in performing services under this Agreement. GRANTEE's personnel and/or subcontractors engaged to perform any work or services required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims related to or on behalf of any of GRANTEE's personnel, including without limitation, claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law (Minnesota Statutes Chapter 268) or the Minnesota Workers' Compensation Act (Minnesota Statutes Chapter 176), or claims of discrimination arising out of state, local or federal law, against GRANTEE, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

6. NON-DISCRIMINATION

In accordance with COUNTY's policies against discrimination, GRANTEE shall not exclude any person from full employment rights nor prohibit participation in or the benefits of any program, service or activity on the grounds of any protected status or class including but not limited to race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin. No person who is protected by applicable federal or state laws against discrimination shall be subjected to discrimination.

7. INDEMNIFICATION

GRANTEE shall defend, indemnify, and hold harmless COUNTY, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of GRANTEE, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of GRANTEE to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims

or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of GRANTEE personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the provisions set forth herein.

8. DUTY TO NOTIFY

GRANTEE shall promptly notify COUNTY of any claim, action, cause of action or litigation brought against GRANTEE, its employees, officers, agents or subcontractors, which arises out of the services described in this Agreement. GRANTEE shall also notify COUNTY whenever GRANTEE has a reasonable basis for believing that GRANTEE and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a claim, action, cause of action, administrative action, criminal arrest, criminal charge or litigation arising out of and/or related to the services described in this Agreement.

9. ACCESS FOR INSPECTIONS

The GRANTEE agrees to acquire written consent from all cost-share grant recipients that the COUNTY, and any duly authorized representatives of the COUNTY, at a time that is mutually agreed upon by the cost-share recipient and the COUNTY, and as often as the COUNTY may reasonably deem necessary, shall have access to and the right to enter the cost-share recipient's property, for purposes of inspection of the practice identified herein.

10. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

GRANTEE shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of the COUNTY. A consent to assign shall be subject to such conditions and provisions as the COUNTY may deem necessary, accomplished by execution of a form prepared by the COUNTY and signed by GRANTEE, the assignee and the COUNTY. Permission to assign, however, shall under no circumstances relieve GRANTEE of its liabilities and obligations under the Agreement.

11. MERGER, MODIFICATION AND SEVERABILITY

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
- B. GRANTEE and/or COUNTY are each bound by its own electronic signature(s) on this Agreement, and each agrees and accepts the electronic signature of the other party.
- C. Any alterations, variations or modifications of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. Except as expressly provided, the substantive legal terms contained in this Agreement including but not limited to Indemnification, Insurance, Merger, Modification and Severability, Default and Cancellation/Termination or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.
- D. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

13. DEFAULT AND CANCELLATION/TERMINATION

Should the GRANTEE fail to maintain the practice during its effective life, the GRANTEE is considered to be in default and is liable to the DEPARTMENT for the full amount of financial assistance received to install and establish the practice. The GRANTEE is not liable for cost-share assistance received if the failure was caused by reasons beyond the GRANTEE's control, or if conservation practices are applied at GRANTEE's expense that provide equivalent protection of the soil and water resources.

This Agreement may be canceled with or without cause by either party upon thirty (30) day written notice.

If this Agreement expires or is cancelled or terminated, with or without cause, by either party, at any time, GRANTEE shall not be entitled to any payment, fees or other monies except for payments duly invoiced for then delivered. In the event GRANTEE has performed work toward a Deliverable that COUNTY has not Accepted at the time of cancellation or termination, GRANTEE hereby expressly acknowledges and agrees that GRANTEE shall not be entitled to any payment for said work including but not limited to incurred costs of performance, termination expenses, profit on the work performed, other costs founded on termination for convenience theories or any other payments, fees, costs or expenses not expressly set forth herein.

14. SURVIVAL OF POVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement do survive such term, cancellation or termination. Such provisions include but are not limited to: SERVICES TO BE PROVIDED (as to ownership of property); INDEPENDENT CONTRACTOR; INDEMNIFICATION; DUTY TO NOTIFY; DATA PRIVACY AND SECURITY; DEFAULT AND CANCELLATION/TERMINATION; MEDIA OUTREACH; and MINNESOTA LAWS GOVERN.

15. CONTRACT ADMINISTRATION

In order to coordinate the services of GRANTEE with the activities of the Hennepin County Department of Environment and Energy so as to accomplish the purposes of this Agreement, James Kujawa, Senior Environmentalist, 612-348-7338, or successor shall manage this Agreement on behalf of the COUNTY and serve as liaison between the COUNTY and GRANTEE.

