

**METROPOLITAN LIVABLE COMMUNITIES DEMONSTRATION
ACCOUNT DEVELOPMENT GRANT PROGRAM
SUB-GRANT AGREEMENT**

This Sub-Grant Agreement (the “Agreement”) is entered into on this _____ day of April, 2018, by and between the **CITY OF EDINA**, a Minnesota municipal corporation (hereinafter referred to as the “Sub-Grantor”) and **SOUTHDALE PARTNERS MN, LLC AS THE ADMINISTRATIVE MEMBER OF SOUTHDALE OFFICE PARTNERS, LLC**, a Minnesota Limited Liability Company (hereinafter referred to as the “Sub-Grantee”).

RECITALS

WHEREAS, the Metropolitan Council (hereinafter referred to as the “Grantor”) and the Sub-Grantor have entered into a Livable Communities Demonstration Account Development Grant Agreement, Grant No. SG08939 (hereinafter “Grant Agreement”); and

WHEREAS, the Sub-Grantee is the fee owner of property at 6600 France Avenue South, Edina (hereinafter referred to as “Project Location”); and

WHEREAS, the Sub-Grantor and Sub-Grantee enter into this Sub-Grant Agreement to fund part of the cost of a 22-acre office park area into a mix of retail, office and residential uses. A primary feature is extensive stormwater management on-site improving the condition of a nearby lake/wetland and creating a pedestrian-oriented spine through the middle of the site as a promenade type space while relocating a majority of the parking to underground structures (hereinafter referred to as the “Project”) at the Project Location and to define the obligations and rights of each under this Sub-Grant.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, Sub-Grantor and Sub-Grantee do hereby agree as follows:

1. **GRANT AGREEMENT.** The Grant Agreement is incorporated herein by reference. If there are any inconsistencies or conflicts between this Sub-Grant Agreement and the Grant Agreement, the terms of the Grant Agreement shall control.

2. **SUB-GRANT.** The Sub-Grantor grants to the Sub-Grantee an amount not to exceed One Million Three Hundred Thousand and No/100 Dollars (\$1,300,000.00) for the Project at the Project Location.

3. **PAYMENT.** The Sub-Grantor will disburse grant funds in response to written payment requests submitted by the Sub-Grantee and reviewed and approved by the Sub-Grantor’s authorized agent. Sub-Grantor’s obligation to disburse funds to the Sub-Grantee is contingent upon receipt by the Sub-Grantor of the funds from the Grantor. Written payment requests shall be made using payment request forms, the form and content of which will be determined by the Sub-Grantor. Payment request and other reporting forms will be provided to the Sub-Grantee by the Sub-Grantor. The Sub-Grantor will disburse grant funds on a reimbursement basis or a “cost incurred” basis. The Sub-Grantee must provide with its written payment requests documentation that shows grant-funded Project activities have actually been completed. Subject to verification of each payment request form (and its documentation) and approval for consistency with this Sub-Grant Agreement, the Sub-Grantor will disburse a requested amount to the Sub-Grantee within thirty-five (35) days after receipt of a properly completed and verified payment request form.

4. **MISCELLANEOUS.**

a. **Authorized Representatives.**

The Sub-Grantor's Authorized Representative is:

City of Edina
4801 West 50th Street
Edina, MN 55424-1330
Attention: Community Development

The Sub-Grantee's Authorized Representative is:

Southdale Partners MN, LLC
6800 France Ave. S #555
Edina, MN 55435
Attention: Gerald T. Jokerst, Wildamere Capital Management____

- b. **Assignment.** Sub-Grantee may neither assign nor transfer any rights or obligations under this Sub-Grant Agreement without the prior consent of the Sub-Grantor and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Sub-Grant Agreement, or their successors in office.
- c. **Amendments.** Any amendment to this Sub-Grant 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.
- d. **Waiver.** If the Sub-Grantor fails to enforce any provision of this Sub-Grant Agreement, that failure does not result in a waiver of the right to enforce the same or another provision of the Agreement in the future.
- e. **Liability and Indemnification.** Sub-Grantee will indemnify, save, and hold the Sub-Grantor, its agents, and employees, harmless from any claims or causes of action, including attorney's fees incurred by the Sub-Grantor arising from the performance of this Sub-Grant Agreement by Sub-Grantee or Sub-Grantee's agents or employees. This clause will not be construed to bar any legal remedies Sub-Grantee may have for the Sub-Grantor's failure to fulfill its obligations under this Agreement. Sub-Grantee shall maintain such books and records as will satisfactorily demonstrate to Federal, State, Grantor's and Sub-Grantor's Auditors that Sub-Grantee has used the grant funds in accordance with the Grant Agreement and this Sub-Grant Agreement.
- f. **State Audits.** Under Minn. Stat. § 16C.05, subd. 5, Sub-Grantee's books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six (6) years from the end of this Sub-Grant Agreement.

- g. **Government Data Practices.** Sub-Grantee and Sub-Grantor must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by Sub-Grantee under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Sub-Grantee under this Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either Sub-Grantee or the Sub-Grantor. If Sub-Grantee receives a request to release the data referred to in this clause, Sub-Grantee must immediately notify the Sub-Grantor. The Sub-Grantor will give Sub-Grantee instructions concerning the release of the data to the requesting party before the data is released.

- h. **Governing Law, Jurisdiction, and Venue.** Minnesota law, without regard to its choice-of-law provisions, governs this Sub-Grant Agreement. Venue for all legal proceedings out of this Sub-Grant Agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Hennepin County, Minnesota.

- i. **Termination for Insufficient Funding.** The Sub-Grantor may immediately terminate this Sub-Grant Agreement if it does not obtain funding from the Grantor or if funding cannot be continued at a level sufficient to allow for the payment of the cleanup costs. Termination must be by written or fax notice to Sub-Grantee. The Sub-Grantor is not obligated to pay for any costs incurred after notice and effective date of termination. However, Sub-Grantee will be entitled to payment, determined on a pro rata basis, for costs incurred up to the date of termination to the extent that funds are available.

Dated: _____, 2018.

CITY OF EDINA

BY: _____
James Hovland, Mayor

AND _____
Scott Neal, City Manager

Dated: _____, 2018.

**SOUTHDALE PARTNERS MN, LLC AS THE
ADMINISTRATIVE MEMBER OF
SOUTHDALE OFFICE PARTNERS, LLC**

BY: _____
Dennis Doyle, Chief Manager