

**Minnehaha Creek Watershed District**

**REQUEST FOR BOARD ACTION**

**MEETING DATE:** September 27, 2018

**TITLE:** Authorization to execute an Environmental Response Fund Grant Agreement with Hennepin County Environment and Energy Department for 325 Blake Road

**RESOLUTION NUMBER:** 18-099

**PREPARED BY:** Michael Hayman

**E-MAIL:** mhayman@minnehahacreek.org

**TELEPHONE:** 952-471-8226

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name):  
 Board Committee  Engineer  Other:

**WORKSHOP ACTION:**

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date):_____	<input type="checkbox"/> Refer to taskforce or committee (date):_____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): <u>Requesting approval at September 27, 2018 Board Meeting</u>	

**PURPOSE or ACTION REQUESTED:**

Authorization to execute an Environmental Response Fund (ERF) grant agreement with Hennepin County Environment and Energy Department to assist with environmental investigation activities at 325 Blake Road.

**PROJECT/PROGRAM LOCATION:**

325 Blake Road, Hopkins

**PROJECT TIMELINE:**

November 2017 – Hennepin County ERF grant application submitted  
February 2018 – Hennepin County ERF grant award  
September 2018 – Approval of grant agreement  
November 2018-April 2019 – Conduct additional site investigation

**PROJECT/PROGRAM COST:**

Fund name and number: 325 Blake Road Stormwater Management, 3145  
Current fund balance: \$2,092,960  
Requested amount of funding: \$0  
Is a budget amendment requested? No  
Is additional staff requested? No

**PAST BOARD ACTIONS:**

October 12, 2017                      RBA 17-062                      Authorization to apply for funding assistance

\*Board actions listed in this RBA relate specifically to the grant application. Additional Board actions are cataloged and available for review

**SUMMARY:**

In November 2017, staff applied for a Hennepin County Environmental Response Fund (ERF) grant to assist with additional site investigation and soil mitigation associated with preparing the 325 Blake Road site for restoration and redevelopment. The application was successful, resulting in the District being awarded \$25,000 in grant assistance in February 2018.

The focus of the ERF request was specific to completing the approved work plan for additional environmental investigation, as previously reviewed by the Minnesota Pollution Control Agency. The additional soil borings will further characterize the suitability of soils onsite and refine the District's understanding of the known petroleum contamination. Work will be conducted in coordination with the District's demolition process to minimize the amount of disturbance at the site and complete the testing process prior to final stabilization.

Staff recommends the District Board of Managers approve the grant agreement between Hennepin County Environment and Energy Department, and authorize the District Administrator to execute said agreement.

**ATTACHMENT:**

1. Grant Agreement

**RESOLUTION**

---

**RESOLUTION NUMBER:**    18-099

**TITLE:**            **Authorization to execute an Environmental Response Fund (ERF) grant agreement with Hennepin County Environment and Energy Department for 325 Blake Road**

WHEREAS,    the Minnehaha Creek Watershed District (MCWD) Board of Managers has identified the Minnehaha Creek subwatershed as priority focal area for project and program implementation; and

WHEREAS,    in October 2017 the MCWD Board of Managers authorized the pursuit of Hennepin County Environmental Response Fund (ERF) grant funding to assist with additional site investigation and soil mitigation associated with preparing the 325 Blake Road site for restoration and redevelopment; and

WHEREAS,    in February 2018 the MCWD was awarded an Environmental Response Fund (ERF) grant from the Hennepin County Environment and Energy Department in the amount of \$25,000 for assistance with additional environmental site investigation activities;

NOW, THEREFORE, BE IT RESOLVED that the MCWD Board of Managers hereby approves the Grant Agreement between Hennepin County, acting through its Environment and Energy Department for appropriated Environmental Response Funds in the amount of \$25,000, and authorizes the District Administrator to execute the Grant Agreement.

Resolution Number 18-099 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

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

ENVIRONMENTAL RESPONSE FUND GRANT AGREEMENT  
BETWEEN THE MINNEHAHA CREEK WATERSHED DISTRICT AND HENNEPIN COUNTY  
ENVIRONMENT AND ENERGY DEPARTMENT

This Agreement is between the County of Hennepin, State of Minnesota (“County”) at A2300 Government Center, Minneapolis, MN 55487 by its Environment and Energy Department (“Department”) and The Minnehaha Creek Watershed District (“Grantee”) with offices located at 15320 Minnetonka Boulevard, Minnetonka, Minnesota, 55345.

Grantee has submitted an application to the County for a grant to be used for investigation activities for future development at the Hopkins Cold Storage project site located at 325 Blake Road North, in Hopkins, Minnesota. The application is incorporated into this Agreement by reference.

The parties agree as follows:

**1. GRANT AMOUNT AND COMPLETION**

The County shall grant to Grantee a sum not to exceed Twenty-Five Thousand dollars (\$25,000.00) (“ERF Grant”) which funds shall be only for expenses incurred in performing activities specified in the Application and as may be further described in Exhibit A to this Agreement or as approved by the County. Approved activities as may be described in Exhibit A and in the application, attached as Exhibit B, are referred as the “Project”. Administrative costs incurred by Grantee are not eligible for reimbursement. Exhibits A and B are attached and incorporated by this reference.

Grantee shall complete the Project within one (1) year of execution of this Agreement and within the terms stated herein. Any material change in the scope of the Project, including time schedule and budget, must be approved in writing by the County. Upon approval by the County Administrator, the duration of this Agreement may be extended for up to twelve (12) months. Funds made available pursuant to this Agreement shall be used only for expenses incurred in performing such purposes and activities described in the Application and this Agreement.

**2. ACCOUNTING AND RECORD KEEPING**

For all expenditures of funds made pursuant to this Agreement, Grantee shall keep financial records including properly executed contracts, invoices, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures. Accounting methods shall be in accordance with generally accepted accounting principles.

The County, the State Auditor, or any of their duly 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. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the Agreement and for six (6) years after its termination or cancellation.

**3. PAYMENT/DISBURSEMENT SCHEDULE**

County will disburse funds to Grantee pursuant to this Agreement, based on a payment request form provided by the County, submitted by Grantee and approved by the County. Payment requests can be submitted once per month and must be accompanied by supporting invoices that relate to activities in the approved Project budget. Subject to verification of adequacy of a written disbursement request and approval of consistency with this Agreement, the County will disburse the requested amount to Grantee within six (6) weeks after receipt of a written disbursement request. The final request for disbursement must be submitted within six (6) months of the expiration date of this Agreement.

#### 4. REPORTING

Grantee shall submit to the County a report on the distribution of funds and the progress of the Project covered from the date of the grant award through June 30 of each year. The reports must be received by the County no later than July 25 of each year. The report shall identify specific goals listed in the application and quantitatively measure the progress of such goals. Reporting forms will be provided by the County. In addition, the required documentation listed in Exhibit A should be supplied as it becomes available.

#### 5. CONTRACTS

Grantee shall include in any contract, provisions that require contractors to comply with all applicable State and Federal laws and regulations regarding employment and workplace safety.

In accordance with Hennepin County's policies against discrimination, Grantee shall not exclude any person from full employment rights or 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; and no person who is protected by applicable Federal or State laws, rules, or regulations against discrimination shall be otherwise subjected to discrimination.

Public Grantees and any contractors or subcontractors performing services as part of this Agreement shall follow that public Grantee's Affirmative Action policy against discrimination.

#### 6. TERMINATION, CANCELLATION AND ASSIGNMENT

This Agreement may be canceled by the County upon sixty (60) days written notice to Grantee without cause. In the event of such cancellation, Grantee shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed up to the effective date of such cancellation.

If the County finds that there has been a failure to comply with the provisions of this Agreement, that reasonable progress has not been made toward commencement or completion of the assessment and/or clean-up activities specified in the Application and this Agreement, notwithstanding any other provisions of this Agreement to the contrary and after written notice and reasonable opportunity to cure, the County may refuse to disburse additional funds and/or require the return of all or part of the funds already disbursed, to the extent such funds were used for purposes other than activities contemplated by this Agreement.

If the County finds that there has been a violation of any state, federal or local law, the County may upon written notice immediately cancel this Agreement in its entirety and may withhold or delay payment. In the event of a decision to withhold or delay payment, the County shall furnish prior written notice to Grantee specifically identifying the reason for withholding or delaying such payment.

This Agreement may not be assigned without the prior written consent of the County.

#### 7. INDEPENDENT CONTRACTOR

Grantee shall select the means, method, and manner of performing the Project. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as constituting Grantee as the agent, representative, or employee of the County for any purpose. Grantee shall remain an independent contractor with respect to all services and activities performed under this Agreement. Any personnel of Grantee or other persons while engaged in the performance of any work or services required by Grantee under this Agreement 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 Economic Security 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. Grantee shall defend, indemnify and hold harmless the County, its officials, officers, agents, and employees from all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the County, including, without limitation, tenure

rights, medical and hospital care, sick leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

## 8. INDEMNIFICATION

Grantee 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 Grantee, its contractors or subcontractors or anyone directly or indirectly employed by them, and/or any party that directly or indirectly benefits from the activities specified in this Agreement, and/or anyone for whose acts and/or omissions they may be liable in the performance of the activities specified in this Agreement and against all loss by reason of the failure of Grantee to perform any obligation under this Agreement.

## 9. INSURANCE

In order to protect the County and those listed above under the indemnification provision, Grantee agrees at all times during the term of this Agreement and beyond such term when so required, to have and keep or cause to have and be kept in force, and to cause all contractors to do likewise, the following insurance coverages under either a purchased insurance or self-insurance program:

1. Commercial General Liability on an occurrence basis with Contractual Liability Coverage:

	<u>Limits</u>
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. Automobile Liability – Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned, and hired automobiles. 1,500,000
  
3. Workers' Compensation and Employer's Liability:
  - a. Workers' Compensation Statutory  
If the contractor is based outside the State of Minnesota, coverage must apply to Minnesota laws.
  
  - b. Employer's Liability. Bodily Injury by:

Accident – Each accident	500,000
Disease – Policy Limit	500,000
Disease – Each Employee	500,000
  
4. Professional Liability –

Per Claim	1,500,000
Aggregate	2,000,000

The insurance must be maintained continuously for a period of two years after the termination of this Agreement.

Grantee shall require that any independent contractors rendering assessment and/or clean-up activities under this Agreement furnish certificates of insurance to Grantee of the insurance coverages listed above, and provide updated certificates as coverages expire.

An umbrella or excess policy over primary liability 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.

Grantee and their contractors shall not commence work until they have obtained required insurance and filed with the Grantee properly executed Certificates of Insurance establishing compliance. The certificate(s) must name the Grantee as the certificate holder and Hennepin County as an additional insured for the commercial general liability coverage(s) for all operations covered under the Agreement and must include the project name and ERF contract number. Grantee shall immediately notify County of any cancellations or reduction of insurance coverage.

Grantee shall provide copies of insurance certificates to the County. If Grantee fails to furnish proof coverages, if requested by the County, the County may withhold payments and/or pursue any other rights or remedy allowed under the contract, law, equity, and/or statute.

#### 10. MERGER AND MODIFICATION

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 hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

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. 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 performance under it. 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.

#### 12. ACKNOWLEDGMENTS

The Grantee shall acknowledge the financial assistance provided by the County in promotional materials, press releases, reports and publications relating to the Project activities described in Exhibit A which are funded in whole or in part with the grant funds. The acknowledgment should contain the following language:

*Financing for this project was provided in part by the Hennepin County Environmental Response Fund.*

Until the Project activities funded by this Agreement are completed, the Grantee shall ensure the above acknowledgment language, or alternative language approved the County, is included on all signs located at the Project or construction sites that identify Project funding partners or entities providing financial support for the project.

Until the Project activities funded by this Agreement are completed and for one year after that date, the Grantee shall provide advance notice to the County, including an invitation to the appropriate County Commissioner's office, of any public events related to the Project.

#### 13. HENNEPIN COUNTY PERSONAL PROPERTY TAX AND PROPERTY TAX

Grantee affirms that it and its officers have paid all Hennepin County personal property taxes and property taxes due on all of its Hennepin County properties for taxes owed on or before December 31, 2017. If the County finds that personal property taxes and property taxes have not been paid by Grantee, Grantee's owner and Grantee's board of directors (if any), County may refuse to disburse funds or require the return of all or part of the funds already disbursed pursuant to section 6 of this Agreement.

COUNTY ADMINISTRATOR APPROVAL

Reviewed for COUNTY by  
the County Attorney's Office:

{ {Sig\_es\_:signer3:signature} }  
{ {userstamp3\_es\_:signer3:stamp} }

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

By:

{ {Sig\_es\_:signer5:signature} }  
{ {userstamp5\_es\_:signer5:stamp} }

Reviewed for COUNTY by:

{ {Sig\_es\_:signer4:signature} }  
{ {userstamp4\_es\_:signer4:stamp} }

Document Assembled by:

{ {Sig\_es\_:signer1:signature} }  
{ {userstamp1\_es\_:signer1:stamp} }

{ {Exh\_es\_:signer1:attachment:label("Attachments")} }



CONTRACTOR

CONTRACTOR warrants that the person who executed this Agreement is authorized to do so on behalf of CONTRACTOR as required by applicable articles, bylaws, resolutions or ordinances.\*

By:

{ {Sig\_es\_:signer2:signature} }  
{ {userstamp2\_es\_:signer2:stamp} }  
{ {                  ttl\_es\_:signer2:title} }

\*CONTRACTOR represents and warrants that it has submitted to COUNTY all applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. Documentation is not required for a sole proprietorship.

## Exhibit A

### Hopkins Cold Storage

Project Summary:

The Hopkins Cold Storage Site was purchased by the Minnehaha Creek Watershed District in 2011 as a redevelopment opportunity associated with the planned Minnehaha Greenway project. Historically, the site was used as a cold storage warehouse for various commercial occupants. Environmental investigations have identified isolated areas of soil contaminated with petroleum compounds from past use of underground fuel oil tanks and polycyclic aromatic hydrocarbons (PAHs). PAHs were also identified in groundwater. The MPCA has requested additional assessment of the site.

The applicant requests ERF assistance for environmental investigation activities and associated consulting activities and MPCA fees.

The following costs are based on a budget submitted by Grantee. Modifications must be approved in writing by the County.

**Approved Budget for the Hopkins Cold Storage Project Site:**

Environmental investigation	\$ 25,000
Total:	\$ 25,000

Required Documentation to be Submitted to Hennepin County:

Insurance Certificates with project name and ERF contract number [see SECTION 9. INSURANCE]

Final Investigation Reports

MPCA Approval Letters

MPCA Invoices

Consultant/Contractor Invoices (include time period covered by invoice and documentation supporting expenses, including subcontractor and analytical invoices - include unit rates and quantities, subcontractor markup limited to 10% or less)

Annual Project Progress/Summary Report(s).