



MICHIGAN NATURAL RESOURCES TRUST FUND
LAND ACQUISITION PROJECT AGREEMENT

Project Number: TF09-165

Project Title: Sheldon-Mead Greenspace Acquisition

This Agreement is between the Michigan Department of Natural Resources for and on behalf of the State of Michigan ("DEPARTMENT") and the **CITY OF ROCHESTER HILLS IN THE COUNTY OF OAKLAND** ("GRANTEE"). The DEPARTMENT has authority to issue grants to local units of government for the acquisition of land for resource protection and public outdoor recreation under Part 19 of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended. The GRANTEE has been approved by the Michigan Natural Resources Trust Fund (MNRTF) Board of Trustees (BOARD) to receive a grant. In **PA 27 of 2010**, the Legislature appropriated funds from the MNRTF to the DEPARTMENT for a grant-in-aid to the GRANTEE. As a precondition to the effectiveness of the Agreement, the GRANTEE is required to sign the Agreement and return it to the DEPARTMENT with the necessary attachments **by July 1, 2010**

1. The legal description of the project area (APPENDIX A); boundary map of the project area (APPENDIX B) and Recreation Grant application bearing the number **TF09-167** (APPENDIX C) are by this reference made part of this Agreement. The Agreement together with the referenced appendices constitute the entire Agreement between the parties and may be modified only in writing and executed in the same manner as the Agreement is executed.
2. The time period allowed for project completion is the date of execution by the DEPARTMENT **through May 1, 2011**, hereinafter referred to as the "project period." Requests by the GRANTEE to extend the project period shall be made in writing before the expiration of the project period. Extensions to the project period are at the discretion of the DEPARTMENT. The project period may be extended only by an amendment to this Agreement.
3. This Agreement shall be administered on behalf of the DEPARTMENT through Grants Management.

- a. All reports, documents, or actions required of the GRANTEE shall be submitted to:

MICHIGAN NATURAL RESOURCES TRUST FUND
GRANTS MANAGEMENT
MICHIGAN DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENT
PO BOX 30425
LANSING MI 48909-7925

The GRANTEE'S representative for this project is:

Name: _____ Title: _____

Mailing Address: _____

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

- a. All notices, reports, requests or other communications from the DEPARTMENT to the GRANTEE shall be sufficiently given when mailed and addressed as indicated above. The DEPARTMENT and the GRANTEE may by written notice designate a different address to which subsequent notices, reports, requests, or other communications shall be sent.
 - b. The GRANTEE certifies to the DEPARTMENT that the person listed as the GRANTEE'S representative is officially empowered to act on behalf of the GRANTEE. Further, the GRANTEE certifies that the person listed as their representative does not now or will not in the future have any FINANCIAL INTEREST, HOLDINGS IN A BUSINESS OR ENTITY or PERSONAL INTEREST, including their immediate family, in the property that is the subject of this grant.
4. The grant herein provided is for the acquisition by the GRANTEE of **39 acres of fee simple title** free of all liens and encumbrances to lands situated and being in the **CITY OF ROCHESTER HILLS, COUNTY OF OAKLAND, STATE OF MICHIGAN** as described in the attached legal description (APPENDIX A) and shown on the attached boundary map (APPENDIX B). As used in this Agreement, the words "project area" shall mean the lands acquired under this Agreement as described in this Section.
5. The project area shall be used for **use as green space preservation, as further described in the GRANTEE'S proposal to the DEPARTMENT and approved by the MNRTF Board**. Significant changes in the use of the project area as described in this Section require the prior written authorization of the DEPARTMENT.
6. In order to preserve the financial resources of the State and to prevent an unjust enrichment of a third party interim owner, if the landowner listed in the project application grants any rights in the real property to an individual or agency other than the GRANTEE, the DEPARTMENT may inspect the terms of the conveyance as a condition to approving the GRANTEE to close.

