



---

<b>Title:</b>	Authorization to Execute Grant Agreement with Hennepin County for Greenway to Cedar Trail Connection
<b>Resolution number:</b>	24-036
<b>Prepared by:</b>	Name: Gabriel Sherman Phone: 952-641-4510 gsherman@minnehahacreek.org
<b>Reviewed by:</b>	Name/Title: Michael Hayman, Director of Project Planning
<b>Recommended action:</b>	Authorize District Administrator to execute the Southwest Community Works Program Grant Agreement for the Blake Road Station Area Cedar Trail Connection by the Minnehaha Creek Watershed District
<b>Schedule:</b>	June 2024: Execute grant agreement with Hennepin County Q3-Q4 2024: Execute project agreement with St. Louis Park, order project, and initiate design
<b>Budget considerations:</b>	Total project costs are estimated to be \$884,173, including stream restoration. Trail costs are estimated to be \$780,780. The \$200,000 grant award will be used to offset trail costs, which will be split evenly between MCWD and the City of St. Louis Park.
<b>Past Board action:</b>	Res #: 22-050      Authorization to Proceed with Greenway to Cedar Trail Connection and Streambank Restoration Feasibility

**Summary:**

Since 2009, the Minnehaha Creek Watershed District (MCWD) has worked with municipal and private partners on a series of projects in the highly urbanized corridor between West 34th Street and Meadowbrook Lake (Hopkins and St. Louis Park) to address downstream water quality and quantity issues, lack of recreational access to Minnehaha Creek, and catalyze economic development. A conceptual design for the Minnehaha Creek Greenway encompassing these projects and identifying future projects in the corridor was developed in 2012, and once the 325 Blake Road Restoration and Redevelopment (325 Blake Road) is complete, the Greenway to Cedar Trail Connection and Streambank Restoration project (Cedar Trail Connection) will represent the remaining gap in the network of trails and greenspace.

The Cedar Trail Connection will bring the Greenway trail under the newly constructed SWLRT corridor, creating the final trail connection between the Minnehaha Creek Preserve and the Cedar Lake LRT Regional Trail by 325 Blake Road, providing uninterrupted pedestrian infrastructure along Minnehaha Creek between Methodist Hospital in St. Louis Park and Cottageville Park in Hopkins. This project also provides an opportunity to stabilize the streambanks and enhance the riparian zone of the stretch of Minnehaha Creek between 325 Blake Road and the Minnehaha Creek Preserve.

Initial feasibility work was conducted in 2015/2016 by Wenck (now Stantec). MCWD contracted with Stantec and Inter-Fluve in 2022 to conduct a more detailed feasibility study to reflect current conditions in the creek and rail corridors, model the floodplain, and advance two potential trail alignments to assess constructability and land rights. During and following feasibility, MCWD staff has worked closely with the City of St. Louis Park to understand the city's trail design requirements, maintenance preferences, and potential funding sources.

MCWD staff had previously identified Hennepin County's Southwest Community Works Program, a subset of the larger Hennepin County Transit Oriented Development Program, as a potential source of funding for Greenway projects. The Southwest Community Works Program provides grants to projects that improve station area connectivity within a TOD Eligible Area along the Green Line Extension, including bike trails, sidewalk connections, streetscaping, lighting, and wayfinding. Funding is awarded based on factors including project readiness, last mile connections to expand ridership area, and the degree to which the project supports climate mitigation or adaptation strategies.

In March 2023, in coordination with the City of Hopkins and the City of St. Louis Park, MCWD responded to Hennepin County's 2023 TOD Program Request for Applications with a request for funding for eligible elements of both 325 Blake Road and the Cedar Trail Connection. MCWD was notified by Hennepin County in August 2023 that \$200,000 in Community Works grant funding had been awarded to support the trail elements of the Cedar Trail Connection project.