Laura Domyancich, (952) 641-4582 shall manage the agreement on behalf of GRANTEE. GRANTEE may replace such person but shall immediately give written notice to the COUNTY.

16. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. GRANTEE shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. If the source or partial source of funds for payment of services under this Agreement is federal, state or other grant monies, GRANTEE shall comply with all applicable conditions of the specific referenced or attached grant.

C. GRANTEE certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings.

17. PAPER RECYCLING

The COUNTY encourages GRANTEE to develop and implement an office paper and newsprint recycling program.

18. NOTICES

Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator with a copy to the originating Department at the address given in the opening paragraph of the Agreement. Notice to GRANTEE shall be sent to the address stated in the opening paragraph of the Agreement or to the address stated in GRANTEE's Form W-9 provided to the COUNTY.

19. CONFLICT OF INTEREST

GRANTEE affirms that to the best of GRANTEE's knowledge, GRANTEE's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. GRANTEE agrees that, should any conflict or potential conflict of interest become known to GRANTEE, GRANTEE will immediately notify the COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the COUNTY whether GRANTEE will or will not resign from the other engagement or representation.

20. MEDIA OUTREACH

GRANTEE shall notify COUNTY, prior to publication, release or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by COUNTY, by and through the Public Relations Officer or his/her designee(s), prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing, promotions, client lists, civic/community events or opportunities and/or other forms of outreach created by, or on behalf of, GRANTEE (i) that reference or otherwise use the term "Hennepin County," or any derivative thereof; or (ii) that directly or indirectly relate to, reference or concern the County of Hennepin, this Agreement, the services performed hereunder or COUNTY personnel, including but not limited to COUNTY employees and elected officials.

21. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

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COUNTY ADMINISTRATOR APPROVAL

Reviewed for COUNTY by
the County Attorney's Office:

COUNTY OF HENNEPIN
STATE OF MINNESOTA

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By:

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Reviewed for COUNTY by:

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GRANTEE

GRANTEE warrants that the person who executed this Agreement is authorized to do so on behalf of GRANTEE as required by applicable articles, bylaws, resolutions or ordinances.*

By:

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*GRANTEE represents and warrants that it has submitted to COUNTY all applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. Documentation is not required for a sole proprietorship.

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ATTACHMENT B

Arden Park Restoration Project

Project Summary

This project will restore 2,150 feet of Minnehaha Creek, adding 230 feet of new stream and the removal of a 4-foot high dam. It also includes 84 acres of regional stormwater management resulting in the estimated removal 33 lbs. of Phosphorus and 1,800 lbs. of TSS annually. The project will improve the function and value of over 6 acres of wetland and restore approximately 10 acres of woodlands through tree planting and invasive species management. The project combines community goals for the park including new and trails, shelter building, and playground.

Approved Budget Activities

Reimbursable expenses are limited to activities relating to the Arden Park Restoration project including 2,150 feet of stream restoration and reconnection to the adjacent floodplain, creek bank reconstruction, native vegetation establishment, large woody habitat incorporated into banks, stabilized banks by grading and shaping and trenching of biodegradable erosion control fabrics, riffle and pool work to provide suitable substrate for fish spawning, stormwater pretreatment vault, six filtration swales, planting 407 trees in 10” pot size or larger, approximately 1,900 bare root trees, 1,400 potted shrubs, over 3,000 bare root or live stake shrubs, native plants and native seeding, (as identified in the Minnehaha Creek Watershed District Hennepin County Opportunity Grant application by the Minnehaha Creek Watershed District as submitted October 25, 2018.) including the preparation of project specifications and designs and related site construction and restoration work of the installed practices, in kind services, operation and maintenance plans and related consulting and inspection. Hennepin County Natural Resource “Opportunity” Grant reimbursements with said work shall not exceed \$32,500 reimbursable project expenses.

The effective life of this practice is twenty (20) years.

Reporting Requirements/Deliverables

The following reporting items are required during the project:

- Project Design and Specifications
- All invoices for consultant and/or contractor work.
- Approval of in-kind contributions prior to work.
- Certification that the project was installed according to the approved plans and specifications
- Operation and Maintenance plans covering the life of the practice.
- Final Project Report (see standard template)