

Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: June 28, 2018

TITLE: Authorization to execute the Hennepin County TOD grant agreement for 325 Blake Road

RESOLUTION NUMBER: 18-057

PREPARED BY: Michael Hayman

E-MAIL: mhayman@minnehahacreek.org

TELEPHONE: 952-471-8226

REVIEWED BY: Administrator Counsel Program Mgr. (Name):
 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 approval at June 28, 2018 Board Meeting	

PURPOSE or ACTION REQUESTED:

Authorization to execute a Transit Oriented Development (TOD) grant agreement with the Hennepin County Housing and Redevelopment Authority (HCHRA) for demolition activities related to removal of the cold storage facility at 325 Blake Road.

PROJECT/PROGRAM LOCATION:

325 Blake Road, Hopkins

PROJECT TIMELINE:

November 2017 – HCHRA grant awarded
December 2017-May 2018 – Demolition planning and refrigeration system removals
June 2018 – Execution of grant agreement
August 2018 – Base bid (phase 1) demolition activity commences
September-December 2018 – Anticipated bid alternate (phase II) demolition activities
January 2019 – Cleared site is redevelopment ready

PROJECT/PROGRAM COST:

Fund name and number: 325 Blake Road Stormwater Management, 3145
Current fund balance: approximately \$2,500,000.00
Requested amount of funding: \$0
Is a budget amendment requested? No

PAST BOARD ACTIONS:

September 22, 2011	RBA 11-085	Authorization to Purchase 325 Blake Road
August 23, 2012	RBA 12-080	Authorization to initiate feasibility
June 13, 2013	Draft Feasibility	No Action Required
June 27, 2013	Public Hearing	No Action Required
July 25, 2013	RBA 13-078	Ordering of 325 Blake Road Stormwater Management
January 23, 2014	RBA 14-005	Authorization to initiate demolition planning
January 29, 2015	RBA 15-010	Authorization to complete additional asbestos investigation
May 25, 2017	RBA 17-037	Authorization to apply for Brownfield Gap Financing
July 27, 2017	RBA 17-044	Authorization to contract for environmental investigation
October 12, 2017	RBA 17-062	Authorization to apply for funding assistance for 325 Blake
March 22, 2018	RBA 18-026	Authorization to decommission and remove equipment
March 22, 2018	RBA 18-027	Authorization to contract for demolition services

*Board actions listed in this RBA relate to acquisition, project ordering and demolition planning. Additional Board actions are cataloged and available for review.

SUMMARY:

In October 2017, staff applied for a Transit Oriented Development (TOD) grant from the Hennepin County Housing and Redevelopment Authority (HCHRA) for \$500,000 to assist with demolition activities related to removal of the cold storage facility at 325 Blake Road. The application was successful, resulting in the District being awarded the full grant request on November 27, 2017.

The focus of the TOD grant award is funding assistance to clear the site and make way for planned transit oriented development and natural resource improvements on the 325 Blake Road site, as well as accommodate the reconstruction of Blake Road. Due to the size and nature of the facility (industrial freezer), the cost of demolition and remediation are projected to be in the range of \$2,000,000 (excluding decommission of refrigeration systems and engineering services).

Timing of demolition is a critical consideration with the reconstruction of Blake Road (County Road 20) presently underway (initiated in April 2018). The redesigned road requires an expansion of road right-of-way – literally clipping a corner of the existing building – to accomplish the multi-modal roadway that has been designed, including a calm, inviting, pedestrian friendly road with dual pedestrian/bike trails.

The award of TOD grant funds allows for phase one of the demolition to proceed – removal of the portion of the building that is in the road right-of-way – thus avoiding significant project costs to bury utilities and complete the multi-use trail after the site is redeveloped. In addition to Hennepin County funding, the MCWD and city of Hopkins are exploring multiple avenues for financial assistance with asbestos mitigation, soil remediation and additional demolition costs.

Staff is recommending approval of the TOD grant agreement to assist in funding phase one demolition activities at 325 Blake Road.

