

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: March 27th, 2012
Re: Hennepin County Agreement – Sport Court

In October of 2011 the City of Tonka Bay applied for a Hennepin County Youth Sports Grant. The City's grant application was successful in obtaining \$10,000 to put toward a Multipurpose Sport Court. The grant application included the Sport Court overlay and two new basketball hoops.

Hennepin County has requested that we sign the attached agreement in duplicate and return it to them with a Resolution providing the Mayor and Staff to sign the Agreement.

The City Attorney and City Administrator have reviewed the Agreement and are recommending signing the Agreement.

Council Action Requested:

Motion to approve the attached Resolution Authorizing the Mayor and City Administrator to enter into the attached Agreement with Hennepin County.

RESOLUTION 12-

**A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT
WITH HENNEPIN COUNTY
FOR A MULTI-PURPOSE SPORTS COURT AT MANITOU PARK
UNDER THE PROVISIONS OF
THE HENNEPIN YOUTH SPORTS PROGRAM**

WHEREAS, Hennepin County (County), via the Hennepin Youth Sports Program, has awarded the City of Tonka Bay (the LGU) a grant in the amount of \$10,000 for the purchase and installation of a multi-purpose sport court at Manitou Park; and

WHEREAS, both parties agree to the conditions set forth in the attached agreement (Exhibit A).

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Tonka Bay that the Mayor and City Administrator are hereby authorized to execute the agreement (Exhibit A).

PASSED at a regular meeting of the Tonka Bay City Council this 27th day of March, 2012.

Motion introduced by _____ and seconded by _____.

Roll Call Vote: Ayes –
Nays –
Absent –

William LaBelle, Mayor

ATTEST:

Joseph Kohlmann, Clerk/Administrator

**AGREEMENT FOR
CITY OF TONKA BAY
MULTIPURPOSE SPORT COURT – MANITOU PARK**

This Agreement is between the County of Hennepin, State of Minnesota (“COUNTY”), A-2300 Government Center, Minneapolis, MN 55487, and City of Tonka Bay, 4901 Manitou Road, Tonka Bay, MN 55331 (“LOCAL UNIT OF GOVERNMENT ” or “LGU”).

Recitals

1. Minnesota Statutes Section 473.757, subd. 2 authorizes Hennepin County to make grants for youth activities and youth and amateur sports within Hennepin County from certain funds collected as part of the sales tax authorized in Section 473.757, subd. 10.
2. Pursuant to Hennepin County Board Resolution 09-0320R3, Hennepin County created the Hennepin Youth Sports Program. The Hennepin Youth Sports Program makes grants for youth sports and activities and amateur sports within Hennepin County.
3. In 2011, as part of the Hennepin Youth Sports Program, by Resolution No. 11-0568R1, Hennepin County authorized an award of \$10,000 to the LGU for the purchase and installation of a Multipurpose Sport Court at Manitou Park, as described in greater detail in the LGU’s application (“Equipment”).

NOW, THEREFORE, the parties hereto do hereby agree as follows:

The parties agree as follows:

1. **TERM AND COST OF THE AGREEMENT**

Pursuant to the terms herein and as reimbursement to the LGU for the LGU’s purchase of the Equipment, COUNTY shall pay the LGU \$ 10,000.

2. **USE OF FUNDS**

The LGU shall use all funds received under this Agreement for the purchase of the Equipment in accordance with the application submitted by the LGU to the Minnesota Amateur Sports Commission. The application for the Equipment, dated October 14, 2011, is on file with Hennepin County and said application is incorporated into this Agreement by this reference. The LGU shall be solely responsible for securing all additional funds needed to complete the purchase of the Equipment. The LGU agrees that the Equipment will display a plaque, decal or sticker, as agreed to by the LGU and COUNTY, identifying that the Equipment was purchased with funds provided by the Hennepin Youth Sports Program.

Upon the purchase and deployment of the Equipment, the LGU shall provide information, data, statistics and other metrics related to the Equipment, related projects, participants and/or related activities, including but not limited to usage numbers, who is using the Sport Court, and what changes in usage were noted. This information shall be provided within one year of completion and on an annual basis for two years thereafter.

3. PAYMENT FOR SERVICES

The LGU shall provide an invoice for the LGU's actual cost of the Equipment. The invoice should include supporting documentation including but not limited to a receipt confirming the LGU's final, actual purchase of the Equipment, which receipt shall identify the seller, the date of sale, and confirm payment of the outstanding balance. Additionally, the LGU shall provide a duly signed certification confirming that the LGU is in possession of the Equipment and has deployed the same for use as indicated in the LGU's application. Said documentation shall be provided or before December 31, 2012. COUNTY shall not pay for Equipment (i) not supported by the necessary documentation; or (ii) for which the documentation is provided after said date.

Payment shall be made directly to the LGU upon the presentation of the invoice in the manner provided by law governing the COUNTY'S payment of claims and/or invoices. Payment shall be made within forty-five (45) days from receipt of the invoice.

4. NON-DISCRIMINATION

In accordance with the COUNTY's policies against discrimination, LGU agrees that it shall not exclude any person from full employment rights nor prohibit participation in or the benefits of, any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin. No person who is protected by applicable Federal or State laws against discrimination shall be subjected to discrimination.

5. INDEMNIFICATION

LGU 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 LGU, a subcontractor hired by the LGU, 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 LGU to perform any obligation under this Agreement.

Nothing in this Agreement constitutes a waiver, by either party, of any statutory or common law defenses, immunities, or limits on liability. Neither party shall be required to pay to a third party, on behalf of themselves or the other party, any amounts in excess

of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The limits of liability for COUNTY and the LGU shall not be stacked or added together to determine the maximum amount of liability for either party.

6. DATA PRACTICES

Each party and their 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. 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, LGU 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 LGU and involve transactions relating to this Agreement. LGU shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its termination or cancellation.

8. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. LGU binds itself, its partners, successors, assigns and legal representatives to the COUNTY for all covenants, agreements and obligations contained in the contract documents.
- B. LGU shall not subcontract, assign, transfer or pledge this Agreement or its obligations hereunder, 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 LGU, the assignee and the COUNTY. Permission to assign, however, shall under no circumstances relieve LGU of its liabilities and obligations under the Agreement.

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. The matters set forth in the Recitals provisions at the beginning of this Agreement are

incorporated into and made a part of this Agreement. 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.

10. DEFAULT AND CANCELLATION

- A. If LGU 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 LGU'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 LGU's compliance. In the event of a decision to withhold payment, the COUNTY shall furnish prior written notice to LGU.
- B. 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.
- 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) day written notice. If COUNTY cancels this Agreement without cause upon thirty days written notice, COUNTY shall pay the LGU reasonable expenses incurred prior to the notice of cancellation.
- E. Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement include but are not limited to:
INDEMNIFICATION; DATA PRACTICES; RECORDS-
AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION;
PROMOTIONAL LITERATURE; and MINNESOTA LAW GOVERNS.

11. CONTRACT PROCESSING AND ADMINISTRATION

Jan Craig, or successor (County Contract Administrator), shall manage this Agreement on behalf of the COUNTY and serve as contract liaison between the COUNTY and LGU.

12. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. LGU shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. If the source or partial source of funds for payment of services under this Agreement is federal, state or other grant monies, LGU shall comply with all applicable conditions of the specific referenced or attached grant.
- C. LGU 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.

13. 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 LGU shall be sent to the address stated in the opening paragraph of the Agreement.

14. PROMOTIONAL LITERATURE

Except as expressly indicated herein, the LGU agrees that the terms "Hennepin County" or any derivative shall not be utilized in any promotional literature, advertisements of any type or form or client lists without the express prior written consent of the COUNTY.

15. 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.

LGU AUTHORIZATION

*LGU: _____

By: _____

Its: _____

And: _____

Its: _____

organized under:

Statutory _____ Option A _____ Option B _____ Charter _____

*LGU 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 LGU returns the Agreement to the COUNTY. Documentation is not required for a sole proprietorship.

COUNTY ADMINISTRATOR APPROVAL

Reviewed by the County
Attorney's Office

Date: _____

COUNTY OF HENNEPIN
STATE OF MINNESOTA

By: _____

County Administrator
Department Director of _____

Date: _____