

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: IV. F.

From: Ross Bintner P.E. - Environmental Engineer

Action

Discussion

Date: May 6, 2015

Information

Subject: Promenade Phase 4 – Hennepin County Environmental Response Fund Grant

Action Requested:

Authorize Mayor to sign Hennepin County Environmental Response Fund Grant Agreement

Information / Background:

Resolution 2014-111 approving a grant application was approved by City Council on October 21, 2014, for soil remediation for Promenade Phase 4 from the Hennepin County Environmental Response Fund (ERF). The grant was successful and the City of Edina was awarded \$39,000 to assist in soil remediation.

Attachments:

Hennepin County Environmental Response Fund Grant Agreement

ENVIRONMENTAL RESPONSE FUND GRANT AGREEMENT
BETWEEN THE CITY OF EDINA AND
HENNEPIN COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES

This Agreement is between the County of Hennepin, State of Minnesota (“County”) at A2300 Government Center, Minneapolis, MN 55487 by its Department of Environmental Services (“Department”) and the City of Edina (“Grantee”) with offices located at 7450 Metro Boulevard, Edina, Minnesota, 55439.

Grantee has submitted an application to the County for a grant to be used for the for contaminated soil excavation, disposal, associated consulting activities and MPCA fees at the Centennial Lake Promenade project site located at 7151 and 7298 Promenade in Edina. The application is incorporated into this Agreement by reference.

The parties agree as follows:

1. GRANT AMOUNT AND COMPLETION

The County shall grant to Grantee a sum not to exceed Thirty-nine thousand dollars (\$39,000.00) (“ERF Grant”) which funds shall be only for expenses incurred in performing activities specified in the Application and as may be further described in Exhibit A to this Agreement or as approved by the County. Approved activities as may be described in Exhibit A and in the application, attached as Exhibit B, are referred as the “Project”. Administrative costs incurred by Grantee are not eligible for reimbursement. Exhibits A and B are attached and incorporated by this reference.

Grantee shall complete the Project within two (2) years of execution of this Agreement and within the terms stated herein. Any material change in the scope of the Project, including time schedule and budget, must be approved in writing by the County. Upon approval by the County Administrator, the duration of this Agreement may be extended for up to twelve (12) months. Funds made available pursuant to this Agreement shall be used only for expenses incurred in performing such purposes and activities described in the Application and this Agreement.

2. ACCOUNTING AND RECORD KEEPING

For all expenditures of funds made pursuant to this Agreement, Grantee shall keep financial records including properly executed contracts, invoices, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures. Accounting methods shall be in accordance with generally accepted accounting principles.

The County, the State Auditor, or any of their duly 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. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the Agreement and for six (6) years after its termination or cancellation.

3. PAYMENT/DISBURSEMENT SCHEDULE

County will disburse funds to Grantee pursuant to this Agreement, based on a payment request form provided by the County, submitted by Grantee and approved by the County. Payment requests can be submitted once per month and must be accompanied by supporting invoices that relate to activities in the approved Project budget. Subject to verification of adequacy of a written disbursement request and approval of consistency with this Agreement, the County will disburse the requested amount to Grantee within six (6) weeks after receipt of a written disbursement request. The final request for disbursement must be submitted within six (6) months of the expiration date of this Agreement.

4. REPORTING

Grantee shall submit to the County a report on the distribution of funds and the progress of the Project covered from the date of the grant award through June 30 of each year. The reports must be received by the County no later than July 25 of each year. The report shall identify specific goals listed in the application and quantitatively measure the progress of such goals. Reporting forms will be provided by the County. In addition, the required documentation listed in Exhibit A should be supplied as it becomes available.

5. CONTRACTS

Grantee shall include in any contract, provisions that require contractors to comply with all applicable State and Federal laws and regulations regarding employment and workplace safety.

In accordance with Hennepin County's policies against discrimination, Grantee shall not exclude any person from full employment rights or 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; and no person who is protected by applicable Federal or State laws, rules, or regulations against discrimination shall be otherwise subjected to discrimination.

Public Grantees and any contractors or subcontractors performing services as part of this Agreement shall follow that public Grantee's Affirmative Action policy against discrimination.

6. TERMINATION, CANCELLATION AND ASSIGNMENT

This Agreement may be canceled by the County upon sixty (60) days written notice to Grantee without cause. In the event of such cancellation, Grantee shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed up to the effective date of such cancellation.

If the County finds that there has been a failure to comply with the provisions of this Agreement, that reasonable progress has not been made toward commencement or completion of the assessment and/or clean-up activities specified in the Application and this Agreement, notwithstanding any other provisions of this Agreement to the contrary and after written notice and reasonable opportunity to cure, the County may refuse to disburse additional funds and/or require the return of all or part of the funds already disbursed, to the extent such funds were used for purposes other than activities contemplated by this Agreement.

If the County finds that there has been a violation of any state, federal or local law, the County may upon written notice immediately cancel this Agreement in its entirety and may withhold or delay payment. In the event of a decision to withhold or delay payment, the County shall furnish prior written notice to Grantee specifically identifying the reason for withholding or delaying such payment.

This Agreement may not be assigned without the prior written consent of the County.

7. INDEPENDENT CONTRACTOR

Grantee shall select the means, method, and manner of performing the Project. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting Grantee as the agent, representative, or employee of the County for any purpose. Grantee shall remain an independent contractor with respect to all services and activities performed under this Agreement. Any personnel of Grantee or other persons while engaged in the performance of any work or services required by Grantee under this Agreement 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 Economic Security 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, contractors, or employees. Grantee shall defend, indemnify and hold harmless the County, its officials, officers, agents, and employees from all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the County, including, without limitation, tenure

rights, medical and hospital care, sick leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

8. 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, its contractors or subcontractors or anyone directly or indirectly employed by them, and/or any party that directly or indirectly benefits from the activities specified in this Agreement, and/or anyone for whose acts and/or omissions they may be liable in the performance of the activities specified in this Agreement and against all loss by reason of the failure of Grantee to perform any obligation under this Agreement.

9. INSURANCE

In order to protect the County and those listed above under the indemnification provision, Grantee agrees at all times during the term of this Agreement and beyond such term when so required, to have and keep or cause to have and be kept in force, and to cause all contractors to do likewise, the following insurance coverages under either a purchased insurance or self-insurance program:

1. Commercial General Liability on an occurrence basis with Contractual Liability Coverage:

	<u>Limits</u>
General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	2,000,000
Personal and Advertising Injury	1,500,000
Each Occurrence –	
Combined Bodily Injury and Property Damage	1,500,000

2. Automobile Liability – Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned, and hired automobiles. 1,500,000

3. Workers' Compensation and Employer's Liability:
 - a. Workers' Compensation Statutory
If the contractor is based outside the State of Minnesota, coverage must apply to Minnesota laws.

 - b. Employer's Liability. Bodily Injury by:

Accident – Each accident	500,000
Disease – Policy Limit	500,000
Disease – Each Employee	500,000

4. Professional Liability –

Per Claim	1,500,000
Aggregate	2,000,000

The insurance must be maintained continuously for a period of two years after the termination of this Agreement.

Grantee shall require that any independent contractors rendering assessment and/or clean-up activities under this Agreement furnish certificates of insurance to Grantee of the insurance coverages listed above, and provide updated certificates as coverages expire.

An umbrella or excess policy over primary liability coverages is an acceptable method to provide the required insurance limits. 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 and their contractors shall not commence work until they have obtained required insurance and filed with the Grantee properly executed Certificates of Insurance establishing compliance. The certificate(s) must name the Grantee as the certificate holder and Hennepin County as an additional insured for the commercial general liability coverage(s) for all operations covered under the Agreement. Grantee shall immediately notify County of any cancellations or reduction of insurance coverage.

Grantee shall provide copies of insurance certificates to County upon request. If Grantee fails to furnish proof coverages, if requested by the County, the County may withhold payments and/or pursue any other rights or remedy allowed under the contract, law, equity, and/or statute.

10. MERGER AND MODIFICATION

It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

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.

11. 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 performance under it. 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.

12. ACKNOWLEDGMENTS

The Grantee shall acknowledge the financial assistance provided by the County in promotional materials, press releases, reports and publications relating to the Project activities described in Exhibit A which are funded in whole or in part with the grant funds. The acknowledgment should contain the following language:

Financing for this project was provided in part by the Hennepin County Environmental Response Fund.

Until the Project activities funded by this Agreement are completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved the County, 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 Project activities funded by this Agreement are completed and for one year after that date, the Grantee shall provide advance notice to the County, including an invitation to the appropriate County Commissioner's office, of any public events related to the Project.

13. HENNEPIN COUNTY PERSONAL PROPERTY TAX AND PROPERTY TAX

Grantee shall require the grant recipient to affirm 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 December 31, 2014. If the County finds that property taxes have not been paid by grant recipient, grant recipient's owner and grant recipient'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 pursuant to section 6 of this Agreement.

14. USE OF ERF GRANT AS A LOAN

An ERF Grant from County to Grantee may not be disbursed by Grantee to any entity as a loan.

COUNTY BOARD AUTHORIZATION

GRANTEE, having signed this agreement, and the Hennepin County Board of Commissioners having duly authorized this agreement on the 27th of January, 2015, and pursuant to such approval, the proper County officials having signed this agreement, the parties hereto agree to be bound by the provisions herein set forth.

Reviewed by the County Attorney's Office

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

Assistant County Attorney

By: _____
Chair of Its County Board

Date: _____

ATTEST: _____
Deputy/Clerk of County Board

Date: _____

By: _____
David Hough, County Administrator

Date: _____

By: _____
Assistant County Administrator, Public Works

Date: _____

Recommended for Approval

By: _____
Director, Department of Environmental Services

Date: _____

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.*

Name: City of Edina _____

By: _____
James Hovland, Mayor City of Edina

Date: _____

*GRANTEE 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 Grantee returns the Agreement to the County. Documentation is not required for a sole proprietorship.

Exhibit A

Centennial Lake Promenade

Project Summary:

The project site is a 2-acre park with trails that will be redesigned with a pedestrian promenade, a new trail, and water features. In the past, the site was used for mining aggregate with subsequent undocumented filling. Investigation of the site detected the presence of elevated levels of arsenic, polycyclic aromatic hydrocarbons (PAHs) as benzo(a)pyrene (BaP) equivalents and petroleum as diesel range organics (DRO) in the soil. During construction, an estimated 750 cubic yards of contaminated soil will be excavated and sent to a landfill. This new promenade will provide improved biking, walking, recreation, and access to shopping in close proximity to multi-family residential and commercial businesses.

The applicant requests ERF assistance for contaminated soil excavation, disposal, associated consulting activities and MPCA fees.

The following costs are based on a budget submitted by Grantee. Modifications must be approved in writing by the County.

Approved Budget for the Centennial Lake Promenade Project Site:

Activities relating to the contaminated soil excavation, disposal, associated consulting activities and MPCA fees	<u>\$39,000.00</u>
Total:	\$39,000.00

Required Documentation to be Submitted to Hennepin County:

Response Action Plan (RAP) Implementation Report

Consultant/Contractor Invoices (include time period covered by invoice, specific activities related to time, and documentation supporting expenses, including subcontractor and analytical invoices - include unit rates and quantities, subcontractor markup limited to 10% or less)

Contaminated soil disposal documentation (unit rates, one manifest per truck per load, and weight/load tickets). Include a spread sheet matching manifest, load tickets, and final weights

Clean fill documentation

MPCA approval letters and invoices

Annual Project Progress/Summary Report(s).

Exhibit B

ERF Application

Centennial Lake Promenade