ATTACHMENT:

1. Grant Agreement

RESOLUTION

RESOLUTION NUMBER:18-057

TITLE:Authorization to execute the Hennepin County TOD grant agreement for 325 Blake Road

WHEREAS, the Minnehaha Creek Watershed District (MCWD) Board of Managers established the area between West 34th Street and Meadowbrook Lake as a priority area for capital project improvements aimed at stormwater improvement, streambank restoration and broader community goals;

WHEREAS, the MCWD Board of Managers has developed a series of strategic capital project initiatives within the urban corridor to advance goals of improving the ecological integrity of Minnehaha Creek, while reintegrating the stream corridor into the surrounding urban fabric;

WHEREAS, in October 2017, the MCWD Board of Managers authorized the pursuit of funding assistance as it endeavors to complete demolition of the 325 Blake Road industrial facility; and

WHEREAS, in November 2017, the MCWD was awarded a Transit Oriented Development (TOD) grant from the Hennepin County Housing and Redevelopment Authority (HCHRA) in the amount of \$500,000 to assist with demolition activities at 325 Blake Road;

NOW, THEREFORE, BE IT RESOLVED that the MCWD Board of Managers hereby approves the Grant Agreement between the Hennepin County Housing and Redevelopment Authority for appropriated Transit Oriented Development funds in the amount of \$500,000 for demolition work related to the Minnehaha Greenway – 325 Blake Road Restoration and Redevelopment Project, and authorizes the District Administrator to execute the Grant Agreement.

Resolution Number 18-057 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

**TRANSIT ORIENTED DEVELOPMENT PROGRAM
GRANT AGREEMENT FOR 325 BLAKE**

This Agreement is between the Hennepin County Housing and Redevelopment Authority, (“HCHRA”), 701 Fourth Avenue South, Suite 400, Minneapolis, MN 55415, and Minnehaha Creek Watershed District (“MCWD”), 15320 Minnetonka Boulevard, Minnetonka MN 55345.

WHEREAS, on September 14, 2017, Minnehaha Creek Watershed District, submitted an application (“Application”) to the HCHRA Fall Transit-Oriented Development (TOD) Program for monetary assistance in completion of 325 Blake project (“Project”) to support the demolition of the existing commercial building to prepare the site for redevelopment and reconstruction of the roadway/pedestrian connections in Hopkins.

WHEREAS, the Project fits within the goals of a multijurisdictional reinvestment program authorized under Minnesota Statutes §383B.79 (“Program”); and

WHEREAS, the HCHRA has the authority to participate in the Project pursuant to Minnesota Statutes §§383B.79 and 469.001 to 469.047 and other applicable law; and

WHEREAS, by Resolution No. 17-HCHRA-0042, approved in November 2017, the HCHRA authorized an award not-to-exceed Five Hundred Thousand Dollars (\$500,000.00) for the Project; and

WHEREAS, the parties are authorized to enter into this agreement pursuant to Minnesota Statutes §§383B.77, 383B.79 and other applicable law; and

WHEREAS, the HCHRA wishes to contract with the MCWD for completion of components of the project, or eligible activities (“Eligible Activities”)

The Parties agree as follows:

1. Term and Cost of the Agreement. The MCWD intends to complete the Eligible Activities for the Project by June 30, 2020. The HCHRA agrees to contribute an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) to MCWD for reimbursement of the Eligible Activities.
2. Eligible Activities. Eligible Activities for reimbursement include demolition of the existing commercial building, demolition-related site work, utility disconnects, and associated removals at 325 Blake Road. MCWD shall use all funds received under this Agreement for completion of the Eligible Activities in accordance with the Application

submitted by MCWD to the HCHRA on September 14, 2017. MCWD shall be solely responsible for securing all additional funds needed for completion of the Eligible Activities and the Project.

3. Intentionally Deleted.
4. Payment. Payment shall be made directly to the MCWD upon the presentation of a claim in the manner provided by law governing the HCHRA's payment of claims and/or invoices. MCWD shall submit timely invoices and proof of payment for demolition-related expenses on a form, Attachment A, furnished by the HCHRA. Invoices must provide clarity on the amount billed for the Eligible Activity and any sub-contractor engaged its procurement or installation. Proof of payment shall include copies of checks and/or lien waivers, as requested by HCHRA. Payment shall be made within forty-five (45) days from receipt of the invoice and proof of payment.
5. Conditions precedent. Prior to closing, MCWD will submit the following documents to HCHRA.
 - a. Demolition Permit
 - b. Response Action Plan (RAP), reviewed and approved by Minnesota Pollution Control Agency (MPCA) or other documentation as agreed upon by HCHRA and MCWD as a substitute of RAP.
6. Independent Contractor. MCWD shall select the means, method, and manner of performing the services. Nothing is intended or should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting MCWD as the agent, representative, or employee of the COUNTY or HCHRA for any purpose. MCWD is and shall remain an independent contractor for all services performed under this Agreement. MCWD shall secure at its own expense all personnel required in performing services under this Agreement. MCWD's personnel and/or other subcontractors engaged to perform any work or services required by this Agreement will have no contractual relationship with the COUNTY or HCHRA, and will not be considered employees of the COUNTY or HCHRA. The COUNTY or HCHRA shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or Minnesota Statutes, chapter 176 (which may be referred to as the "Workers' Compensation Act:), on behalf of any personnel including, without limitation, claims of discrimination against MCWD, 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 the COUNTY or HCHRA, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.
7. Indemnification. MCWD shall defend, indemnify, and hold harmless the COUNTY, HCHRA, 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 from any act or omission of MCWD, a subcontractor, anyone employed by them, or anyone for whose acts or omissions the MCWD is liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of MCWD 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 MCWD personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the provisions set forth herein. Notwithstanding any other term, covenant or condition of this Agreement, the MCWD's liability under this Agreement for any claim of any nature or any cause of action against the MCWD, by any person or party, is limited to the liability limits set forth in Minnesota Statutes, Chapter 466.

8. Insurance. In order to protect the MCWD and those listed above under the indemnification provisions, the MCWD agrees at all times during the term of this Agreement and beyond such term when so reasonably requested by the HCHRA, to keep in force, or to cause an affiliated entity or contractor to keep in force, the following insurance coverages, or the MCWD's actual insurance limits for primary coverage and excess liability or umbrella policy limits, whichever is greater:

A. Commercial General Liability on an occurrence basis with contractual liability coverage:

	<u>Limits</u>
General Aggregate	\$2,000,000

B. Worker's Compensation and Employer's Liability:

	<u>Limits</u>
(1) Workers' Compensation	Statutory
(2) Employer's Liability. Bodily injury by:	
Accident - Each Accident	\$100,000
Disease - Policy Limit	\$500,000
Disease - Each Employee	\$100,000

In the event that the HCHRA determines that the above coverages and limits or any other insurance coverages and limits become insufficient, MCWD agrees that it will furnish within thirty (30) days, alternative coverages or increased limits reasonably requested by the HCHRA.

If provider is a unit of general local government, its liability shall be governed by the provisions of Minnesota Statutes Chapter 466.

9. Data. MCWD, its officers, agents, owners, partners, employees, volunteers 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 state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (HIPAA). For clarification and not limitation, HCHRA hereby notifies MCWD that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. MCWD shall promptly notify HCHRA if MCWD 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.

If MCWD has access to or possession/control of Data (as defined in the DEFAULT AND CANCELLATION/TERMINATION provisions below), MCWD shall safeguard and protect the Data in accordance with generally accepted industry standards, and all laws. To the extent of any inconsistency between accepted industry standards and HCHRA policies, rules and directions, MCWD shall notify HCHRA of the inconsistency and follow HCHRA direction. MCWD shall immediately notify HCHRA of any actual or suspected security breach or unauthorized access to Data, then comply with all responsive directions provided by HCHRA. The foregoing shall not be construed as eliminating, limiting or otherwise modifying MCWD's indemnification obligations herein.

Classification of data as trade secret data will be determined pursuant to applicable law and, accordingly, merely labeling data as "trade secret" does not necessarily make the data protected as such under any applicable law.

10. Records – Availability/Access. Subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5, the COUNTY, HCHRA, 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 MCWD and involve transactions relating to this Agreement. MCWD shall maintain these materials and allow access during the period of the Agreement and for six (6) years after its expiration or cancellation or termination.
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.

MCWD and/or HCHRA 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, modifications, or waivers of 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 the License, Payment Terms, Warranties, Indemnification, 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 or 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.

12. Default and Cancellation/Termination.

- a. If MCWD fails to perform any of the provisions of this Agreement, fails to administer the work as to endanger the performance of the Agreement, it shall be in default. Unless MCWD's default is cured within a 45 day period or excused in writing by the HCHRA, the HCHRA 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 the HCHRA to delay payment until the MCWD's compliance. In the event of a decision to withhold payment, the HCHRA shall furnish prior written notice to MCWD.

- b. For purposes of this subsection, “Data” means any data or information, and any copies thereof, created by MCWD or acquired by MCWD from or through HCHRA 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. Data does not include privileged attorney-client communication and any records that MCWD must retain pursuant to state or federal law.

Upon expiration, cancellation or termination of this Agreement:

1. At the discretion of HCHRA and as specified in writing by the Contract Administrator, MCWD shall deliver to the Contract Administrator all Data so specified by HCHRA.
 2. HCHRA shall have full ownership and control of all such Data. If HCHRA permits MCWD to retain copies of the Data, MCWD shall not, without the prior written consent of HCHRA or unless required by law, use any of the 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 Data; and shall not do anything which in the opinion of HCHRA would affect HCHRA’s ownership and/or control of such Data.
 3. Except to the extent required by law or as agreed to by HCHRA, MCWD shall not retain any Data that are confidential, protected, privileged, not public, nonpublic, or private, as those classifications are determined pursuant to applicable law. In addition, MCWD shall, upon HCHRA’s request, certify destruction of any Data so specified by HCHRA.
- c. Notwithstanding any provision of this Agreement to the contrary, MCWD shall remain liable to for damages sustained by HCHRA by virtue of any breach of this Agreement by MCWD. Upon notice to MCWD of the claimed breach and the amount of the claimed damage, HCHRA may withhold any payments to MCWD for the purpose of set-off until such time as the exact amount of damages due HCHRA from MCWD is determined. Following notice from HCHRA of the claimed breach and damage, MCWD and HCHRA shall attempt to resolve the dispute in good faith.
- d. If MCWD materially changes the project design for motor vehicle, pedestrian, bicycle, transit, parking, lighting, or public realm improvements, it shall be in default. MCWD must immediately notify the HCHRA in writing of any material change. Unless MCWD’s default is excused by the HCHRA, the HCHRA may upon written notice immediately cancel this Agreement in its entirety. The HCHRA at its option, after sixty (60) days prior written notice to MCWD, may declare any payments made to the MCWD to be due and payable in full.

- e. The HCHRA'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.
 - f. This Agreement may be canceled/terminated with or without cause by the HCHRA upon thirty (30) days' written notice. In the event of cancellation/termination under this subsection, the HCHRA will reimburse the MCWD in the amount of eligible costs incurred to the date of the written notice.
 - g. Should MCWD fail to complete the Project, the HCHRA at its option, after sixty (60) days prior written notice to MCWD, may declare any payments made to the MCWD to be due and payable in full.
13. 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 CONTRACTOR; INDEMNIFICATION; DATA; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION/TERMINATION; and MINNESOTA LAW GOVERNS.
14. Contract Administration. In order to coordinate the services of MCWD with the activities of the HCHRA so as to accomplish the purposes of this Agreement, Simran Aryal, Development Contract Analyst, or successor, shall manage this Agreement on behalf of the HCHRA and serve as liaison between the HCHRA and MCWD.
15. 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. Notice to the HCHRA shall be sent to the Deputy Executive Director with a copy sent to parties set forth in Section 14 at the address stated in the opening paragraph of the Agreement. Notice to MCWD shall be sent to the address stated in the opening paragraph of the Agreement or to the address stated in MCWD's Form W-9 provided to the HCHRA.
16. Reporting. Written quarterly reports (or sooner as requested by HCHRA) shall be provided to inform the HCHRA on the status of the project. These reports should include items such as financing applications, zoning and planning submittals, timeline, other key documents that demonstrate the progress of the project, and any material changes to the project prior to project commencement. MCWD must provide a Close-out Report at completion of the Project using the form provided to MCWD electronically as part of this Agreement at a later date.
17. Conflict of Interest. MCWD affirms that to the best of MCWD's knowledge, MCWD'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. Should any conflict or

potential conflict of interest become known to MCWD, MCWD shall immediately notify the HCHRA of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the HCHRA whether MCWD will or will not resign from the other engagement or representation. Unless waived by HCHRA, a conflict or potential conflict may, in HCHRA's discretion, be cause for cancellation or termination of this Agreement.

18. Displacement, Relocation, and Acquisition. MCWD shall take all reasonable steps to minimize displacement of persons as necessary for implementation of the Activities. MCWD shall conduct all such acquisitions in its name, or in the name of another eligible organization acceptable to the Authority, which shall hold title to all real property purchased. MCWD shall prepare all notices, appraisals, and documentation required in conducting acquisition under the latest applicable regulations of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, Section 104(d) of the Housing and Community Development Act of 1992, and provide all relocation notices, counseling, and services.
19. Recognition of Hennepin County. In recognition of HCHRA funding support, MCWD agrees to include the Hennepin County logo on project site signage and project website. If project signage references other government financing programs on the project sign, MCWD shall include a reference that financing was provided in part by the Hennepin County Transit Oriented Development Program. Hennepin county's brand guidance can be found here <https://www.hennepin.us/brand>
20. Assignment. This Agreement may not be assigned, pledged, or transferred without the prior written consent of the HCHRA.
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.

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AUTHORITY BOARD AUTHORIZATION

Reviewed for COUNTY by
the County Attorney's Office:

HENNEPIN COUNTY HOUSING AND
REDEVELOPMENT AUTHORITY
STATE OF MINNESOTA

By:

Chair of Its Board

Reviewed for COUNTY by:

ATTEST:

Deputy/Clerk of County Board

Board Resolution No:

By:

Document Assembled by:



Simran Aryal
Development Contract Analyst
Jun 14, 2018

Executive Director

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

By:

*MCWD 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.

