

PROJECT AGREEMENT
City of Edina and Minnehaha Creek Watershed District

ARDEN PARK IMPROVEMENT PROJECT

This Agreement is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D ("District"), and the City of Edina, a statutory city and political subdivision of the State of Minnesota ("City").

Recitals

A. Arden Park is a public park owned by the City through which Minnehaha Creek runs. The creek channel in this location has been altered by urban flows and its riparian ecology has been affected by urban uses.

B. The District would like to restore the channel and its riparian corridor for water quality and ecologic purposes. Through its strategic plan for parks, recreation and trails, the City has determined that the park warrants substantial capital maintenance and improvement, and the parties would like to integrate these purposes into a single park redesign project that incorporates the creek environment into the recreational experience.

C. In addition, the parties would like to incorporate regional stormwater management into the park, as an opportunity to treat stormwater runoff from surrounding developed hard surface before it discharges into the creek.

D. In August 2016, the parties entered into a memorandum of agreement to jointly develop a concept plan for the Arden Park Improvement Project ("Project"). The concept plan is Attachment A to this Agreement, and has been approved by both the City Council and the District Board of Managers.

E. At this time, the parties share the following general Project intent: removals, demolition, grading, stormwater and creek work are to occur in 2018, and trail and natural resource work are to occur in 2019.

F. The parties hereby enter into this Agreement for the design, construction and maintenance of channel restoration and park improvements consistent with the approved concept plan.

Terms

A. Scope

1. The Project scope includes the improvements listed here. Except as one or more may be excluded pursuant to the procedures in this Agreement, all of these improvements will be incorporated into Project construction. The City may construct or install additional improvements in conjunction with, or after, Project construction. For each category of improvements, the notation in parentheses states how design and construction cost is allocated, subject to the further terms of this Agreement.

Facilities (City cost)

Lawn area seeding and regrading
Storm drain, water and sewer line relocates

Paths (City cost)**

10'-wide parks path
6'-wide trail connections to nature trail
Brookview Avenue sidewalk
Lookout terrace off of Brookview Avenue

Trails & Vegetation (cost shared equally*)

Main arterial bridge
Nature trail & wood boardwalk at north end of park
North pedestrian bridge
Buckthorn removal, native vegetation restoration in extended corridor

Creek Restoration (District cost)

Canoe landing and creek overlook at 54th Street
Canoe and tubing put-in and landing at north end of park
Grading and creek remeander
Native vegetation restoration in creek corridor
Park shelter demolition

Stormwater Management (cost shared equally)

Sediment capture feature, north end of park
Bioretention basins (2), west side of creek
Low-impact demonstrations associated with park shelter (e.g., native vegetation & pollinator garden, green roof/cistern, pervious pavement)

*** The City cost for the Main arterial bridge is the cost replacement in-kind; the District cost is for extending the span, and demolishing the bridge to accommodate the creek restoration.**

**** The City cost for Path improvements is the cost for standard asphalt surface. In its discretion, the District may include and elect an add alternate for pervious paving and will bear the incremental cost.**

B. Design

2. The following attachments are incorporated into this Agreement:

- a. Attachment A: Concept Plan;
- b. Attachment B: Concept Project Cost Estimate;

c. Attachment C: Creek Remeander Area Limit Sketch; and

d. Attachment D: Stormwater Facility Area Limit Sketch

3. The District will retain one or more consultants to complete design studies, design the Project, assist in procurement and provide construction oversight. The consultant choice and the consultant scope of work will be subject to City approval, not to be unreasonably withheld. The scope of work and the billing terms thereunder will be organized so that design costs can be apportioned between the District and City as specified in this Agreement. The terms of the consultant contract as to professional warranty, duty of care, indemnification and hold harmless, intellectual property rights and document right of use will extend to both the District and the City.

4. At the District's request, the City will provide information in its possession relevant to the feasibility work. This includes, but is not limited to, information regarding any subsurface structures and requirements for relocations of and connections to City stormwater and other utility infrastructure. At the District's request, the parties will cooperate to identify permissible tree removal.

5. The District will provide a draft 50% design report to the City for comment and its consultant will prepare a final 50% design report. If the report identifies an obstacle to implementing the Project consistent with Attachments A and B, the parties will collaborate in good faith to identify agreeable modifications. Subject to the District right to construct the Creek Restoration elements as set forth at paragraph 17, below, either party may withdraw from this Agreement if it concludes that there is no agreeable modification.

6. Proceeding to design is conditioned on the District Board of Managers ordering the project pursuant to Minnesota Statutes §103B.251.

7. The City will timely inform the District of its requirements for grades, soils and utility installations and relocates within the Project area. Utility work that is not needed for the Project may be omitted from the design. The District will prepare a 50% Project design that, among other elements, includes a rough grading plan; assessment of soil quality, contamination, geophysics and groundwater levels; and cut/fill balance. The 50% design will provide for rough grades as specified by the City for subsequent construction of park improvements not included in the Project.

8. The District will transmit the 50% design with preliminary cost estimate for City concurrence. The District and City will work in good faith to reconcile any differences as to the 50% design and the District will produce the 90% design.

9. The design will include a maintenance plan that specifies inspection and maintenance terms for Stormwater Management improvements and native vegetation management. The parties will coordinate to develop the plan as a part of the 50% design and it will be finalized within the 90% design.

10. The District will transmit the 90% design to the City, along with an engineer's revised cost estimate, for concurrence.

C. Construction

11. The District will obtain all permits and approvals for the Project. The City will cooperate as landowner. The City will timely process all applicable city permits. Pursuant to Minnesota Statutes §103D.335, subdivision 24, the City will not charge a fee for any such permit.

12. The District will prepare contract documents and procure construction through sealed bid or Best Value method, after consultation with the City as to method and any relevant terms of the procurement process. If the District uses Best Value method, the City will participate in evaluating technical proposals and bids. The contract documents will reflect Project and phase deadlines to which the District and City have agreed.

13. In its judgment, the District may procure the Project by means of a single contract, or may segment the work to better achieve Project purposes. The parties may agree to remove the improvement titled "Low-impact demonstrations associated with park shelter" from the contract documents and pursue that improvement by separate contract or arrangements.

14. The City will supply construction limits, access routes, subsurface structure information and any other relevant information to the District for contract document preparation. The City and District will establish City construction inspection requirements and the District will incorporate these into the contract documents. These requirements may include a phasing of substantial completion inspection and approval by the City.

15. The contract documents will include the following:

a. The bid form will arrange and itemize work so that the City's reimbursement obligation for a given invoice can be determined.

b. The contract will state substantial and final completion dates agreeable to the City.

c. The contract will require that the contractor:

(i) Provide performance and payment bonds, which may be reduced to a warranty or maintenance bond after Project completion;

(ii) Name the City as an additional insured under the contractor's commercial general liability policy, for work and completed operations;

(iii) Indemnify the City for the contractor's negligent acts and those of its subcontractors;

(iv) Extend duties of care and warranties to the City;

(v) Determine the location of and protect all utilities and structures;

(vi) Comply with local traffic and site control requirements; and

(vii) Restore or repair any damage to the City's lands and facilities.

16. The City will afford necessary and convenient access and construction limits for the work and will be responsible to maintain work-in-progress insurance for commercially covered property and hazards, for the benefit of the contractor and the District.

17. Termination of this Agreement before bid opening is authorized pursuant to the following terms:

- a. Either party may terminate this Agreement. The party will be obligated for its share of design consultant costs incurred to the time of termination and for all consultant costs incurred after the publication of the bid solicitation.
- b. If the City chooses to terminate, on District request it will convey to the District a perpetual easement allowing the District to construct and maintain the Creek Restoration, Facilities and/or Stormwater Management improvements, assign its rights to any grant funds applicable to these improvements, and bear the cost of Facilities work. The easement will provide for reasonably convenient access and the right to work and construct within the limits defined on Attachments C and D. The easement will provide for cooperation as to relocating utilities, and overall good faith to facilitate the District's work.
- c. If the District chooses to terminate, on City request it will assign to the City both the design contract and its rights to grant funds.