7. The DEPARTMENT agrees as follows:
- a. To grant to the GRANTEE a sum of money equal to **Fifty (50%) percent of One Million Twenty Thousand (\$1,020,000.00) dollars** as reimbursement of the total eligible cost of acquisition of fee simple title free of all liens and encumbrances to the lands in the project area, not to exceed the sum of **Five Hundred Ten Thousand (\$510,000.00) dollars**.
 - b. To include the following in the total cost of acquisition eligible for reimbursement as provided for in Section 7(a):
 - i. Purchase price of the land, up to the fair market value, in the project area acquired by the GRANTEE during the project period as provided for in this Agreement;
 - ii. Those relocation assistance costs authorized by P.A. 227 of 1972, supra, and the terms of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (PL 91-646) 94 Stat 1894 (1970);
 - iii. Reasonable and appropriate costs incurred and paid by the GRANTEE during the project period for recording fees, title insurance, and environmental assessments; and
 - iv. Costs incurred and paid by the GRANTEE for an appraisal(s) as provided for in Section 9(f) that is performed after January 1, 2010, or as otherwise approved by the DEPARTMENT, and that has been approved by the DEPARTMENT.
 - c. To grant funds in the form of reimbursements to the GRANTEE for eligible costs and expenses incurred, as follows:
 - i. Payments will be made on a reimbursement basis at **Fifty (50%) percent** of the eligible expenses incurred by the GRANTEE up to 90% of the maximum reimbursement allowable under the grant.
 - ii. Reimbursement will be made only upon DEPARTMENT review and approval of a complete reimbursement request submitted by the GRANTEE on forms provided by the DEPARTMENT and that meets all documentation requirements set forth by the DEPARTMENT. A complete reimbursement request must document the total cost of the acquisition and the GRANTEE's compliance with Section 8 of this Agreement and DEPARTMENT acquisition project procedures.
 - iii. The DEPARTMENT shall conduct an audit of the project's financial records upon approval of the final reimbursement request by the DEPARTMENT. The DEPARTMENT may issue an audit report with no deductions or may find some costs ineligible for reimbursement.
 - iv. The final 10% of the grant amount will be released upon completion of a satisfactory audit by the DEPARTMENT and documentation that the GRANTEE has erected acknowledgement of MNRTF assistance in compliance with Section 9(q) of this Agreement.

8. The GRANTEE shall be eligible for reimbursement only upon completion of all of the following:
 - a. Acquisition by the GRANTEE of fee simple title free of all liens and encumbrances of all lands in the project area, and
 - b. The GRANTEE has submitted proof of acquisition of marketable record title to the DEPARTMENT in the form of a policy of title insurance insuring the GRANTEE is possessed of marketable record title in fee simple, free of all liens and encumbrances to the lands in the project area, and said policy to insure the GRANTEE against loss or damage at least equal to the purchase price of the subject lands, and
 - c. The GRANTEE has made proper conveyance to the State of Michigan of all mineral rights to which the State is entitled under this Agreement as outlined in Section 9(m), and
 - d. The GRANTEE has submitted a complete request for reimbursement as set forth in this Agreement.

9. The GRANTEE agrees as follows:
 - a. To immediately make available all funds needed to incur all necessary costs required to complete the project and to provide **Five Hundred Ten Thousand (\$510,000.00) dollars** as local match to this project. This sum represents **Fifty (50%) percent** of the total eligible cost of acquisition including incidental costs. Any cost overruns incurred to complete the project called for by this Agreement shall be the sole responsibility of the GRANTEE.
 - b. To complete the acquisition in compliance with the acquisition project procedures set forth by the DEPARTMENT.
 - c. To make no written offer or commitment to purchase lands in the project area before execution of this Agreement and before written DEPARTMENT approval as provided for in Section 9. Failure to comply with this requirement shall, at the option of the DEPARTMENT, make the cost of the property an ineligible expense under this Agreement and subjects this Agreement to termination by the DEPARTMENT.
 - d. To provide verification that the site is not a facility as defined by State Law, based on the results of due diligence and, if needed, an environmental assessment or if the site has been determined to be a facility, to provide documentation of due care compliance. The results of the due diligence must be accounted for in the appraisal(s).
 - e. To complete a 40-year title review on the property. The results of the title review must be accounted for in the appraisal(s).
 - f. To complete an appraisal of the project area in accordance with standards established by the DEPARTMENT to determine the fair market value thereof; two appraisals meeting these standards being required for properties valued at \$500,000 or more. Failure to complete the appraisal in

this manner shall make the cost of said appraisal(s) an ineligible expense under this Agreement.

- g. To submit the appraisal(s) to the DEPARTMENT for approval no later than 120 days after the date of execution of this Agreement. No written offer or commitment to purchase land in the project area shall be transmitted by the GRANTEE until after approval has been given in writing by the DEPARTMENT.
- h. To perform, or to directly contract for the performance of, all appraisals, appraisal reviews, title review and closing, actual acquisition of all lands in the project area, and the relocation of tenants, owners, and/or businesses in accordance with and consistent with provisions of P.A. 227 of 1972, supra, and the terms of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (PL 91-646) 94 Stat 1894 (1970).
- i. To eliminate all pre-existing non-recreation uses of the project area within 90 days of the date of acquisition, unless otherwise approved by the DEPARTMENT in writing.
- j. To remove existing structures or make ready for an appropriate use in a reasonable time frame after completion of the acquisition.
- k. To complete acquisition of the entire project area before **May 1, 2011**. Failure to acquire the project area by **May 1, 2011** shall constitute a breach of this Agreement and subject the GRANTEE to the remedies provided by law and set forth in Section 23 of this Agreement.
- l. To provide to the DEPARTMENT all documents and information as specified in Sections 7(c) and 8 of the Agreement within 90 days after the actual acquisition of land in the project area and no later than **August 1, 2011**. Failure to submit the required documents and information for review before **August 1, 2011** shall constitute a breach of this Agreement and subjects the GRANTEE to the remedies provided for by law and Section 22 of this Agreement.
- m. For parcels over 5 acres, to execute, acknowledge and deliver to the DEPARTMENT a deed conveying to the State of Michigan perpetual nonparticipating 1/6 interest in all of the rights acquired by the GRANTEE in coal, oil, gas, sand, gravel or any other minerals in, on or under the lands in the project area.
- n. To retain all rights acquired by the GRANTEE in coal, oil, gas, sand, gravel or any other minerals in, on or under the lands in the project area in perpetuity.
- o. To not develop any rights acquired by the GRANTEE in coal, oil, gas, sand, gravel or any other minerals in, on or under the lands in the project area, and not to develop these minerals from sites adjacent to the project area in a manner that diminishes the usefulness of the project area for its intended purposes.

- p. To maintain satisfactory financial accounts, records, and documents and to make them available to the DEPARTMENT for auditing upon request. Such accounts, records, and documents shall be retained by the GRANTEE for not less than three years following submittal of the final reimbursement request.
- q. To erect and maintain a sign or other acknowledgement as approved by the DEPARTMENT on the property which designates this project as one having been acquired with the assistance of the MNRTF. The size, color, and design of this sign shall be in accordance with DEPARTMENT specifications.
- r. To provide to the DEPARTMENT for approval, a complete tariff schedule containing all charges to be assessed against the public utilizing the project area and/or any facilities constructed thereon, and to provide to the DEPARTMENT for approval, all amendments thereto before the effective date of such amendments. Any tariff schedule proposed shall provide solely for sufficient revenues to cover the costs of operating, maintaining and/or developing the premises and/or any facilities provided thereon. Preferential membership or annual permit systems are prohibited at this site. Differences in admission and other fees may be instituted on the basis of residence. Nonresident fees shall not exceed twice that charged residents. If no resident fees are charged, nonresident fees may not exceed the rate charged residents at other comparable state and local public recreation facilities.
- s. To separately account for any revenues received from the project area which exceed the demonstrated operating costs and to reserve such surplus revenues for the future maintenance and/or expansion of the GRANTEE'S park and outdoor recreation program.
- t. To furnish the DEPARTMENT, upon request, detailed statements covering the annual operation of project area and/or facilities, including income and expenses and such other information the DEPARTMENT might reasonably require.
- u. To adopt such ordinances and/or resolutions as shall be required to effectuate the provisions of this Agreement; certified copies of all such ordinances and/or resolutions adopted for such purposes shall be forwarded to the DEPARTMENT before the effective date thereof.
- v. To maintain the premises in such condition as to comply with all federal, State, and local laws which may be applicable and to make any and all payments required to pay any and all taxes, fees, or assessments legally imposed against the project area.
- w. To make the project area and any facilities located thereon and the land and water access ways to them open to the public within 90 days of the date of acquisition and to keep them open to the public at all times on equal and reasonable terms. No individual shall be denied ingress or egress thereto or

the use thereof on the basis of sex, race, color, religion, national origin, residence, age, height, weight, familial status, marital status or disability.

- x. To make the project area and any future facilities provided thereon available for public outdoor recreation in perpetuity and in accordance with uses described in this Agreement and APPENDIX C, to regulate the use thereof and to provide for the maintenance thereof to the satisfaction of the DEPARTMENT, and to appropriate such moneys and/or provide such services as shall be necessary to provide such adequate maintenance.
10. The GRANTEE shall acquire fee simple title, free of all liens, encumbrances, or restrictions on future use to the lands in the project area. The fee simple title acquired shall not be subject to (1) any possibility of reverter or right of entry for condition broken or any other executory limitation which may result in defeasance of title or (2) to any reservations or prior conveyance of coal, oil, gas, sand, gravel or any other mineral interests.
 11. The GRANTEE shall not allow any encumbrance, lien, security interest, mortgage or any evidence of indebtedness to attach to or be perfected against the project area.
 12. The project area and any facilities located thereon shall not be wholly or partially conveyed, either in fee, easement or otherwise, or leased for a term of years, or for any other period, nor shall there be any whole or partial transfer of title, ownership, or right of ownership or control without the written approval and consent of the DEPARTMENT.
 13. The assistance provided to the GRANTEE as a result of this Agreement is intended to have a lasting effect on the supply of outdoor recreation, scenic beauty sites, and recreation facilities beyond the financial contribution alone and permanently commits the project area to Michigan's outdoor recreation estate, therefore:
 - a. The GRANTEE agrees that lands in the the project area are being acquired with MNRTF assistance and shall be maintained in public outdoor recreation use in perpetuity. No portion of the project area shall be converted to other than public outdoor recreation use without the approval of the DEPARTMENT. The DEPARTMENT shall approve such conversion only upon such conditions as it deems necessary to assure the substitution by GRANTEE of other outdoor recreation properties of equal or greater fair market value and of reasonable equivalent usefulness and location. Such substituted land shall become part of the project area and will be subject to all the provisions of this Agreement.
 - b. Approval of a conversion shall be at the sole discretion of the DEPARTMENT.
 - c. Before completion of the project, the GRANTEE and the DEPARTMENT may mutually agree to alter the project area through an amendment to this Agreement to provide the most satisfactory public outdoor recreation area.

14. Should title to the lands in the project area or any portion thereof be acquired from the GRANTEE by any other entity through exercise of the power of eminent domain, the GRANTEE agrees that the proceeds awarded to the GRANTEE shall be used to replace the lands affected with outdoor recreation properties of equal or greater fair market value, and of reasonably equivalent usefulness and location. The DEPARTMENT shall approve such replacement only upon such conditions as it deems necessary to assure the substitution with other outdoor recreation properties of equal or greater fair market value and of reasonably equivalent usefulness and location. Such replacement land shall be subject to all the provisions of this Agreement.
15. The GRANTEE acknowledges that:
 - a. The GRANTEE has examined the project area and has found the property safe for public use or actions will be taken by the GRANTEE to make the property safe for public use no later than 90 days after the date of acquisition; and
 - b. The GRANTEE is solely responsible for development, operation, and maintenance of the project area, and that responsibility for actions taken to develop, operate, or maintain the project area is solely that of the GRANTEE; and
 - c. The DEPARTMENT'S involvement in the premises is limited solely to the making of a grant to assist the GRANTEE in acquiring same.
 - d. The GRANTEE acknowledges that the DEPARTMENT is not responsible for any tax liability assessed on the property after closing by the GRANTEE. Further, the eligible amount of tax pro-rated at time of closing will be determined by the DEPARTMENT.
16. Before the DEPARTMENT will give written approval to make a written offer to purchase the property included in this project, the GRANTEE must provide documentation to the DEPARTMENT that indicates either:
 - a. It is reasonable for the GRANTEE to conclude, based on the advice of an environmental consultant, as appropriate, that no portion of the project area is a facility as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act, Act 451 of the Public Acts of 1994, as amended; or
 - b. If any portion of the project area is a facility, documentation that Department of Natural Resources and Environment-approved response actions have been or will be taken to make the site safe for its intended use within the project period, and that implementation and long-term maintenance of response actions will not hinder public outdoor recreation use and/or the resource protection values of the project area.
17. If the DEPARTMENT determines that, based on contamination, the project area will not be made safe for the planned recreation use within the project period, or another date established by the DEPARTMENT in writing, or if the DEPARTMENT

determines that the presence of contamination will reduce the overall usefulness of the property for public recreation and resource protection, the grant may be cancelled by the DEPARTMENT with no reimbursement made to the GRANTEE.

18. The GRANTEE shall acquire and maintain, or cause to be acquired or maintained, insurance which will protect the GRANTEE from claims which may arise out of or result from the GRANTEE'S operations under this Agreement, whether performed by the GRANTEE, a subcontractor or anyone directly or indirectly employed by the GRANTEE, or anyone for whose acts may hold them liable. Such insurance shall be with companies authorized to do business in the State of Michigan in such amounts and against such risks as are ordinarily carried by similar entities, including but not limited to public liability insurance, worker's compensation insurance or a program of self-insurance complying with the requirements of Michigan law. The GRANTEE shall provide evidence of such insurance to the DEPARTMENT at its request.
19. Nothing in this Agreement shall be construed to impose any obligation upon the DEPARTMENT to operate, maintain or provide funding for the operation and/or maintenance of any recreational facilities in the project area.
20. The GRANTEE hereby represents that it will defend any suit brought against either party which involves title, ownership, or any other rights, whether specific or general, including any appurtenant riparian rights, to and in the project area and any lands connected with or affected by this project.
21. The GRANTEE is responsible for the use and occupancy of the premises, the project area and the facilities thereon. The GRANTEE is responsible for the safety of all individuals who are invitees or licensees of the premises. The GRANTEE will defend all claims resulting from the use and occupancy of the premises, the project area and the facilities thereon. The DEPARTMENT is not responsible for the use and occupancy of the premises, the project area and the facilities thereon.
22. Failure by the GRANTEE to comply with any of the provisions of this Agreement shall constitute a material breach of this Agreement.
23. Upon breach of the Agreement by the GRANTEE, the DEPARTMENT, in addition to any other remedy provided by law and this Agreement, may:
 - a. Terminate this Agreement; and/or
 - b. Withhold and/or cancel future payments to the GRANTEE on any or all current recreation grant projects until the violation is resolved to the satisfaction of the DEPARTMENT; and/or
 - c. Withhold action on all pending and future grant applications submitted by the GRANTEE under the Michigan Natural Resources Trust Fund and the Land and Water Conservation Fund; and/or
 - d. Require repayment of grant funds already paid to GRANTEE.
 - e. Specific performance of the Agreement.

24. The GRANTEE agrees that the benefit to be derived by the State of Michigan from the full compliance by the GRANTEE with the terms of this Agreement is the preservation, protection and the net increase in the quality of public outdoor recreation facilities and resources which are available to the people of the State and of the United States and such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State of Michigan by way of assistance under the terms of this Agreement. The GRANTEE agrees that after final reimbursement has been made to the GRANTEE, repayment by the GRANTEE of grant funds received would be inadequate compensation to the State for any breach of this Agreement. The GRANTEE further agrees therefore, that the appropriate remedy in the event of a breach by the GRANTEE of this Agreement after final reimbursement has been made shall be the specific performance of this Agreement.
25. The GRANTEE may not assign or transfer any interest in this Agreement without prior written authorization of the DEPARTMENT.
26. The rights of the DEPARTMENT under this Agreement shall continue in perpetuity.
27. The Agreement may be executed separately by the parties. This Agreement is not effective until:
 - a. The GRANTEE has signed it and returned it together with the necessary attachments within 90 days of the date the Agreement is issued by the DEPARTMENT, and
 - b. The DEPARTMENT has signed it.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, on this date.

Approved by resolution (true copy attached) of the _____,
date _____,
meeting of the _____,
(special or regular) (name of approving body)

GRANTEE

SIGNED:

WITNESSED BY:

By _____

1) _____

Title: _____

2) _____

Date: _____

Grantee's Federal ID#

MICHIGAN DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENT

SIGNED:

WITNESSED BY:

By _____
Jim Wood

1) _____

Title: Manager, Grants Management

2) _____

Date: _____

APPENDIX A
LEGAL DESCRIPTION OF THE PROJECT AREA

APPENDIX B
BOUNDARY MAP OF THE PROJECT AREA

APPENDIX C
RECREATION GRANT APPLICATION TF09-165
(Incorporated herein by reference)

SAMPLE RESOLUTION
(Acquisition)

Upon motion made by _____, seconded by _____, the following Resolution was adopted:

“RESOLVED, that the _____, Michigan, does hereby accept the terms of the Agreement as received from the Michigan Department of Natural Resources and Environment, and that the _____ does hereby specifically agree, but not by way of limitation, as follows:

1. To appropriate all funds necessary to complete the project during the project period and to provide _____ (\$ _____) dollars to match the grant authorized by the DEPARTMENT.
2. To maintain satisfactory financial accounts, documents, and records to make them available to the DEPARTMENT for auditing at reasonable times in perpetuity.
3. To regulate the use of the property acquired and reserved under this Agreement to assure the use thereof by the public on equal and reasonable terms.
4. To comply with any and all terms of said Agreement including all terms not specifically set forth in the foregoing portions of this Resolution.

The following aye votes were recorded: _____
The following nay votes were recorded: _____

STATE OF MICHIGAN)
) ss
COUNTY OF _____)

I, _____, Clerk of the _____, Michigan, do hereby certify that the above is a true and correct copy of the Resolution relative to the Agreement with the Michigan Department of Natural Resources and Environment, which Resolution was adopted by the _____ at a meeting held _____.

Signature

Title

Dated: