

Agreement No. PW 46-23-15
County Project No. 9840
County State Aid Highway No. 152
Minneapolis Park and Recreation Board
County of Hennepin

**TREE PLANTING AGREEMENT
BETWEEN COUNTY OF HENNEPIN AND
MINNEAPOLIS PARK AND RECREATION BOARD**

THIS AGREEMENT, between the County of Hennepin, State of Minnesota, ("COUNTY") A-2300 Government Center, Minneapolis, Minnesota 55487, on behalf of the Hennepin County Transportation Department, 1600 Prairie Drive, Medina, Minnesota, 55340, ("DEPARTMENT"), and the City of Minneapolis, acting by and through its Park and Recreation Board, 2217 West River Road, Minneapolis, Minnesota, 55411, a municipal corporation under the laws of the State of Minnesota, ("PARK BOARD").

WITNESSETH:

WHEREAS, the COUNTY is preparing to bring about the improvement of County State Aid Highway No. (CSAH) 152 (Washington Avenue) between CSAH 52 (Hennepin Avenue) and 5th Avenue South as shown on the County Engineer's plans for County Project (C.P.) Number 9840; and

WHEREAS, the COUNTY has undertaken, as a part of CP 9840, the planting of trees along CSAH 152; and

WHEREAS, the COUNTY has funds for planting trees along CSAH 152 and wishes to contract with the PARK BOARD for the planting of said trees; and

WHEREAS, the PARK BOARD is agreeable to undertake said tree planting activities, and to assume ownership and ongoing responsibility for the care and maintenance of said trees.

NOW THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the COUNTY on behalf of the DEPARTMENT and the PARK BOARD agree as follows:

1. TERM AND COST OF THE AGREEMENT

The PARK BOARD agrees to furnish services to the COUNTY commencing April 1, 2017 and terminating June 30, 2018 for an amount not to exceed \$40,000.00, unless terminated earlier in accordance with the Default and Cancellation provisions of this Agreement.

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It is understood that the work to be performed under this Agreement will be in conjunction with the construction activities of the Project. The PARK BOARD shall coordinate its planting and maintenance activities with the COUNTY's construction contractor, and shall obtain the COUNTY's Project Engineer's approval before starting any work within the Project's construction limits. It is anticipated that the CSAH 152 corridor will be ready for planting activities in calendar year 2017, and all such planting activities shall be completed no later than completion of construction for CP 9840.

2. SERVICES TO BE PROVIDED

The PARK BOARD shall furnish and plant up to 100 trees along 152 between CSAH 52 (Hennepin Avenue) and 5th Avenue South at a cost of \$400.00 per tree for a total cost not to exceed \$40,000.00. Tree location and species shall be as shown in the construction plans for CP 9840 and shall be coordinated with the COUNTY's construction project engineer and construction contractor.

It is understood and agreed that the PARK BOARD shall be responsible for inspecting and analyzing the soils at each planting location, and if soil amendments are needed, shall furnish and install at no expense to the COUNTY. It is further understood that as a result of the PARK BOARD's activities, any damage to adjacent areas or structures shall be borne by the PARK BOARD and all adjacent surfaces shall be properly swept and cleaned of any debris or remnant soils upon completion of the planting activities. It is further understood and agreed that the PARK BOARD shall be responsible for all underground utility locates and traffic control, and shall coordinate its traffic control with the COUNTY's Project Engineer and construction contractor.

It is understood and agreed that it shall be the PARK BOARD's responsibility to maintain the tree planting areas prior to tree planting upon completion of the Project's construction activities in said areas.

The PARK BOARD shall use all funds received under this Agreement for the costs of tree acquisition and planting. Administrative costs are not reimbursable under this Agreement. By performing said services and accepting payment therefore, the PARK BOARD agrees to accept ownership and ongoing responsibility for the care and maintenance of the trees included under this Agreement.

3. PAYMENT FOR SERVICES

Payment for services shall be made directly to PARK BOARD after completion of the services upon the presentation of a claim as provided by law governing the COUNTY's payment of claims and/or invoices. PARK BOARD shall submit monthly invoices for services rendered on forms which may be furnished by the COUNTY. Payment shall be made within forty five (45) days from receipt of the invoice.

4. INDEPENDENT CONTRACTOR

PARK BOARD 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 co-partners between the parties or as constituting PARK BOARD as the agent, representative, or employee of the COUNTY for any purpose. PARK BOARD is and shall remain an independent PARK BOARD for all services performed under this Agreement. PARK BOARD shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of PARK BOARD or other persons while engaged in the performance of any work or services required by PARK BOARD 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 PARK BOARD, its officers, agents, subcontractor's, or employees shall in no way be the responsibility of the COUNTY. PARK BOARD shall defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers, 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 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. LIABILITY

The PARK BOARD 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 the PARK BOARD, 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 the PARK BOARD to perform any obligation under this Agreement.

The COUNTY agrees to defend, indemnify, and hold harmless the PARK BOARD, 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 the COUNTY, 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 the COUNTY to perform any obligation under this Agreement.

6. DATA PRACTICES

PARK BOARD, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA), the Health Insurance Portability and Accountability Act and implementing regulations, if applicable, and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality. If PARK BOARD creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the COUNTY pursuant to this Agreement, then PARK BOARD must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance. PARK BOARD agrees to defend, indemnify and hold harmless the COUNTY, its officials, officers, agents, employees, and volunteers from any claims resulting from PARK BOARD's officers', agents', owners', partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of such protected data, or other noncompliance with the requirements of this section. PARK BOARD agrees to promptly notify the COUNTY if it becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA. The terms of this section shall survive the cancellation or termination of this Agreement.

7. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes Section 16C.05, Subd. 5, PARK BOARD agrees that the COUNTY, the State Auditor, the Legislative 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 PARK BOARD and involve transactions relating to this Agreement. The PARK BOARD shall maintain these materials and allow access during the period of the Agreement and for six (6) years after its termination or cancellation.

8. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. PARK BOARD binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations contained in the contract documents.
- B. PARK BOARD 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 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 PARK BOARD, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve PARK BOARD of its liabilities and obligations under the Agreement.

- C. PARK BOARD shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of COUNTY. Permission to subcontract, however, shall under no circumstances relieve PARK BOARD of its liabilities and obligations under the Agreement. Further, PARK BOARD shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between PARK BOARD and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions specified in this Agreement. PARK BOARD shall make contracts between PARK BOARD and subcontractors available upon request.
- D. As required by Minnesota Statutes section 471.425, subd. 4a, PARK BOARD shall pay any subcontractor within ten (10) days of PARK BOARD's receipt of payment from COUNTY for undisputed services provided by the subcontractor. PARK BOARD shall pay interest of 1½ percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, PARK BOARD shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including any attorney's fees, incurred in bringing the action.

9. MERGER AND MODIFICATION

- A. 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. All items that are referenced or that are attached are incorporated and made a part of this Agreement.
- 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.

10. DEFAULT AND CANCELLATION

- A. If PARK BOARD fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, it shall be in default. Unless PARK BOARD's default is excused by the COUNTY, the COUNTY may upon written notice immediately cancel this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for the COUNTY to delay payment until PARK BOARD's

compliance. In the event of a decision to withhold payment, the COUNTY shall furnish prior written notice to PARK BOARD.

- B. If the COUNTY fails to make payment in accordance with the terms of this Agreement, this shall constitute default. Unless COUNTY's default is excused by the PARK BOARD, the PARK BOARD may upon written notice immediately cancel this Agreement in its entirety, at which time all sums due and owing shall become immediately payable by the COUNTY.
- C. The 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.
- D. This Agreement may be canceled with or without cause by either party upon thirty (30) days' written notice.

11. CONTRACT ADMINISTRATION

In order to coordinate the services of PARK BOARD with the activities of the Hennepin County Transportation Department so as to accomplish the purposes of this Agreement, Mr. James Grube, County Highway Engineer, or his successor (Contract Administrator), shall manage this Agreement on behalf of the COUNTY and serve as liaison between the COUNTY and PARK BOARD.

12. 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 PARK BOARD shall be sent to the address stated in the opening paragraph of the Agreement.

13. 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.

IN TESTIMONY WHEREOF, The parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written. .

MINNEAPOLIS PARK AND RECREATION BOARD

(Seal)

By: _____
Its: President

Date: _____

And: _____
Its: Secretary

Date: _____

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COUNTY OF HENNEPIN

ATTEST:

By: _____
Deputy/Clerk of the County Board

By: _____
Chair of its County Board

Date: _____

Date: _____

APPROVED AS TO FORM:

By: Julie Bruma
Assistant County Attorney

And: _____

Date: _____

Date: 4/7/16
Works

And: _____
Assistant County Administrator, Public

Date: _____

APPROVED AS TO EXECUTION:

By: _____
Assistant County Attorney

RECOMMENDED FOR APPROVAL

By: _____
County Highway Engineer

Date: _____

Date: _____

RECOMMENDED FOR APPROVAL

By: _____
Department Director, Transportation (Road
& Bridges) - Operations

Date: _____

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