

Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: February 25, 2016

TITLE: Accepting Hennepin County Natural Resource Opportunity Grant for the Meadowbrook Golf Course Ecological Restoration Project

RESOLUTION NUMBER: 16-013

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): <u>Consent approval February 25, 2016</u>	

PURPOSE or ACTION REQUESTED:

Board acceptance of the Hennepin County Natural Resource Opportunity Grant for the Meadowbrook Golf Course Ecological Restoration Project and approval of the grant agreement.

PROJECT/PROGRAM LOCATION:

Meadowbrook Golf Course, St. Louis Park, Hopkins and Edina, MN

PROJECT TIMELINE:

February 2016	Complete final design, permitting and construction documents for golf course
March 2016	Golf course project bidding and contract documents
July 2016	Construction starts on 16 holes and driving range
Sept –Nov 2016	Final design and bidding of Minnehaha Creek restoration; construction complete of first 16 holes and driving range; construction begins on stream and remaining two holes
June 2017	Construction on stream and remaining two holes complete
April 2018	Grand opening of redesigned golf course

PROJECT/PROGRAM COST:

Fund name and number: Meadowbrook Golf Course Ecological Restoration - #3150
Requested amount of funding: No funding required – Acceptance of \$100,000 grant award
Is a budget amendment requested? No
Is additional staff requested? No

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

PAST BOARD ACTIONS:

Extensive Board action has occurred related to this project. The most recent and relevant to grant funding are:

August 13, 2015	RBA 15-068	Authorization to apply for Hennepin County Natural resource grant funding
September 10, 2015	Public Hearing	Public hearing on the Meadowbrook Golf Course Ecological Restoration Project
October 22, 2015	15-088	Ordering the Meadowbrook Golf Course Ecological Restoration Project and authorization to amend the cooperative agreement with MPRB for project design

SUMMARY:

On August 13, 2016, the Board of Managers authorized District staff to apply for grant funding for the Meadowbrook Golf Course Ecological Restoration Project through the Hennepin County Natural Resources Opportunity Grant. Available to local government units, Hennepin County manages a natural resource grant program for projects that improve water quality or preserve, establish or restore natural areas.

On January 26, 2016 the Hennepin County Board of Commissioners considered the District’s application and determined that the maximum grant award of \$100,000 should be offered to the District for costs associated with construction of the natural resource restoration project.

The awarded funds are to incorporate channel stabilization, stream enhancement (re-meander), riparian corridor improvements, habitat restoration, wetland restoration and enhancement, and flood protection and resiliency practices along Minnehaha Creek, as part of the Minneapolis Park and Recreation Board’s (MPRB) redesign of Meadowbrook golf course.

The District continues collaboration with MPRB in the design process to restore Minnehaha Creek and anticipates final stream and wetland restoration designs coming before the Board in June 2016, once the spring thaw has arrived and final site survey data can be incorporated into the draft plans. The stream corridor improvements will be constructed during the winter of 2016-2017.

The grant agreement from Hennepin County, in the form of a Personal/Professional Service Agreement, is attached for Board review.

Staff recommends that the Board approves the grant agreement; authorizes the Board President to execute the agreement, with any final non-substantive changes and on advice of counsel; and directs the District administrator to provide for the District’s fulfillment of its responsibilities thereunder.

PERSONAL/PROFESSIONAL SERVICE AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 (the "COUNTY"), on behalf of the Hennepin County Environment and Energy Department, 701 Fourth Avenue South, Suite 700, Minneapolis, MN 55415 ("DEPARTMENT") and Minnehaha Creek Watershed District, 15320 Minnetonka Blvd, Minnetonka, MN 55345 ("GRANTEE").

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

The term of this contract is commencing on the date of execution of this contract and terminating December 31, 2018, unless terminated earlier in accordance with the Default and Cancellation provisions of this Agreement. 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 an amount not to exceed one hundred thousand dollars (\$100,000) for reimbursable project costs.

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 Implantation of channel stabilization, stream enhancement (remeander), riparian corridor improvements, habitat restoration, and wetland restoration and enhancement, and flood protection and resiliency practices along Minnehaha Creek in St. Louis Park, as part of the Minneapolis Park and Recreation Board's (MPRB) redesign of Meadowbrook golf course (as identified in the Hennepin County Natural Resource "Opportunity" Grant Application for the Meadowbrook Golf Course Ecological Restoration Project dated November 6, 2015) including the preparation of project specifications and designs and related site

construction and restoration work, in kind services, operation and maintenance plans and related consulting and inspection.

2. PRACTICES TO BE IMPLEMENTED

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 requested is **The Meadowbrook Golf Course Ecological Restoration Project as more fully described in Attachment B.**

3. 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. INDEPENDENT CONTRACTOR

The GRANTEE shall not be considered to be either a temporary or permanent employee of the COUNTY. The GRANTEE acts as an independent contractor and the GRANTEE'S contractor act hereunder as independent contractors and acquires no tenure rights or any rights or benefits of Workers' Compensation, Re-employment Compensation, medical and hospital care, sick and vacation leave, severance pay, retirement benefits, or any other right or benefit offered to COUNTY employees.

GRANTEE 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 GRANTEE as the agent, representative, or employee of the COUNTY for any purpose. GRANTEE is and shall remain an independent GRANTEE for all services performed under this Agreement. GRANTEE shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of GRANTEE or other persons while engaged in the performance of any work or services required by GRANTEE will have no contractual relationship with the COUNTY and will not be considered employees of the COUNTY. The COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or the Workers'

Compensation Act of the State of Minnesota on behalf of any personnel, including, without limitation, claims of discrimination against GRANTEE, its officers, agents, GRANTEEs, or employees. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind from the COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

5. NON-DISCRIMINATION

In accordance with the COUNTY's policies against discrimination, GRANTEE agrees that it 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 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.

6. INDEMNIFICATION

GRANTEE agrees to defend, indemnify, and hold harmless the COUNTY, its 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 Data Practices provisions set forth in Section 9 hereof.

7. 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.

8. 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.

9. 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.

10. 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.

Michael Hayman, Minnehaha Creek Watershed District, 952-471-8226, SHALL MANAGE THE AGREEMENT ON BEHALF OF GRANTEE. GRANTEE MAY REPLACE SUCH PERSON BUT SHALL IMMEDIATELY GIVE WRITTEN NOTICE TO THE COUNTY.

11. 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.

12. PAPER RECYCLING

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

13. 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.

14. 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.

15. PROMOTIONAL LITERATURE

GRANTEE agrees, to the extent applicable, to abide by the current Hennepin County Communications Policy (available upon request). This obligation includes, but is not limited to, GRANTEE not using the term "Hennepin County" or any derivative in any promotional literature, advertisements of any type or form or client lists without the express prior written consent of a COUNTY Department Director or equivalent.

16. 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.

17. HENNEPIN COUNTY PERSONAL PROPERTY TAX AND PROPERTY TAX

Grantee affirms that it and its officers have paid all Hennepin County personal property taxes and property taxes due on all of its Hennepin County properties for taxes owed on or before the date of the execution of this contract. If the County finds that property taxes have not been paid by Grantee, Grantee's owner and Grantee's board of directors (if any), County may refuse to disburse funds or require the return of all or part of the funds already disbursed.

COUNTY ADMINISTRATOR AUTHORIZATION

Reviewed by the County Attorney's
Office

COUNTY OF HENNEPIN
STATE OF MINNESOTA

Assistant County Attorney

By: _____
David J. Hough, County Administrator

By: _____
Assistant County Administrator - Public Works

Date: _____

Recommended for Approval

By: _____
Director, Hennepin County Environment and
Energy Department

Date: _____

CONTRACTOR

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

Printed Name: _____

Signed: _____

Title: _____

Date: _____

* Contractor shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time Contractor returns the Agreement to the County. Documentation is not required for a sole proprietorship.

Attachment B

Meadowbrook Golf Course Ecological Restoration Project

Project Summary

The project will incorporate channel stabilization, stream enhancement (remeander), riparian corridor improvements, habitat restoration, wetland restoration and enhancement, and flood protection and resiliency practices along Minnehaha Creek in St. Louis Park, as part of the Minneapolis Park and Recreation Board's (MPRB) redesign of Meadowbrook golf course. Project will include education and outreach and will extend upstream stream restorations and trailways completed earlier.

Highlighted secondary benefits include redeveloping blighted areas that currently have virtually no water resource functions or values and are directly adjacent to Minnehaha Creek; enhancing aquatic and terrestrial wildlife habitat in and adjacent to Minnehaha Creek (in-stream habitat is estimated to increase by 220%); improvement of native habitat through the development of native vegetation and restoration of wetlands; and riparian corridor expansion and stabilization. Furthermore, this area will provide access to the creek for recreational purposes (e.g. paddling), and access for trail users through expansion of the Minnehaha Creek Greenway area, including connections to the local Cedar Regional trail and trail access to future Southwest LRT riders.

Approved Budget Activities

Activities relating to the implantation of channel stabilization, stream enhancement (remeander), riparian corridor improvements, habitat restoration, and wetland restoration and enhancement, and flood protection and resiliency practices along Minnehaha Creek in St. Louis Park, as part of the MPRB's redesign of Meadowbrook golf course (as identified in the Hennepin County Natural Resource "Opportunity" Grant Application for the Meadowbrook Golf Course Ecological Restoration Project dated November 24, 2015) including the preparation of project specifications and designs and related site construction and restoration work, 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 \$100,000 for reimbursable project expenses.

The effective life of this practice is ten (10) 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)