

**MEMORANDUM OF UNDERSTANDING
BETWEEN COUNTY OF HENNEPIN AND
THE CITY OF EDINA**

THIS AGREEMENT is between the County of Hennepin, State of Minnesota, A-2300 Government Center, Minneapolis, Minnesota 55487 (“**COUNTY**”), on behalf of the Hennepin County Library, 12601 Ridgedale Drive, Minnetonka, Minnesota 55305, (“**LIBRARY**”), and the City of Edina, 4801 West 50th Street, Edina, Minnesota 55424, (“**CITY**”).

RECITALS

WHEREAS, pursuant to the terms of a trust agreement the Trustee (“**Trustee**”) for the estate of Linda Brandt was directed to create a memorial in the name of Linda Brandt in the form of a sculpture or work of art that would allow friends a physical location to visit in her memory; and

WHEREAS, on or about June 19, 2018, the Trustee entered into a fund agreement (“**Fund Agreement**”) with Friends of the Edina Library (“**FEL**”) and Friends of the Hennepin County Library (“**FHCL**”) providing a fund of One Hundred Thousand Dollars (\$100,000) (“**Bequest**”) to create a memorial in the name of Ms. Brandt for the commission of a work of art; and

WHEREAS, under the terms of the Fund Agreement, FHCL received the Bequest to hold as a fiduciary on behalf of FEL; and

WHEREAS, the estate of Linda Brandt further notified FEL that the trustee to the estate selected a bench (the “**Bench**”) as the work of art and offered to work with FEL to create the Bench for placement outside of the Edina Library; and

WHEREAS, FEL commissioned sculptor Janey Westin to create the Bench which will be a custom-made Indiana limestone bench; and

WHEREAS, FHCL has made the first payment to the artist and will use the balance of the \$100,000 for additional payments to the artist and for installation of the bench; and

WHEREAS, on November 28, 2019, FEL in support of Edina Library transferred ownership of the Bench to Library; and

WHEREAS, in 2019 the Bench will be installed by Hennepin County Facilities staff at a location adjacent to a sidewalk northwest of the Edina Library on City property (“**City Property**”) as described in Attachment A, attached and incorporated by this reference; and

WHEREAS, the City agrees to the installation of the Bench by Hennepin County on City Property; and

WHEREAS, the City agrees to maintain the Bench at the location where it is installed by Hennepin County;

NOW, THEREFORE, in consideration of these mutual undertakings and agreements, the COUNTY and the CITY agree as follows:

1. Installation of the Bench

- a. Upon completion of the Bench by sculptor Janey Westin, the COUNTY will transport it to the Edina Library and install it adjacent to the sidewalk on the northwest side of the Edina Library on City Property as depicted in Attachment A.
- b. The COUNTY will obtain all necessary permits, if any, required in connection with the installation of the Bench.
- c. The COUNTY shall be responsible for any maintenance or repairs to the Bench necessitated by any damage resulting from the installation of the Bench.

2. Project Maintenance

- a. The CITY, in partnership with its volunteers, shall be responsible for the maintenance of the Bench upon completion of the installation of the Bench. Maintenance includes, but is not limited to maintaining the reasonable cleanliness of the Bench, removing graffiti and repairing the bench if it is damaged. However, should the Bench become damaged beyond simple repairs, as determined in the sole discretion of the City, the City reserves the right to return the Bench to the COUNTY.
- b. The CITY shall furnish all labor, materials, supplies, tools and other items necessary to provide the needed maintenance or repair.
- c. The Library is providing to the City information from the artist about maintenance best practices which are described in Attachment B and attached and incorporated by this reference. City shall comply with maintenance practices described in Attachment B.
- d. The City agrees to keep the Bench at the location where installed by Hennepin County unless both parties agree to a new location.
- e. This Agreement does not grant any interest whatsoever in land.

3. Project Term

Agreement is effective upon signing and terminates on July 1, 2044.

4. Project Representatives

The CITY's Authorized Representative is:

Perry Vetter
Parks and Recreation Director
Edina City Hall
4801 West 50th Street
Edina, MN 55424

The COUNTY's Authorized Representative is:

Janet Mills
Interim Director
Hennepin County Library
12601 Ridgedale Drive
Minnetonka, MN 55305

A party may change its Authorized Representative by sending written notice to the other party.

5. Signage

Each party's Authorized Representative is responsible for administering this Agreement and is authorized to give and receive any notice or demand required by this Agreement:

No advertising signs or devices of any form or size will constructed or permitted to be constructed or placed upon the Bench except for a small plaque, located inside the Edina Library, stating that the Bench is a gift from the estate of Linda Brandt.

6. Amendments

Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Agreement, or their successors in office.

7. Assignment

Neither party may assign or transfer any rights or obligations under this Agreement without the prior consent of the other party and a written assignment agreement, executed and approved by the same parties who executed and approved this Agreement, or their successors in office.

8. Force Majeure

Neither party will be responsible to the other for a failure to perform under this Agreement (or a delay in performance), if such a failure or delay is due to a force majeure event. A force majeure event is an event beyond a party's reasonable control, including but not limited to, unusually severe weather, fire, floods, severe vandalism, severe accidental damage or other acts of God.

9. Independent Contractor

The CITY 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 the CITY as the agent, representative, or employee of the COUNTY for any purpose. The CITY is and shall remain independent contractors for all services performed under this Agreement. The CITY shall secure all personnel required in performing services under this Agreement. Any personnel of the CITY or other persons while engaged in the performance of any work or services required by the CITY 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 the CITY, its officers, agents, contractors, or employees. The CITY shall defend, indemnify, and hold harmless Hennepin County, their 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.

10. Indemnification

Each PARTY shall defend, indemnify, and hold harmless the other PARTY, 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 directly or indirectly from any act or omission of the Party, 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 Party 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 Party personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the provisions set forth herein. To the full extent permitted by law, actions by the Parties pursuant to this Agreement are intended to be and shall be construed as a "cooperative activity" and it is the intent of the parties that they shall be deemed a "single governmental unit" for the purposes of liability, all as set forth in Minn. Stat. § 471.59, subd. 1a(a); provided further that for purposes of that statute, each party to this Agreement expressly declines responsibility for the acts or omissions of the other parties.

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.

b. CITY 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.

c. 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.

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

12. Default

If CITY 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.

13. Media Outreach

CITY shall notify COUNTY, prior to publication, release or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by COUNTY, by and through the Public Relations Officer or his/her designee(s), prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing, promotions, client lists, civic/community events or opportunities and/or other forms of outreach created by, or on behalf of, CITY (i) that reference or otherwise use the term "Hennepin County," or any derivative thereof; or (ii) that directly or indirectly relate to, reference or concern the County of Hennepin, this Agreement, the services performed hereunder or COUNTY personnel, including but not limited to COUNTY employees and elected officials.

14. 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.

COUNTY BOARD AUTHORIZATION

Reviewed by the County Attorney's
Office

COUNTY OF HENNEPIN
STATE OF MINNESOTA

Assistant County Attorney

By: _____
County Administrator

Date: _____

Date: _____

By: _____
Interim Director, Hennepin County Library

Date: _____

CITY OF EDINA

By: _____
Mayor,

By: _____
City Manager,

Date: _____

Date: _____