

## **PUBLIC SPACE RECYCLING GRANT AGREEMENT**

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 Department of Environment and Energy, 701 South Fourth Street, Suite 700, Minneapolis, Minnesota 55415 (“DEPARTMENT”) and City of Tonka Bay, 4901 Manitou Road, Tonka Bay, MN 55331 (“GRANTEE”).

WHEREAS, the Hennepin County Board has established a Public Space Recycling Grant Program to provide funding (“Incentive Funds”) to selected eligible waste abatement projects; and

WHEREAS, the GRANTEE has made an application for a waste abatement project and has been selected for funding of said described project in accordance with the terms of this Agreement (application copies attached as Exhibit A);

NOW, THEREFORE, the parties agree as follows:

### 1. TERM AND COST OF THE AGREEMENT

This Agreement shall commence upon execution and terminate July 31, 2017, unless terminated earlier in accordance with the Default and Cancellation provisions of this Agreement.

The total cost of this Agreement, including all reimbursable expenses, shall not exceed Eight Thousand Three Hundred Thirty-Six Dollars (\$8,336.00).

### 2. SERVICES TO BE PROVIDED

a. The GRANTEE will operate its public space recycling project (hereinafter the “Project”), including the proposed Project budget, as described in the application submitted by the GRANTEE and kept on file with the COUNTY (See Exhibit A).

b. In addition to the services referred to above, the GRANTEE agrees:

1. The GRANTEE shall submit to the DEPARTMENT an interim report by October 30, 2016, and a final report by June 15, 2017. The reports should include at a minimum:
  - Project summary;
  - Results achieved;
  - Amount of material collected, recycled, and disposed;
  - Obstacles/challenges encountered;
  - Recommendations;
  - Detailed budget expenditures; and
  - Cost/benefit analysis of the Project.

The COUNTY shall have full ownership and control of all reports, which includes the right of the COUNTY to use any data and information contained in such project report in any manner the COUNTY determines, including but not limited to case studies or public presentations.

2. All containers funded by COUNTY Incentive Funds shall prominently display, on all accessible sides, weather-resistant labels that designate the container for recycling. The labels shall include at a minimum:
  - The preferred COUNTY symbol for recycling;
  - Photo images of recyclable materials; and
  - The preferred COUNTY terms for recyclable materials.

All labels shall be approved by the DEPARTMENT prior to production. The GRANTEE may request customized recycling container labels from the DEPARTMENT at no additional expense to the GRANTEE.

3. All recycling containers funded by COUNTY Incentive Funds shall be co-located with trash containers.
  4. All Incentive Funds accepted from the COUNTY over the term of the Agreement shall be used solely for Project expenses relating to waste reduction and recycling, as described in the Project. The GRANTEE shall not retain any Incentive Funds in excess of actual Project expenses and shall return any such excess Incentive Funds to the COUNTY upon completion of the Project.
  5. The GRANTEE may not charge its residents through property tax, utility fees, special fees or any other method for that portion of the costs of the Project that is funded by COUNTY Incentive Funds.
  6. The GRANTEE shall establish a separate accounting mechanism, such as a Project number, activity number, cost center, or fund that will separate Incentive Fund revenues and expenditures from all other GRANTEE activities.
  7. Incentive Fund Project activities, revenues, and expenditures are subject to audit by the COUNTY to ensure compliance with the purpose of this grant. Any Incentive Fund expenditures not approved shall be returned to the COUNTY.
- c. All right, title and interest in all copyrightable material which the GRANTEE may conceive or originate either individually or jointly with others, and which arises out of the performance of this Agreement, are the property of the COUNTY. The GRANTEE shall assign to the COUNTY all right, title, interest and copyrights of the copyrightable material. The GRANTEE also agrees, upon request of the COUNTY, to execute all papers and perform all other acts necessary to assist the COUNTY to obtain and register copyrights on those materials. Where applicable, works for authorship created by the GRANTEE for the COUNTY in performance of this Agreement shall be considered “works made for hire” as defined in the U.S. Copyright Act.

d. The GRANTEE hereby warrants that, when legally required, the GRANTEE shall obtain the written consent of both the owner and licensor to reproduce, publish, and/or use any material supplied to the COUNTY including but not limited to software, hardware, documentation, and/or any other item. The GRANTEE further warrants that any material or item delivered by the GRANTEE will not violate the United States Copyright Law or any property right of another and agrees that the GRANTEE shall defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers, and employees, at the GRANTEE's own expense against any alleged infringement of any copyright or property right.

3. PAYMENT FOR SERVICES

The COUNTY shall pay Incentive Funds to the GRANTEE in an amount not-to-exceed Eight thousand three hundred thirty-six dollars (\$8,336.00). The first Incentive Fund payment of Six thousand two hundred fifty-two dollars (\$6,252.00), 75% of the total grant amount, shall be disbursed upon execution of the Agreement. The final Incentive Fund payment of Two thousand eighty-four dollars (\$2,084.00), 25% of total grant amount, or remaining funds, shall be disbursed upon approval of the final Project report.

4. INDEPENDENT CONTRACTOR

GRANTEE 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 GRANTEE as the agent, representative, or employee of the COUNTY for any purpose. GRANTEE is and shall remain an independent contractor for all services performed under this Agreement. GRANTEE shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of GRANTEE or other persons while engaged in the performance of any work or services required by GRANTEE 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 Unemployment Insurance 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. 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, unemployment compensation, disability, severance pay, and retirement benefits.

5. INDEMNIFICATION

GRANTEE shall 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, 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 GRANTEE to perform any obligation under this Agreement.

6. INSURANCE

A. GRANTEE shall at all times during the term of this Agreement have and keep in force the following insurance coverages:

Limits

1. Commercial General Liability on an occurrence basis with contractual liability coverage:

General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	2,000,000
Personal and Advertising Injury Each Occurrence—Combined Bodily Injury and Property Damage	1,500,000
	1,500,000

2. Workers' Compensation and Employer's Liability:

Workers' Compensation	Statutory
Employer's Liability. Bodily injury by:	
Accident—Each Accident	500,000
Disease—Policy Limit	500,000
Disease—Each Employee	500,000

B. An umbrella or excess policy over primary liability insurance 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. Upon written request, GRANTEE shall promptly submit copies of insurance policies to the COUNTY.

GRANTEE shall not commence work until it has obtained required insurance and filed with the COUNTY a properly executed Certificate of Insurance establishing compliance.

C. Duty to Notify. GRANTEE shall promptly notify the COUNTY of any claim, action, cause of action or litigation brought against GRANTEE, its employees, officers, agents or subcontractors, which arises out of the provisions contained in this Agreement.

7. DATA PRACTICES

GRANTEE, 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 GRANTEE creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of the COUNTY pursuant to this Agreement, then GRANTEE 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. GRANTEE agrees to defend, indemnify and hold harmless the COUNTY, its officials, officers, agents, employees, and volunteers from any claims resulting from GRANTEE'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. GRANTEE 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.

8. RECORDS – AVAILABILITY/ACCESS

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

9. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. GRANTEE binds itself, its partners, successors, assigns and legal representatives to the COUNTY for all covenants, agreements and obligations contained in the contract documents.
- B. GRANTEE 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 the COUNTY. A consent to assign shall be subject to such conditions and provisions as the COUNTY may deem necessary, accomplished by execution of a form prepared by the COUNTY and signed by GRANTEE, the assignee and the COUNTY. Permission to assign, however, shall under no circumstances relieve GRANTEE of its liabilities and obligations under the Agreement.

- C. GRANTEE shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of the COUNTY. Permission to subcontract, however, shall under no circumstances relieve GRANTEE of its liabilities and obligations under the Agreement. Further, GRANTEE 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 GRANTEE and each subcontractor shall require that the subcontractor's services be performed in accordance with the terms and conditions specified. GRANTEE shall make contracts between GRANTEE and subcontractors available upon request.

10. MERGER AND MODIFICATION

- 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. 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. DEFAULT AND CANCELLATION

- A. If GRANTEE 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 GRANTEE'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 GRANTEE's compliance. In the event of a decision to withhold payment, the COUNTY shall furnish prior written notice to GRANTEE.
- B. Upon cancellation or termination of this Agreement, the GRANTEE shall itemize any and all Incentive Fund expenditures up to the date of cancellation or termination and return any Incentive Funds not yet expended.
- C. Notwithstanding any provision of this Agreement to the contrary, GRANTEE shall remain liable to the COUNTY for damages sustained by the COUNTY by virtue of any breach of this Agreement by GRANTEE. Upon notice to GRANTEE of the claimed breach and the amount of the claimed damage, the COUNTY may withhold any payments to GRANTEE for the purpose of set-off until such time as the exact amount of damages due the COUNTY from GRANTEE is determined. Following notice from the COUNTY of the claimed

breach and damage, GRANTEE and the COUNTY shall attempt to resolve the dispute in good faith.

- D. The above remedies shall be in addition to any other right or remedy available to the COUNTY under this Agreement, law, statute, rule, and/or equity.
- E. 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.
- F. This Agreement may be canceled with or without cause by either party upon thirty (30) day written notice.
- G. COUNTY may upon written notice immediately cancel or terminate this Agreement in the event funding for this Project is withdrawn, frozen or otherwise made unavailable, in the sole discretion of the COUNTY. COUNTY is not obligated to further fund the Project after notice and effective date of termination.

## 12. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement include but are not limited to: SERVICES TO BE PROVIDED (as to ownership of property); INDEPENDENT CONTRACTOR; INDEMNIFICATION; INSURANCE; DATA PRACTICES; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION; PROMOTIONAL LITERATURE; and MINNESOTA LAW GOVERNS.

## 13. CONTRACT ADMINISTRATION

In order to coordinate the services of GRANTEE with the activities of the Hennepin County Department of Environmental Services so as to accomplish the purposes of this Agreement, Dave McNary, Solid Waste Division Manager or successor (Contract Administrator), shall manage this Agreement on behalf of the COUNTY and serve as liaison between the COUNTY and GRANTEE.

Lindy Crawford, City Administrator, who can be contacted at 952-474-7994 and [lcrawford@cityoftonkabay.net](mailto:lcrawford@cityoftonkabay.net), shall manage this Agreement on behalf of the GRANTEE. GRANTEE may replace such person but shall immediately give written notice to the COUNTY of the name, phone number and email address of such substitute person and of any other subsequent substitute person.

14. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. GRANTEE shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. GRANTEE shall comply with all applicable conditions of the specific referenced grant.
- C. GRANTEE certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings.

15. 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 GRANTEE shall be sent to the address stated in the opening paragraph of the Agreement.

16. MEDIA OUTREACH

CONTRACTOR shall not use the term “Hennepin County”, or any derivative thereof in CONTRACTOR’s advertising, external facing communication and/or marketing, including but not limited to advertisements of any type or form, promotional ads/literature, client lists and/or any other form of outreach, without the written approval of the Hennepin County Public Affairs/Communications Department, or their designees.

17. 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.

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**COUNTY ADMINISTRATOR APPROVAL**

Reviewed by the County  
Attorney's Office

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

By: \_\_\_\_\_  
Assistant County Attorney

By: \_\_\_\_\_  
David Hough, County Administrator

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Assistant County Administrator - Public Works

Date: \_\_\_\_\_

**Recommended for Approval**

By: \_\_\_\_\_  
Department Director of Environmental Services

Date: \_\_\_\_\_

GRANTEE, (City of Tonka Bay)  
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\*.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Title: \_\_\_\_\_

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.