17A. After the bids have been opened the parties must concur in the award of the bid. If the Parties do not concur in the award of a bid, this agreement shall terminate.

18. Adjustments to the Project after bid opening but before award of contract will occur as follows:

- a. Either party may direct that a Sediment capture feature, Bioretention basin or Trails & Vegetation improvement be deleted from the work if the bid price of that improvement exceeds the engineer's 90% cost estimate by more than 20 percent. In that event, the improvement will be retained if the other party agrees to pay that part of the overage above 20 percent.
- b. The City may direct that one or more Paths improvements be deleted from the work. It will be responsible for any increase in price of any other contract element item to accommodate the deletion.
- c. The District may delete one or more Creek Restoration improvements from the work if the bid price of the improvement, or the total for the improvements, exceeds the engineer's 90% cost estimate by more than 20 percent. The work will be retained if the City agrees to pay that part of the overage above 20 percent.
- d. If the parties concur that adjustments to the Project under this paragraph make it appropriate for the City to manage construction, they will cooperate to assign the District's contract rights and obligations to the City.

19. During the work, the District, in its judgment, may make work changes with or without field directive, or by work change directive or change order. Notwithstanding any other term of this Agreement, City approval of a work change is not required unless it would affect: (a) the design of

an improvement other than Creek Restoration improvements; (b) the City's Project cost; or (c) City maintenance requirements.

20. The City engineer will promptly consider a proposed work change for approval, which will not be unreasonably withheld. The City engineer's delegated authority to approve a work change that increases the City's portion of the contract price is limited to 10 percent of that part of the bid price allocated to the City, aggregate of all work changes.

21. The City may disapprove a work change concerning a Facilities or Paths improvement, but will be responsible: (a) to determine appropriate disposition as to that improvement; and (b) for all contract price adjustments resulting from disapproval. The District may disapprove a work change concerning a Creek Restoration improvement, but will be responsible: (a) to determine appropriate disposition as to that improvement; and (b) for all contract price adjustments resulting from disapproval. In either case, if the work change is prompted by circumstances not reasonably anticipated, the parties will consult to determine the appropriate modification and any price adjustment resulting from that will be allocated in accordance with paragraph 29, below.

22. A work change to a Stormwater Management or Trails & Vegetation improvement that the construction oversight consultant deems reasonably necessary to successfully construct the improvement will be authorized unless both parties agree otherwise. In the latter event, the parties will consult to determine the appropriate disposition. Any price adjustment will be allocated in accordance with paragraph 29, below.

23. The City has the right of concurrence in substantial completion of all improvements other than Creek Restoration improvements. The District will notify the City when it considers the Project, or a previously designated phase thereof, to be substantially complete. The City will have ten business days thereafter to inspect and transmit its written concurrence or lack thereof. The City will withhold concurrence only on a material deviation from plans and specifications and its written notice will specifically describe the deviation and the contract basis to withhold concurrence. In that event, the parties will cooperate in good faith to resolve the City's objection.

24. The District's construction oversight consultant will certify completion and supply a copy of signed record drawings to the City.

D. Public information

25. The City and District together will develop, prepare and implement a plan for public information and input during the course of Project development, construction and maintenance.

E. Maintenance

26. When the District engineer has certified completion and delivered record drawings to the City, ownership of all improvements will vest in the City. At this time, the parties will record mutual covenants in which the City will maintain the Paths, Trails & Vegetation, and Stormwater Management improvements, and the District will maintain the Creek Restoration improvements, in accordance with the maintenance plan specified at paragraph 9, above. On the District's request, the City will make reasonable arrangements for the District's occupation of the park property for maintenance under this paragraph.

F. Funding

28. Each party will bear its own process and administrative costs in carrying out this Agreement and implementing the project.

29. Each party will bear costs of the design and construction contracts as follows:

- a. The City will bear costs relating to Facilities and Paths improvements, except for certain incremental costs allocated to the District by the footnote of paragraph 1, above.
- b. The District will bear costs relating to Creek Restoration improvements.
- c. The parties will share equally costs relating to Trails & Vegetation and Stormwater Management improvements.
- d. The parties will share equally all costs that cannot reasonably be allocated to the preceding specific categories of improvements.

30. The parties will work together, and may work separately, to identify and seek applicable grant funding. When applying for grants, the parties will cooperate to seek the broadest scope of Project funding. Any grant funds will be applied to the appropriate improvement costs. Required cost-share and reductions in funding obligation will be allocated to one or both parties in accordance with the cost allocations set forth in the preceding paragraph. In applying for and administering any grant, the parties will endeavor for the grant to be assignable as between them in the event either party withdraws from the Project.

31. The City and District may use stormwater charges or any other authorities it possesses to generate the revenues to cover its Project costs. Either party may finance its costs as it chooses.

32. The District will invoice the City from time to time, and no more frequently than monthly, for those design and construction costs for which the City is responsible. The City will reimburse for undisputed costs within 30 days of invoice receipt. On request, the District will further document costs incurred.

33. Each party will assume all maintenance costs for those improvements for which it bears primary maintenance responsibility pursuant to paragraph 26, above. The City will bear the cost of any performance monitoring required under any District or other permit.

G. Regulatory treatment

34. Attachment D shows area of opportunity for each stormwater management facility. The level of water quality treatment, and volume and peak flow management will be maximized during the design, while remaining consistent with the parks use of the land.

35. Based on stormwater management facility record drawings and technical specifications, the District will quantify the treatment capacity outcomes.

36. As-built capacity of a facility exceeding intended capacity will be owned by the City. To the extent not prohibited by terms of grant funding, and as otherwise consistent with District stormwater management rules, the City may allocate this capacity as it chooses for its own compliance purposes, or for the compliance purposes of third-party development or redevelopment, within the specified catchments.

37. For any development or redevelopment that will use a Project facility for compliance, the City must approve the debiting of facility capacity and must confirm that the facility is current on maintenance. The City will maintain, and share with the District, an accounting of the use of facility capacity.

H. Standard terms

38. Each party agrees to hold harmless, defend and indemnify the other party from and against that portion of any and all liability, loss, claim, damage or expense (including reasonable attorney fees, costs and disbursements) that the indemnified party may incur as a result of the performance of this Agreement due to any negligent act or omission of the indemnifying party or any other act or omission that subjects it to liability in law or equity. Notwithstanding, Minnesota Statutes chapter 466 and other applicable law govern liability of the City and the District. This Agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party or the other party to this Agreement.

39. This Agreement is not a joint powers agreement under Minnesota Statutes §471.59 and nothing herein constitutes either party's agreement to be responsible for the acts or omissions of the other party pursuant to subdivision 1(a) of that statute. Each party is responsible for its own employees for any claims arising under the Workers Compensation Act.

40. The execution of this Agreement on behalf of the District Board of Managers and the City Council authorizes all delegations of authority by those bodies expressly contained herein.

41. Each communication under this Agreement will be made to the following representatives:

Administrator, Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345
Re: Arden Park Project, Edina

Manager, City of Edina
4801 W 50th Street
Edina MN 55424

Contact information will be kept current. A party may change its contact by written notice to the other party.

42. This Agreement incorporates all terms and understandings of the parties concerning the Project. An amendment to this Agreement must be in writing and executed by the parties. A

party's failure to enforce a provision of this Agreement does not waive the provision or that party's right to enforce it subsequently. All above Recitals are incorporated into this Agreement.

43. This Agreement is effective on execution by both parties and unless terminated as expressly provided herein, will expire five years thereafter. Paragraphs 26 and 34-39 will survive expiration.

IN WITNESS WHEREOF the parties execute this Agreement by their authorized officers.

CITY OF EDINA

By _____
Its Mayor

Date:

By _____
Its City Manager

Date:

Approved for form and execution:

MCWD Counsel

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Its President

Date: