

Contract No: _____

LANDSCAPE SERVICES 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 Facility Services Department, and the MAPLE GROVE PARKS AND RECREATION BOARD, an appointed board of the City of Maple Grove authorized by Maple Grove City Code §22-31 and Minn. Stat. §512.501 (“BOARD” or “CONTRACTOR”).

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

BOARD shall furnish services to COUNTY commencing April 1, 2023 and expiring March 31, 2026, unless cancelled or terminated earlier in accordance with the provisions herein.

BOARD shall be paid Nineteen Thousand and 00/100 Dollars (\$19,000) per year, subject to annual price adjustments of three percent (3%) effective April 1 of the second and third year of the term (“Base Amount”). The total cost of the Base Amount for the term of this Agreement, including all reimbursable expenses, shall not exceed Fifty-Eights Thousand, Seven Hundred Twenty-Seven and 00/100 Dollars (\$58,727).

2. SERVICES TO BE PROVIDED

BOARD shall provide landscaping services at the Maple Grove Library, including turf management (mow, fertilize, weed control), seasonal clean-up (spring and fall), and landscape maintenance (maintenance mulch, weed control, prune and remove diseased, dead or damaged material) (“Base Services”) in consideration of the Base Amount. Base Services are more fully described in Exhibit A, attached hereto and incorporated by this reference.

Any services beyond the Base Services described on Exhibit A and requested by the COUNTY shall be additional services (“Additional Services”) and billed outside and in addition to the Base Amount (“Additional Services Fee”). Additional Services shall be itemized separately from the Base Services, listing hours and hourly rates on the invoice.

Separate purchase order numbers will confirm all Additional Services requests. COUNTY and BOARD are to agree to scope of work and rates prior to Additional Services work commencing. If applicable, overtime and holiday pay must receive prior authorization and approval by COUNTY.

BOARD shall take necessary precautions to protect persons, property, and equipment from injury and damages. BOARD shall repair or replace any items, furnishings, or

building surfaces damaged as a direct result of the BOARD performing the Base Services and Additional Services. Repairs and replacements shall be to the COUNTY's reasonable satisfaction. BOARD shall assume all reasonable repair and replacement costs.

3. SAFETY PRACTICES

The BOARD shall be responsible for initiating, maintaining and supervising all safety precautions required in connection with performing the Base Services and Additional Services, including regulations of the Occupational Safety and Health Administration (OSHA) and other regulatory agencies. COUNTY reserves the right, but not the obligation, to oversee all Base Services and Additional Services work from a safety standpoint and require the BOARD to take appropriate action to ensure safety and code compliance.

To allow for any required communications by the COUNTY to its employees and patrons, a minimum 24-hour telephone or email notice to the contacts listed below, or to another contact as provided by a party in writing to the other party, is to be given by the BOARD prior to any chemical applications or performing the Base Services and Additional Services on the COUNTY property that may be unreasonably disruptive to patrons or employees:

Contacts: COUNTY – Chuck Johnson, Sr. FOM; Rick Hoenisch, FOM,
tel: 612-998-3899; email Charles.Johnson@hennepin.us
BOARD – Ben Jaszewski,
tel: 763-600-4243; email bjaszewski@maplegrovmn.gov

4. PAYMENT FOR SERVICES

Payment for Base Services and Additional Services shall be made directly to BOARD after completion of the Base Services and Additional Services and upon the presentation of a claim as provided by law governing COUNTY's payment of claims and/or invoices. BOARD shall submit semiannual invoices on April 1 and October 1 for Base Services and Additional Services rendered on forms which may be furnished by COUNTY. Payment shall be made within forty-five (45) days from receipt of the invoice.

BOARD shall not provide Base Services and Additional Services under this Agreement without receiving a purchase order or purchase order number supplied by COUNTY. All invoices shall display a Hennepin County purchase order number and be sent to the central invoice receiving address supplied by COUNTY.

5. INDEPENDENT CONTRACTOR

BOARD shall select the means, method, and manner of performing the Base Services and Additional Services. Nothing is intended nor should be construed as creating or

establishing the relationship of a partnership or a joint venture between the parties or as constituting BOARD as the agent, representative, or employee of COUNTY for any purpose. BOARD is and shall remain an independent contractor for all services performed under this Agreement. BOARD shall secure at its own expense all personnel required in performing Base Services and Additional Services under this Agreement. BOARD's personnel and/or subcontractors engaged to perform any Base Services and Additional Services required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or Minnesota Statutes, chapter 176 (which may be referred to as the "Workers' Compensation Act"), on behalf of any personnel, including, without limitation, claims of discrimination against BOARD, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

6. NON-DISCRIMINATION

In accordance with COUNTY's policies against discrimination, BOARD 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 any protected status or class including but not limited to 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.

7. EARLY TERMINATION

Either party may terminate this Agreement, with or without cause, upon ninety (90) days' written notice.

8. INDEMNIFICATION

BOARD shall defend, indemnify, and hold harmless COUNTY, 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 BOARD, 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 Base Services and Additional Services required by this Agreement, and against all loss by reason of the failure of BOARD to perform any obligation under this Agreement.

9. INSURANCE

- A. With respect to the Base Services and Additional Services provided pursuant to this Agreement, BOARD shall at all times during the term of this Agreement and beyond such term when so required have and keep in force the following minimum insurance coverages or BOARD’s actual insurance limits for primary coverage and excess liability or umbrella policy limits, whichever is greater:

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 | 1,500,000 |
| | Each Occurrence—Combined Bodily Injury and Property Damage | 1,500,000 |
| 2. | Workers’ Compensation and Employer’s Liability: | |
| | Workers’ Compensation | Statutory |
| | If BOARD is based outside the state of Minnesota, coverage must comply with Minnesota law. In accordance with Minnesota law, if BOARD is a sole proprietor, it is exempted from the above Workers’ Compensation requirements. In the event that BOARD should hire employees or subcontract this work, BOARD shall obtain the required insurance. | |
| | Employer’s Liability. Bodily injury by: | |
| | Accident—Each Accident | 500,000 |
| | Disease—Policy Limit | 500,000 |
| | Disease—Each Employee | 500,000 |
| 3. | Professional Liability—Per Claim | 1,500,000 |
| | Aggregate | 2,000,000 |
| | The professional liability insurance must be maintained continuously for a period of two years after the expiration, cancellation or termination of this Agreement. | |

- B. An umbrella or excess policy is an acceptable method to provide the required commercial general insurance coverage.

The above establishes minimum insurance requirements. It is the sole responsibility of BOARD to determine the need for and to procure additional

insurance which may be needed in connection with this Agreement. Upon written request, BOARD shall promptly submit copies of insurance policies to COUNTY.

BOARD shall not commence work until it has obtained required insurance and filed with COUNTY a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Hennepin County as the certificate holder, and as an additional insured for the commercial general liability coverage required herein. A self-insured retention (SIR) applicable to the commercial liability coverage is not acceptable, unless expressly agreed to in writing by COUNTY. If the certificate form contains a certificate holder notification provision, the certificate shall state that the insurer will endeavor to mail to COUNTY thirty (30) day prior written notice in the event of cancellation/termination of any described policies. If BOARD receives notice of cancellation/termination from an insurer, BOARD shall fax or email a copy of the notice to COUNTY within two business days.

BOARD shall furnish to COUNTY updated certificates during the term of this Agreement as insurance policies expire. If BOARD fails to furnish proof of insurance coverages, COUNTY may withhold payments and/or pursue any other right or remedy allowed under contract, law, equity, and/or statute.

BOARD waives all rights against COUNTY, its officials, officers, agents, volunteers, and employees for recovery of damages to the extent that damages are covered by insurance of BOARD.

10. DUTY TO NOTIFY

BOARD shall promptly notify COUNTY of any claim, action, cause of action or litigation brought against BOARD, its employees, officers, agents or subcontractors, which arises out of the services described in this Agreement. BOARD shall also notify COUNTY whenever BOARD has a reasonable basis for believing that BOARD and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a claim, action, cause of action, administrative action, criminal arrest, criminal charge or litigation arising out of and/or related to the services described in this Agreement.

11. DATA

BOARD, its officers, agents, owners, partners, employees, volunteers and subcontractors shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For clarification and not limitation, COUNTY hereby notifies BOARD that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. BOARD shall promptly notify COUNTY if BOARD becomes aware of any potential

claims, or facts giving rise to such claims, under the MGDPA or other data or privacy laws.

Classification of data as trade secret data will be determined pursuant to applicable law and, accordingly, merely labeling data as “trade secret” does not necessarily make the data protected as such under any applicable law.

12. RECORDS – AVAILABILITY/ACCESS

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

13. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. BOARD binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations herein.
- B. BOARD 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 COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by BOARD, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve BOARD of its liabilities and obligations under the Agreement.
- C. BOARD shall not subcontract this Agreement and/or the Base Services and Additional Services to be performed, whether in whole or in part, without the prior written consent of COUNTY, which consent shall not be unreasonably withheld or delayed. Permission to subcontract, however, shall under no circumstances relieve BOARD of its liabilities and obligations under the Agreement. Further, BOARD 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 BOARD and each subcontractor shall require that the subcontractor’s services be performed in accordance with this Agreement. BOARD shall make contracts between BOARD and subcontractors available upon request. For clarification and not limitation of the foregoing, none of the following constitutes assent by COUNTY to a contract between BOARD and a subcontractor, or a waiver or release by COUNTY of BOARD’s full compliance

with the requirements of this Section: (1) COUNTY's request or lack of request for contracts between BOARD and subcontractors; (2) COUNTY's review, extent of review or lack of review of any such contracts; or (3) COUNTY's statements or actions or omissions regarding such contracts.

14. 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. 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.
- C. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

15. DEFAULT AND CANCELLATION/TERMINATION

- A. If BOARD 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. Unless BOARD's default is excused in writing by COUNTY, COUNTY may upon written notice immediately cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until BOARD's compliance. In the event of a decision to withhold payment, COUNTY shall furnish prior written notice to BOARD.
- B. Notwithstanding any provision of this Agreement to the contrary, BOARD shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by BOARD. Upon notice to BOARD of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to BOARD for the purpose of set-off until such time as the exact amount of damages due COUNTY from BOARD is determined. Following notice from COUNTY of the claimed breach and damage, BOARD and COUNTY shall attempt to resolve the dispute in good faith.

- C. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.
- D. 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.
- E. If this Agreement expires or is cancelled or terminated, with or without cause, by either party, at any time, BOARD shall not be entitled to any payment, fees or other monies except for payments duly invoiced for then-delivered and accepted deliverables/milestones pursuant to this Agreement. In the event BOARD has performed work toward a deliverable that COUNTY has not accepted at the time of expiration, cancellation or termination, BOARD shall not be entitled to any payment for said work including but not limited to incurred costs of performance, termination expenses, profit on the work performed, other costs founded on termination for convenience theories or any other payments, fees, costs or expenses not expressly set forth in this Agreement.
- F. BOARD has an affirmative obligation, upon written notice by COUNTY that this Agreement may be suspended or cancelled/terminated, to follow reasonable directions by COUNTY, or absent directions by COUNTY, to exercise a fiduciary obligation to COUNTY, before incurring or making further costs, expenses, obligations or encumbrances arising out of or related to this Agreement.

16. SURVIVAL OF PROVISIONS

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

17. CONTRACT ADMINISTRATION

In order to coordinate the Base Services and Additional Services of BOARD with the activities of the Hennepin County Facility Services Department so as to accomplish the purposes of this Agreement, Joey Prusak, Contract Manager, or successor ("Contract Administrator"), shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and BOARD.

Chuck Stifter, Parks and Recreation Director, shall manage the agreement on behalf of BOARD. BOARD may replace such person but shall immediately give written notice to COUNTY of the name, phone number and email/fax number (if available) of such substitute person and of any other subsequent substitute person.

18. COMPLIANCE

BOARD shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.

19. NOTICES

Unless the parties otherwise agree in writing, 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 COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to BOARD shall be sent to the address stated in the opening paragraph of this Agreement or to the address stated in BOARD's Form W-9 provided to COUNTY.

21. CONFLICT OF INTEREST

BOARD affirms that to the best of BOARD's knowledge, BOARD's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to BOARD, BOARD shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether BOARD will or will not resign from the other engagement or representation. Unless waived by COUNTY, a conflict or potential conflict may, in COUNTY's discretion, be cause for cancellation or termination of this Agreement.

22. MEDIA OUTREACH

BOARD 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, BOARD (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.

23. 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.

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COUNTY ADMINISTRATOR APPROVAL

Reviewed for COUNTY by
the County Attorney's Office:

By: _____
Assistant County Attorney

Date: _____

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By: _____
County Administrator

Date: _____

By: _____
Assistant County Administrator of Operations

Date: _____

Recommended for Approval:

By: _____
Department Director of Facility Services

Date: _____

**MAPLE GROVE PARKS AND RECREATION
BOARD**

By: _____

Printed Name: William Lewis

Printed Title: Chair

Date: March 16, 2023

By: _____

Printed Name: Chuck Stifter

Printed Title: Director

Date: March 16, 2023