MCWD staff received a draft grant agreement from Hennepin County in December 2023 and worked with legal counsel to review all terms and conditions. Based on staff and legal counsel input, Hennepin County sent a revised grant agreement to MCWD in March 2024. Staff recommends the MCWD Board of Managers adopt proposed Resolution 24-036 authorizing the District Administrator to execute the Southwest Community Works Program Grant Agreement for the Blake Road Station Area Cedar Trail Connection by the Minnehaha Creek Watershed District.

**Attachments:**

- Southwest Community Works Program Grant Agreement for the Blake Road Station Area Cedar Trail Connection by the Minnehaha Creek Watershed District



## RESOLUTION

---

**Resolution number:** 24-036

**Title:** Authorization to Execute Southwest Community Works Program Grant Agreement for the Blake Road Station Area Cedar Trail Connection by the Minnehaha Creek Watershed District

- WHEREAS on March 27, 2014, the Board of Managers adopted a policy “In Pursuit of a Balanced Urban Ecology in the Minnehaha Creek Watershed District” to guide the MCWD’s planning and watershed management activities, integrating its water resource implementation efforts with urban planning, through innovation, partnership and a sustained geographic focus;
- WHEREAS the District has identified the area between West 36th Street and Meadowbrook Lake as a priority area for capital improvements focused on stormwater management, greenspace expansion and increased recreational access;
- WHEREAS working with the Cities of St. Louis Park and Hopkins, and with other public and private partners, the District has implemented a series of initiatives to restore, enhance and connect Minnehaha Creek and its associated riparian areas;
- WHEREAS the District has been coordinating with the SWLRT Project Office with respect to the integration of public transit, development and water resource management interests, including for the purpose of informing design as to a critical pedestrian crossing at Minnehaha Creek and SWLRT that is part of the Minnehaha Creek Greenway conceptual plan;
- WHEREAS in 2015/2016, Stantec Consulting Service Inc. (Stantec), previously Wenck Associates, Inc., completed initial feasibility work to determine potential alignments for a trail connection between the Minnehaha Creek Preserve and the Cedar Lake LRT Regional Trail under the SWLRT, freight rail, and regional trail bridges in St. Louis Park;
- WHEREAS in 2022, Stantec and Inter-Fluve completed an updated feasibility study to reflect current conditions in the creek and rail corridors, model the floodplain, and advance two potential trail alignments to assess constructability and land rights;
- WHEREAS in March 2023, MCWD applied for Hennepin County TOD Program Grant funds for eligible elements of the 325 Blake Road Restoration and Redevelopment and the Greenway to Cedar Trail Connection and Streambank Restoration project (Cedar Trail Connection) projects;
- WHEREAS on August 22, 2023, the Board of Hennepin County Commissioners passed Resolution 23-0310 authorizing the County Administrator to negotiate a grant agreement with MCWD in the amount of \$200,000 for eligible elements of the Cedar Trail Connection project;

WHEREAS a draft grant agreement was delivered by Hennepin County to MCWD in December 2023 and a final grant agreement was subsequently negotiated between Hennepin County and MCWD;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to execute the Southwest Community Works Program Grant Agreement for the Blake Road Station Area Cedar Trail Connection by the Minnehaha Creek Watershed District.

Resolution Number 24- 036 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 6/27/2024

\_\_\_\_\_  
Secretary Date: \_\_\_\_\_

DRAFT

**SOUTHWEST COMMUNITY WORKS PROGRAM  
GRANT AGREEMENT FOR THE BLAKE ROAD STATION AREA CEDAR TRAIL  
CONNECTION  
BY THE MINNEHAHA CREEK WATERSHED DISTRICT**

This Agreement (“Agreement”) is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487, on behalf of the Hennepin County Housing and Economic Development Department, 701 4<sup>th</sup> Avenue South, Suite 400, Minneapolis, MN 55415 (“COUNTY”), and the MINNEHAHA CREEK WATERSHED DISTRICT, 15320 Minnetonka Blvd, Minnetonka, MN 55345, a government entity (“GRANTEE”), each a (“Party”) collectively (“Parties”).

WITNESSETH:

WHEREAS, Hennepin County Board Resolution No 23-0310 authorized County Administration to negotiate an award of up to \$200,000.00 to GRANTEE under COUNTY’s Southwest Community Works Program (“Program”).

WHEREAS, Resolution 09-0596 established the Southwest Light Rail Transit Community Works project to provide an organizational structure and process for coordinating light rail transit (LRT) engineering and land use and other related planning activities to support development of the corridor.

WHEREAS, GRANTEE was competitively selected via a request for proposals process conducted in spring 2023 for the Hennepin County Redevelopment Authority (HRA)’s Transit Oriented Development Program, whereby applications were accepted for concurrent consideration of funding from the HRA’s Bottineau, Penn and Southwest Community Works Programs.

WHEREAS, COUNTY wishes to award GRANTEE the Grant Funds, as defined below, to support construction activities to build a bicycle and pedestrian connection under the freight rail, light rail, and regional trail bridges between the Minnehaha Creek Preserve and the Cedar Lake Regional Trail located near 325 Blake Road, Hopkins, MN (the “affected properties”), consisting of the new construction of a trail connection from Cedar Lake LRT Regional Trail to Cottageville Park (the “Project”), as depicted in Attachment B.

The parties agree as follows:

1. TERM AND AMOUNT OF GRANT

This Agreement shall commence as of August 15, 2023, and expire on December 31, 2026, unless cancelled or terminated earlier in accordance with the provisions herein.

The total amount of this grant, including all reimbursable expenses, is not to exceed Two-Hundred Thousand Dollars and no/100 (\$200,000.00) (“Grant Funds”).

2. GRANT REQUIREMENTS

- A. Grant Funds shall be used for hard construction costs, including grading, site preparation, and trail construction, (“Eligible Activities”) related to the Project.
- B. GRANTEE’s project management, administration and staff costs, legal or permit fees, design fees, holding costs, and other soft costs are not considered “Eligible Activities.”
- C. GRANTEE shall be solely responsible for securing all additional funds needed for completion of the Project.

3. GRANT DISBURSEMENT

- A. Grant Funds shall be disbursed by COUNTY to GRANTEE on a reimbursement basis to pay for incurred costs for Eligible Activities after COUNTY has issued verification of the completion of Eligible Activities.
- B. COUNTY shall disburse funds after GRANTEE has incurred at least 50% of total Project costs and invoiced COUNTY as described below.
- C. To request payment, GRANTEE shall submit documents to COUNTY including but not limited to: (1) a completed reimbursement form, Attachment A, attached to this Agreement; (2) invoices from GRANTEE/subgrantee; (3) signed and notarized payment application forms; (4) copies of checks/and or lien waivers and photos of the work completed as requested by the COUNTY. Payment request should be made no more than once per thirty (30) day period.
- D. GRANTEE shall perform all Eligible Activities to the satisfaction of COUNTY, in accordance with the provisions herein, and in compliance with applicable law. If COUNTY determines that GRANTEE has not complied with the foregoing, COUNTY shall not have any obligation to pay GRANTEE for the non-complying Eligible Activities. Payment shall be made by COUNTY to GRANTEE within thirty-five (35) days from receipt of the invoice.
- E. COUNTY shall provide a purchase order and purchase order number to GRANTEE. GRANTEE may not invoice COUNTY for Eligible Activities completed without referencing the purchase order number and all invoices should be emailed to [OBF.Internet@hennepin.us](mailto:OBF.Internet@hennepin.us) and [Ryan.Kelley@hennepin.us](mailto:Ryan.Kelley@hennepin.us) or his successor, as directed by COUNTY.
- F. Payments shall be made pursuant to the provisions herein and COUNTY’s then applicable payment policies, procedures, rules and directions. COUNTY is not

responsible for remedying fraudulent or unauthorized payments requested in GRANTEE's name.

- G. COUNTY shall make no disbursement of Grant Funds prior to having received copies of the following documents and records:
  - i. Copy of valid and fully executed cooperative agreements, any applicable easements, access agreements, and/or deeds for the affected properties clearly indicating permission to construct and maintain the Project on those properties.
  - ii. A signed closing statement indicating the total of all Project costs.
  - iii. City Council resolution, or similar approving document, showing municipal approval of the Project.
- H. COUNTY may withhold from any payment due to GRANTEE any amount which is due and owing COUNTY under this or any other agreement between the parties due to overpayment or as a result of an audit.
- I. Except for the Grant Fund payments expressly set forth herein, costs and expenses for parking, mileage or transportation fees, copying and postage related fees, and all other costs or reimbursable expenses shall be paid by GRANTEE and not reimbursed by COUNTY.

#### 4. SITE PLAN AND CONSTRUCTION PLANS

- A. GRANTEE shall submit final construction and site plans for the Project, stamped and approved by the GRANTEE's Engineer ("Construction Plans") to the COUNTY prior to Project reimbursements. COUNTY will review the Construction Plans, including public realm improvements, for consistency with the Project site plan as proposed and described in the Application. If Construction Plans are found to be inconsistent with the originally proposed plans, Grant Funds may be withheld until such time as GRANTEE brings the Construction Plans into conformity with this Agreement.

#### 5. INDEPENDENT GRANTEE

GRANTEE shall select the means, method, and manner of performing the Grant Requirements. 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 GRANTEE under this Agreement. GRANTEE shall secure at its own expense all personnel required in completing Grant Requirements under this Agreement. GRANTEE's personnel and/or subgrantees or subcontractors engaged to perform any work 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 applicable law, against GRANTEE, its officers, agents, GRANTEEs, 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

A. 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, national origin, sex, gender expression, gender identity, age, disability, marital status, sexual orientation, or public assistance status. No person who is protected by applicable law against discrimination shall be subjected to discrimination.

B. COUNTY encourages GRANTEE to develop and implement a policy promoting diversity, equity, and inclusion in GRANTEE's workplace.

7. AFFIRMATIVE ACTION

INTENTIONALLY OMITTED

8. 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 attorney's fees, resulting directly or indirectly from any act or omission of GRANTEE, a subgrantee or 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 these provisions.

9. INSURANCE



A. In order to protect the GRANTEE and those listed above under the indemnification provisions, the GRANTEE agrees at all times during the term of this Agreement and beyond such term when so reasonably requested by the COUNTY, to keep in force, or to cause an affiliated entity or subcontractor to keep in force, the following insurance coverages:

	<b>REQUIRED INSURANCE COVERAGES</b>	<b>MINIMUM</b>
<b>(1)</b>	<b><u>Builders Risk Completed Value non-reporting form of fire, extended coverage vandalism and malicious mischief hazard insurance covering the replacement value of the Project</u></b>	
<b>(2)</b>	<p style="text-align: center;"><b><u>Commercial General Liability (CGL)</u></b></p> <p style="text-align: right;">General Aggregate Products—Completed Operations Aggregate Personal and Advertising Injury Each Occurrence—Combined Bodily Injury and Property Damage</p> <p>Coverage shall be on an occurrence basis and include contractual liability coverage. Coverage shall be written on the most current ISO (Insurance Services Office, Inc.) CGL form or its equivalent.</p>	<p>\$2,000,000 \$2,000,000 \$1,500,000 \$1,500,000</p>
<b>(3)</b>	<p style="text-align: center;"><b><u>Workers' Compensation and Employer's Liability</u></b></p> <p style="text-align: right;">Workers' Compensation Employer's Liability: Bodily injury by accident—Each Accident Employer's Liability: Bodily injury by Disease—Policy Limit</p> <p>If GRANTEE is based outside the state of Minnesota, coverage must comply with Minnesota law. If GRANTEE is a sole proprietor, it is exempted from the above Workers' Compensation requirements to the extent provided by Minnesota law. In the event that GRANTEE should hire employees or subcontract this work, GRANTEE shall obtain the required insurance.</p>	<p>Statutory \$500,000 \$500,000</p>
<b>(4)</b>	<p style="text-align: center;"><b><u>Automobile Liability</u></b></p> <p>Such insurance shall cover liability for bodily injury and property damage arising from the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of GRANTEE's subcontractor.</p>	<p>\$2,000,000</p>

B. An umbrella or excess policy is an acceptable method to provide the required commercial general insurance coverage.

The above establishes minimum insurance requirements. It is the sole responsibility of GRANTEE to determine the need for and to procure additional insurance which may be needed in connection with this Agreement.

GRANTEE shall ensure that all of GRANTEE's subcontractors (i) independently carry insurance appropriate to cover the subcontractors' exposures and that meet or exceed the Required Insurance Coverages set forth in the table above; (ii) are covered under the GRANTEE's policies; or (iii) or both. GRANTEE is responsible for monitoring its subcontractors' proof of insurance to ensure compliance with the foregoing obligations. Copies of certificates of insurance shall be maintained by GRANTEE and shall be supplied to COUNTY upon request.

GRANTEE shall not commence work until it has obtained required insurance and filed with COUNTY a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Hennepin County as the certificate holder, and as an additional insured for the commercial general liability and the automobile liability coverages required herein. The funding of deductibles and self-insured retentions maintained by GRANTEE, shall be the sole responsibility of GRANTEE.

10. DUTY TO NOTIFY

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

11. DATA, SYSTEMS, AND INTELLECTUAL PROPERTY

A. GRANTEE, its officers, agents, owners, partners, employees, volunteers and subgrantees and subcontractors shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable law, rules, regulations and orders relating to data or the privacy, confidentiality or security of data. For clarification and not limitation, COUNTY hereby notifies GRANTEE that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. GRANTEE shall promptly notify COUNTY if GRANTEE becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA or other data, data security, privacy or confidentiality laws, and shall also comply with the other requirements of this Section.

Classification of data, including trade secret data, will be determined pursuant to applicable law and, accordingly, merely labeling data as "trade secret" by

GRANTEE does not necessarily make the data protected as such under any applicable law.

- B. In addition to the foregoing MGDPA and other applicable law obligations, GRANTEE shall comply with the following duties and obligations regarding County Data and County Systems (as each term is defined herein). As used herein, "County Data" means any data or information, and any copies thereof, created by GRANTEE or acquired by GRANTEE from or through COUNTY pursuant to this Agreement, including but not limited to handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, videos, or symbols, or combinations thereof.

If GRANTEE has access to or possession/control of County Data, GRANTEE shall safeguard and protect the County Data in accordance with generally accepted industry standards, all laws, and all then applicable COUNTY policies, procedures, rules and directions, as directed by COUNTY. To the extent of any inconsistency between accepted industry standards and such COUNTY policies, procedures, rules and directions, GRANTEE shall notify COUNTY of the inconsistency and follow COUNTY direction. GRANTEE shall immediately notify COUNTY of any known or suspected security breach or unauthorized access to County Data, then comply with all responsive directions provided by COUNTY. The foregoing shall not be construed as eliminating, limiting or otherwise modifying GRANTEE's indemnification obligations herein.

C. INTENTIONALLY OMITTED

D. INTENTIONALLY OMITTED

E. Upon expiration, cancellation or termination of this Agreement:

- (1) At the discretion of COUNTY and as specified in writing by the Grant Administrator, GRANTEE shall deliver to the Grant Administrator all County Data so specified by COUNTY.
- (2) COUNTY shall have full ownership and control of all such County Data. If COUNTY permits GRANTEE to retain copies of the County Data, GRANTEE shall not, without the prior written consent of COUNTY or unless required by law, use any of the County Data for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such County Data; and shall not do anything which in the opinion of COUNTY would affect COUNTY's ownership and/or control of such County Data. Notwithstanding the above, COUNTY acknowledges that as a government entity GRANTEE is subject to the MGDPA (Minn Stat chapter 13) and records retention

requirements (Minn Stat 138.17); COUNTY will not limit or impede GRANTEE's duties and obligations under their statutory requirements.

- (3) Except to the extent required by law or as agreed to by COUNTY, GRANTEE shall not retain any County Data that are confidential, protected, privileged, not public, nonpublic, or private, as those classifications are determined pursuant to applicable law. In addition, GRANTEE shall, upon COUNTY's request, certify destruction of any County Data so specified by COUNTY.

12. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of GRANTEE and involve transactions relating to this Agreement. GRANTEE shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its expiration, cancellation, or termination.

13. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. GRANTEE binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements, and obligations herein.
- B. GRANTEE shall not assign, transfer, or pledge this Agreement and/or the Grant Requirements, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by GRANTEE, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve GRANTEE of its liabilities and obligations under the Agreement.
- C. GRANTEE shall not subcontract this Agreement and/or the Grant Requirements, whether in whole or in part, without the prior written consent of COUNTY. Permission to subcontract, however, shall under no circumstances relieve GRANTEE of its liabilities and obligations under the Agreement. Further, GRANTEE shall be fully responsible for the acts, omissions, and failure of its subgrantees or subcontractors in the performance of the Grant Requirements, and of person(s) directly or indirectly employed by subgrantees or subcontractors. Contracts between GRANTEE and each subgrantee or subcontractor shall require that the subgrantee's or subcontractor's services be performed in accordance with this Agreement. GRANTEE shall make contracts between GRANTEE and subgrantees and subcontractors available upon request. For clarification and not

limitation of the provisions herein, none of the following constitutes assent by COUNTY to a contract between GRANTEE and a subgrantee or subcontractor, or a waiver or release by COUNTY of GRANTEE's full compliance with the requirements of this Section: (1) COUNTY's request or lack of request for contracts between GRANTEE and s subgrantees or subcontractors; (2) COUNTY's review, extent of review or lack of review of any such contracts; or (3) COUNTY's statements or actions or omissions regarding such contracts.

- D. As may be applicable to GRANTEE and as required by Minnesota Statutes section 471.425, subd. 4a, GRANTEE shall pay any subgrantee or subcontractor within ten (10) days of GRANTEE's receipt of payment from COUNTY for undisputed services provided by the subgrantee or subcontractor, and GRANTEE shall comply with all other provisions of that statute.

#### 14. 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.

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.

- B. 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.
- C. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

#### 15. DEFAULT AND CANCELLATION/TERMINATION

- A. If GRANTEE fails to perform any of the provisions of this Agreement, fails to administer the work so as to endanger the performance of the Agreement or otherwise breaches or fails to comply with any of the terms of this Agreement, it shall be in default. Unless GRANTEE's default is excused in writing by COUNTY, COUNTY may upon written notice immediately cancel or terminate

this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until GRANTEE's compliance. In the event of a decision to withhold payment, COUNTY shall furnish prior written notice to GRANTEE.

- B. Notwithstanding any provision of this Agreement to the contrary, GRANTEE shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by GRANTEE. Upon notice to GRANTEE of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to GRANTEE for the purpose of set-off until such time as the exact amount of damages due COUNTY from GRANTEE is determined. Following notice from COUNTY of the claimed breach and damage, GRANTEE and COUNTY shall attempt to resolve the dispute in good faith.
- C. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.
- D. COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- E. This Agreement may be cancelled/terminated with or without cause by COUNTY upon thirty (30) days' written notice.
- F. 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 and accepted deliverables/milestones pursuant to this Agreement. In the event GRANTEE has performed work toward a deliverable that COUNTY has not accepted at the time of expiration, cancellation or termination, 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 in this Agreement.
- G. Upon written notice, COUNTY may immediately suspend or cancel/terminate this Agreement in the event any of the following occur: (i) COUNTY does not obtain anticipated funding from an outside source for this project; (ii) funding for this project from an outside source is withdrawn, frozen, shut down, is otherwise made unavailable or COUNTY loses the outside funding for any other reason; or (iii) COUNTY determines, in its sole discretion, that funding is, or has become, insufficient. COUNTY is not obligated to reimburse for any Eligible Activities that are provided or costs or expenses or obligations incurred or encumbered after the notice and effective date of the suspension or cancellation/termination. In the

event COUNTY suspends, cancels or terminates this Agreement pursuant to this paragraph, COUNTY shall pay any amount due and payable prior to the notice of suspension or cancellation/termination except that COUNTY shall not be obligated to pay any amount as or for penalties, early termination fees, charges, time and materials for Eligible Activities not then completed, costs, expenses or profits on work done.

- H. GRANTEE has an affirmative obligation, upon written notice by COUNTY that this Agreement may be suspended or cancelled/terminated, to follow reasonable directions by COUNTY, or absent directions by COUNTY, to exercise a fiduciary obligation to COUNTY, before incurring or making further costs, expenses, obligations or encumbrances arising out of or related to this Agreement.

16. SURVIVAL OF PROVISIONS

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: INDEPENDENT GRANTEE; INDEMNIFICATION; INSURANCE; DUTY TO NOTIFY; DATA, SYSTEMS, AND INTELLECTUAL PROPERTY; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION/TERMINATION; MEDIA OUTREACH; and MINNESOTA LAW GOVERNS.

17. GRANT ADMINISTRATION

In order to coordinate the services of GRANTEE with the activities of the Housing and Economic Development Department so as to accomplish the purposes of this Agreement, (Ryan Kelley, Community Development Manager), or successor (“Grant Administrator”), shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and GRANTEE.

Michael Hayman, 952-471-8226, mhayman@minnehahacreek.org, shall manage the Agreement on behalf of GRANTEE. GRANTEE may replace such person but shall immediately give written notice to COUNTY of the name, phone number and email (if available) of such substitute person and of any other subsequent substitute person.

18. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. GRANTEE shall comply with all applicable laws, conditions of any funding sources, regulations, rules and ordinances currently in force or later enacted.
- B. 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. GRANTEE shall immediately notify COUNTY if GRANTEE is debarred or suspended during the term of this Agreement.

19. RECYCLING

COUNTY encourages GRANTEE to have a single-sort recycling program or provide recycling service for at least three types of materials, which may include food waste. COUNTY also encourages GRANTEE to educate employees about the recycling program.

20. NOTICES

Unless the parties otherwise agree in writing, 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 relating to the general administration of this Agreement may be communicated via email between the Grant Administrator and Michael Hayman, or their designees. Notices to COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to GRANTEE shall be sent to the address stated in the opening paragraph of this Agreement or to the address stated in GRANTEE's Form W-9 provided to COUNTY.

21. 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 or potential conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to GRANTEE, GRANTEE shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether GRANTEE will or will not resign from the other engagement or representation. A conflict or potential conflict may, in COUNTY's discretion, be cause for cancellation or termination of this Agreement.

22. ACKNOWLEDGMENTS AND MEDIA OUTREACH

Grantee shall acknowledge the financial assistance provided by COUNTY in promotional materials, press releases, reports and publications relating to the Project. The acknowledgment shall contain the following language:

*This project is supported in part by funding from Hennepin County Southwest Community Works.*

Until the Project funded by this Agreement is completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved the County, and the Hennepin County "H" logo, is included on all signs located at the Project or construction sites that identify Project funding partners or entities providing financial support for the project.



Until the completion of the Project funded by this Agreement are completed and for one year after that date, the Grantee shall provide advance notice to the County of media, social media, or news releases, including an invitation to the Grant Administrator and the appropriate County Commissioner's office, of any public events related to the Project.

23. 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.

THIS PORTION OF PAGE INTENTIONALLY LEFT BLANK

COUNTY BOARD AUTHORIZATION

Reviewed for COUNTY by  
the County Attorney's Office:

COUNTY OF HENNEPIN  
STATE OF MINNESOTA  
By:

Reviewed for COUNTY by:

ATTEST:

Board Resolution No:

By:

Document Assembled by:

*Simran Aryal*

**Simran Aryal**

E-signed 2024-03-05 02:36PM CST

Simran.Aryal@hennepin.us

Hennepin County

Development Contract Analyst



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:

\*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.



Attachment B

