

MEETING DATE: November 15, 2018

TITLE: Authorization to execute a sub-grant agreement with the City of Hopkins for asbestos abatement activities at 325 Blake Road

RESOLUTION NUMBER: 18-117

PREPARED BY: Michael Hayman

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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 final approval on November 15, 2018</u>	

PURPOSE or ACTION REQUESTED:

Authorization to execute a sub-grant agreement with the City of Hopkins for asbestos abatement activities at 325 Blake Road. The focus of this Board action is to approve the sub-grant agreement for reimbursement of the awarded \$805,700 in asbestos abatement funds, received through the Metropolitan Council Tax-Based Revitalization Account (TBRA) Seeding Equitable Environmental Development (SEED) grant program.

PROJECT/PROGRAM LOCATION:

325 Blake Road North, Hopkins MN

PROJECT TIMELINE:

May 1, 2018 – MCWD-Hopkins joint application submitted to Met Council TBRA SEED grant program
June 27, 2018 – Met Council awards grant funds to City of Hopkins
July 26, 2018 – Demolition contract awarded to Veit & Company
August 13, 2018 – Demolition activities commence at 325 Blake Road
December 31, 2018 – Demolition complete and site stabilized
June 30, 2020 – Grant expiration deadline

PROJECT/PROGRAM COST:

Fund name and number: 325 Blake Road Stormwater Management, 3145
Requested amount of funding: grant award of \$805,700

PAST BOARD ACTIONS:

May 25, 2017 RBA 17-037 Authorization to apply for Hennepin County grant funding
October 12, 2017 RBA 17-062 Authorization to apply for funding assistance for 325 Blake Road

SUMMARY:

In October 2017 the Minnehaha Creek Watershed District (MCWD) Board of Managers authorized staff to apply for funding assistance through the Metropolitan Council Tax-Based Revitalization Account (TBRA) Seeding Equitable Environmental Development (SEED) grant program for demolition assistance on the 325 Blake Road property. The TBRA SEED program is part of the Metropolitan Council livable communities grant program designed to promote successful revitalization and redevelopment within the Twin Cities metro area.

Minnesota statute limits the Metropolitan Council livable communities grant programs, such as the TBRA SEED program, to cities, counties and their housing or development authorities. As such, the MCWD and City of Hopkins (City) prepared and submitted a joint application to the TBRA SEED program for asbestos abatement assistance as part of demolition activities on the 325 Blake Road property.

In June 2018 the MCWD and City were notified that the Metropolitan Council approved and awarded the request of \$805,700 for the proposed asbestos abatement activities. Due to the aforementioned requirements of the livable communities program, the grant award is to City, which, as grantee, is the responsible party for communications and grant administration.

Since the MCWD is the owner of the site and has agreed to construction contracts for all demolition activity planned on the site, the City wishes to designate the MCWD as the developer through a sub-grant agreement (attached). This structure will allow the parties to deliver the asbestos abatement activities as agreed upon in the grant agreement in the most timely and efficient manner.

It should be noted that demolition and abatement activities, as set forth in the grant application and agreement, are allowed to commence upon notice of award (June 28, 2018). The MCWD initiated demolition activities on the site on August 13, 2018 and has met all requirements of the grant agreement for successful reimbursement.

Staff is recommending the Board of Managers authorize the administrator to execute, on advice and consent of counsel, and with any non-substantive adjustments, a sub-grant agreement with the City of Hopkins for asbestos abatement activities on the 325 Blake Road property.

ATTACHMENTS:

1. Draft sub-grant agreement

SUB-GRANT AGREEMENT
(Cold Storage Project)
(Metropolitan Council Tax Base Revitalization Account
Seeding Equitable Environmental Development Grant Program)

THIS SUB-GRANT AGREEMENT (“Agreement”) is made as of this ____ day of _____, 2018, by and between the city of Hopkins, a municipal corporation under the laws of the state of Minnesota (“City”), and the Minnehaha Creek Watershed District, a watershed district under the laws of the state of Minnesota (“Developer”).

WHEREAS, the City entered into a grant agreement with the Metropolitan Council in 2018 (the “Grant Agreement”), a copy of which is attached hereto as Exhibit A and is incorporated herein and made part of this Agreement; and

WHEREAS, the Grant Agreement provides that the Metropolitan Council will grant to City a sum not to exceed eight hundred five thousand and seven hundred and no/100 dollars (\$805,700.00), which funds shall be used to perform the duties and tasks specified in the Grant Agreement related to the environmental cleanup associated with the Cold Storage facility located within the City (the “Project”); and

WHEREAS, City will pass the funds provided in the Grant Agreement through to Developer to implement the Project as provided in this Agreement; and

WHEREAS, City and Developer have agreed for Developer to assume certain duties and responsibilities of City under the Grant Agreement in consideration of receiving funds provided for in the Grant Agreement and subject to the terms, conditions, and limitations set forth therein.

NOW, THEREFORE, in consideration of the premises and the mutual promises set forth herein, the parties hereto covenant and agree as follows:

1. Grant Funds. City agrees to forward to Developer funds received under the Grant Agreement for the Project based upon approved reimbursement requests received from the Developer and conditioned on Developer’s continuing compliance with its obligations hereunder. Grant funds shall be forwarded to the Developer when such funds are received by the City pursuant to Section 2.09 of the Grant Agreement, with such funds being forwarded to the Developer within 30 days of their receipt by the City.

2. Developer Obligations. Developer will perform and satisfy certain obligations of City under the Grant Agreement. Specifically, but without limiting the foregoing, Developer will perform all of the following with respect to the Project and in satisfaction of Grant Agreement obligations:

- (a) Developer will perform, or participate in, all elements of the Project as described in Attachment A of the Grant Agreement, as it may be amended, and will properly document expenses, including time and materials, in the manner expressed in the Grant Agreement and will provide information to the City to aid in all required

grant reporting. Any amendments made to the Grant Agreement, including its exhibits, are incorporated into and made part of this Agreement by reference, and the City shall forward a copy of any such approved amendment to the Developer. The City will not approve any proposed amendments to the Grant Agreement without the written concurrence of the Developer.

- (b) Developer will comply with all requirements and conditions of the Grant Agreement applicable to the Project that, by their nature, must be performed by Developer rather than the City and that are conditions of award of funds under the Grant Agreement.
- (c) The times of performance and expiration of Developer's obligations under this Agreement shall be as provided in the Grant Agreement.
- (d) Developer will provide written invoices for reimbursement in accordance with the requirements of the Grant Agreement.
- (e) Developer will comply with all applicable federal, state, and local laws, rules, regulations, and ordinances in completing the Project.
- (f) Developer will take all other actions as are needed to ensure compliance with the Grant Agreement and provide such information and assistance to the City as may be needed to ensure the City can comply with the requirements of the Grant Agreement that, by their nature, must be performed by the City rather than the Developer.

3. Developer Reimbursement. Developer will be reimbursed from the funds received through the Grant Agreement for grant-eligible costs incurred in performing its obligations in accordance with this Agreement. Reimbursements will be forwarded to Developer following completion of work by the Developer from grant funds received by City from the Metropolitan Council, pursuant to the payment process provided in Section 2.09 of the Grant Agreement. The City shall forward such reimbursements to the Developer within 30 days of receipt from the Metropolitan Council. Developer shall provide such invoices or other evidence of expenses incurred as may be required by the City or by the Metropolitan Council to complete any necessary payment request forms or other documentation required under the Grant Agreement. The City shall have no obligation to reimburse the Developer for any amounts that exceed the amount of the grant received by the City under the Grant Agreement.

4. No Assignment. Developer may neither assign nor transfer any rights or obligations under this Agreement without the prior consent of the City and an assignment agreement executed and approved by the parties.

5. Amendments. Any amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the parties.

6. No Waiver. If City fails to enforce any provisions of this Agreement, such failure does not waive the provision or alter the City's right to enforce it.

7. Entire Agreement. This Agreement contains all negotiations and agreements between City and Developer. No other agreements or understandings regarding the Grant Agreement, or this Agreement, may be used to bind either party.

8. Indemnification. Developer shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from any claims or causes of action, including attorney's fees incurred by City, arising from the performance of this Agreement by Developer, or its officers, agents or employees, except to the extent the claims arise from the City's own negligence.

9. Audit. Developer's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by the City, Metropolitan Council, and/or the state auditor or legislative auditor, as appropriate, for a minimum of six years from the end of this Agreement.

10. Data Practices. Developer shall comply with applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. If Developer receives a request to release data referred to in this paragraph, Developer must immediately notify City. The City will give Developer instructions concerning the release of the data to the requesting party, prior to such release.

11. Workers' Compensation. Developer certifies that it is in compliance with Minnesota Statutes, section 176.181, subdivision 2, pertaining to workers' compensation insurance coverage. Developer's employees and agents will not be considered employees of City. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of employees of Developer, and any claims made by any third party as a consequence of any act or omission on the part of such employees are in no way the obligation of City or Metropolitan Council.

12. Publicity. Any publicity regarding the subject matter of this Grant Agreement must identify the Metropolitan Council as a source of funding. Publicity shall include information identified in the Grant Agreement to the extent required herein. Developer must not claim that City or the Metropolitan Council endorses its products or services.

13. Applicable Law. The law governing the obligations of this Agreement and the venue for all legal proceedings associated therewith shall be in accordance with the Grant Agreement.

14. Termination. This Agreement is subject to termination in accordance with the termination provision of the Grant Agreement. However, the provisions in the Grant Agreement regarding Liability, State Audits, Government Data Practices, Intellectual Property, and Governing Law, Jurisdiction and Venue will survive termination or cancellation of this Agreement or of the Grant Agreement.

15. Conditioned. This Agreement is conditioned on approval by the Metropolitan Council to the extent such approval is required by the Grant Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first written above.

CITY OF HOPKINS

By: _____
Molly Cummings, Mayor

And by: _____
Mike Mornson, City Manager

Date: _____

DEVELOPER

By: _____

Date: _____

By: _____

Date: _____

EXHIBIT A
Grant Agreement

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP / SITE INVESTIGATION
SEEDING EQUITABLE ENVIRONMENTAL DEVELOPMENT (SEED)
GRANT PROGRAM**

GRANTEE: City of Hopkins	GRANT NO. SG-10536
PROJECT: Cold Storage	
GRANT AMOUNT: \$805,700	FUNDING CYCLE: 2018
COUNCIL ACTION: June 27, 2018	EXPIRATION DATE: June 30, 2020

**METROPOLITAN LIVABLE COMMUNITIES ACT
GRANT AGREEMENT**

THIS GRANT AGREEMENT (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the Municipality or Development Authority identified above as “Grantee.”

WHEREAS, Minnesota Statutes section 473.251 creates the Metropolitan Livable Communities Fund, the uses of which fund must be consistent with and promote the purposes of the Metropolitan Livable Communities Act (“LCA”) and the policies of the Council’s Metropolitan Development Guide; and

WHEREAS, Minnesota Statutes sections 473.251 and 473.252 establish within the Metropolitan Livable Communities Fund a Tax Base Revitalization Account and require the Council to use the funds in the account to make grants to Municipalities or Development Authorities for the cleanup of polluted land in the seven-county metropolitan area; and

WHEREAS, the Grantee is a Municipality or a Development Authority as defined in Minnesota Statutes section 473.252, subdivisions 1 and 1a; and

WHEREAS, at its March 25, 2015 meeting the Metropolitan Council’s governing body approved an annual LCA Fund Distribution Plan that authorized a two-year Tax Base Revitalization Account Seeding Equitable Environmental Development (“SEED”) program targeted to sites in areas of concentrated poverty that do not yet have a planned or identified redevelopment project with the goal of creating jobs within those areas; and

WHEREAS, the Grantee seeks funding in connection with an application for Tax Base Revitalization Account funds submitted in response to the Council’s notice of availability of grant funds for the “Funding Cycle” identified above and will use the grant funds made available under this Agreement to help fund the “Project” identified in the application; and

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WHEREAS, the Council awarded Tax Base Revitalization Account grant funds to the Grantee subject to any terms, conditions, or clarifications stated in its Council Action, and with the understanding that the Project identified in the application will proceed to completion in a timely manner and all grant funds will be expended prior to the “Expiration Date” identified above.

NOW THEREFORE, in reliance on the above statements and in consideration of the mutual promises and covenants contained in this Agreement, the Grantee and the Council agree as follows:

I. DEFINITIONS

1.01. Definition of Terms. The terms defined in this Section have the meanings given them in this Section unless otherwise provided or indicated by the context.

- (a) **Cleanup Costs or Costs.** “Cleanup Costs” or “Costs” means:
- (1) For hazardous waste or substance contamination, the cost of preparing or implementing a voluntary response action plan approved by the Minnesota Pollution Control Agency under Minnesota Statutes section 115B.175, subdivision 3.
 - (2) For asbestos contamination, the cost of preparing or implementing a project-specific asbestos project plan for the Site and performing asbestos-related work which is carried out by contractors or subcontractors licensed or certified by the Commissioner of Health under the Minnesota Asbestos Abatement Act, Minnesota Statutes sections 326.70 to 326.81, in accordance with rules prescribed by the Commissioner of Health related to asbestos abatement and asbestos management activity, and meeting the federal Asbestos Hazard Emergency Response Act (“AHERA”) standards for asbestos.
 - (3) For petroleum contamination, the cost of preparing or implementing a corrective action plan for the Site approved by the Minnesota Pollution Control Agency under Minnesota Statutes chapter 115C.
 - (4) For lead abatement, the cost of lead abatement work performed by certified contractors consistent with all applicable federal and state laws, rules, and standards governing lead abatement or regulated lead work on residential or commercial properties.
- (b) **Council Action.** “Council Action” means the action or decision of the governing body of the Metropolitan Council, on the meeting date identified at Page 1 of this Agreement, by which the Grantee was awarded Tax Base Revitalization Account contamination cleanup and site investigation grant funds.
- (c) **Development Authority.** “Development Authority” means a statutory or home rule charter city, a housing and redevelopment authority, an economic development authority, or a port authority in the metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.

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- (d) **Municipality.** “Municipality” means a statutory or home rule charter city or town participating in the Local Housing Incentives Program under Minnesota Statutes section 473.254, or a county in the metropolitan area as defined by Minnesota Statutes section 473.121, subdivision 2.
- (e) **Participating Municipality.** “Participating Municipality” means a statutory or home rule charter city or town that has elected to participate in the Local Housing Incentive Account program and negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254.
- (f) **Project.** Unless clearly indicated otherwise by the context of a specific provision of this Agreement, “Project” means the contamination cleanup and site investigation at the Site identified in the application for Tax Base Revitalization Account funds for which grant funds were requested.
- (g) **Project Costs.** “Project Costs” means the eligible costs of the contamination cleanup and site investigation activities for which the grant funds must be used pursuant to Section 2.04 of this Agreement.
- (h) **Site.** “Site” means the polluted land proposed for contamination cleanup and site investigation by the Grantee and located both within the metropolitan area and within a Participating Municipality.

II. GRANT FUNDS

2.01. Source of Funds. The grant funds made available to the Grantee under this Agreement are from the Tax Base Revitalization Account of the Metropolitan Livable Communities Fund. The grant funds are derived from the area-wide tax imposed under Minnesota Statutes chapter 473F and are not from federal sources.

2.02. Total Grant Amount. The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement. Notwithstanding any other provision of this Agreement, the Grantee understands and agrees that any reduction or termination of Tax Base Revitalization Account funds made available to the Council may result in a like reduction in the Grant Amount made available to the Grantee.

2.03 Twenty-Five Percent Local Match. The Grant Amount provided to the Grantee under this Agreement may be used to pay up to seventy-five percent (75%) of the total eligible Project Costs. The Grantee shall match at least twenty-five percent (25%) of the Grant Amount received from the Council. The matching funds shall be identified in the progress and final reports required under Section 3.03.

2.04. Authorized Use of Grant Funds. The Grant Amount made available to the Grantee under this Agreement shall be used only for Cleanup Costs for contamination cleanup and Costs for site investigation at the Site described in the application for Tax Base Revitalization Account funds. A

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Project summary that identifies eligible uses of the grant funds as approved by the Council is attached to and incorporated into this Agreement as Attachment A. Aerial photography or drawings that identify the specific location(s) within the Project boundaries or the Site(s) for which grant funds must be used is attached to and incorporated into this Agreement as Attachment B. Grant funds must be used for cleanup and site investigation of the Site which must be located in a Participating Municipality. If consistent with the application and subject to the limitations in Minnesota Statutes section 116J.556, the Grantee may use the grant funds to provide a portion of the local match requirement for Project Costs that qualify for a grant under Minnesota Statutes sections 116J.551 to 116J.557.

2.05. Ineligible Uses. Grant funds must be used for costs directly associated with the specific contamination cleanup and site investigation activities for which the grant funds were awarded and shall not be used for “soft costs” such as: administrative overhead; travel expenses; legal fees; insurance; bonds; permits, licenses or authorization fees; costs associated with preparing grant proposals or applications; project coordination costs; operating expenses; planning costs; and prorated lease and salary costs. Grant funds may not be used for investigation costs incurred prior to the date of the “Council Action” identified at Page 1 of this Agreement. A detailed list of ineligible and eligible costs is available from the Council’s Livable Communities program office. Grant funds also shall not be used by the Grantee or others to supplant or replace: (a) grant or loan funds obtained for the Project from other sources; or (b) Grantee contributions to the Project, including financial assistance or other resources of the Grantee; or (c) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee or others in the implementation or performance of the Project activities.

2.06. Restrictions on Loans by Subgrantees. The Grantee shall not permit any subgrantee or subrecipient to use the grant funds for loans or grants to any subrecipient at any tier unless the Grantee obtains the prior written consent of the Council. The requirements of this Section 2.05 shall be included in all subgrants.

2.07. Project Changes. The Grantee must promptly inform the Council in writing of any significant changes to the Project for which the grant funds were awarded, as well as any potential changes to grant-funded activities described or identified in Attachments A and B. Failure to inform the Council of any significant changes to the Project or significant changes to grant-funded components of the Project, and use of grant funds for ineligible or unauthorized purposes, will jeopardize the Grantee’s eligibility for future LCA awards. Grant funds will not be disbursed prior to Council approval of significant changes to either the Project or grant-funded activities described or identified in Attachments A and B.

2.08. Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: (a) any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; and (b) any grant funds that are not used for

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the authorized purposes. For the purposes of this Agreement, grant funds are “expended” prior to the Expiration Date if the Grantee pays or is obligated to pay for expenses of eligible Project activities that occurred prior to the Expiration Date and the eligible expenses were incurred prior to the Expiration Date. Unspent or unused grant funds and other funds remitted to the Council shall revert to the Council’s Tax Base Revitalization Account for distribution through application processes in future Funding Cycles or as otherwise permitted by law.

2.09. Payment Request Forms, Documentation, and Disbursements. The Council will disburse grant funds in response to payment requests submitted by the Grantee through the Council’s online grant management system and reviewed and approved by the Council’s authorized agent. Payment requests shall be made using payment request forms, the form and content of which will be determined by the Council. Payment request and other reporting forms will be provided to the Grantee by the Council. Payment requests must include the following documentation:

Consultant/contractor invoices showing the time period covered by the invoice; the specific grant-funded Project activities conducted or completed during the authorized time period within which eligible costs may be incurred; and documentation supporting expenses including subcontractor and consultant invoices showing unit rates and quantities. Subcontractor markups shall not exceed ten percent (10%).

The Council will disburse grant funds on a reimbursement basis or a “cost incurred” basis. The Grantee must provide with its payment requests documentation that shows grant-funded Project activities actually have been completed. Subject to verification of each payment request form (and the required documentation) and approval for consistency with this Agreement, the Council will disburse a requested amount to the Grantee within two (2) weeks after receipt of a properly completed and verified payment request form.

2.10. Effect of Grant. Issuance of this Grant neither implies any Council responsibility for any contamination at the Site nor imposes any obligation on the Council to participate in the cleanup of any Site contamination or in the Cleanup Costs beyond the Grant Amount of this Agreement. By awarding grant funds to the Grantee for the Project and executing this Agreement, the Council assumes no responsibility for: (a) any damage to persons, property, or the environment caused by any contamination cleanup or site investigation activities or for any subsequent Site cleanup activities or implementation of the Project; or (b) determining whether intended uses of the Site identified in the grant application or potential future uses of the Site, including any residential uses, are suitable for the Site.

III. ACCOUNTING, AUDIT, AND REPORT REQUIREMENTS

3.01. Accounting and Records. The Grantee agrees to establish and maintain accurate and complete accounts and records relating to the receipt and expenditure of all grant funds received from the Council. Notwithstanding the expiration and termination provisions of Sections 4.01 and 4.02,

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such accounts and records shall be kept and maintained by the Grantee for a period of six (6) years following the completion of the Project activities described or identified in Attachments A and B or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Accounting methods shall be in accordance with generally accepted accounting principles.

3.02. Audits. The above accounts and records of the Grantee shall be audited in the same manner as all other accounts and records of the Grantee are audited and may be audited or inspected on the Grantee's premises or otherwise by individuals or organizations designated and authorized by the Council at any time, following reasonable notification to the Grantee, for a period of six (6) years following the completion of the Project activities or six (6) years following the expenditure of the grant funds, whichever occurs earlier. Pursuant to Minnesota Statutes section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the Grantee that are relevant to this Agreement are subject to examination by the Council and either the Legislative Auditor or the State Auditor, as appropriate, for a minimum of six (6) years.

3.03. Report Requirements. The Grantee will submit to the Council on semi-annual basis (twice each year) a status report on the Project activities described or identified in Attachments A and B and the expenditures of the grant funds. Submission of properly completed payment request forms (with proper documentation) required under Section 2.09 will constitute the required status reports. The Grantee must complete and submit to the Council a Final Report before the final disbursement of grant funds will be approved. The form and content of the Final Report will be determined by the Council. The Council may require the Grantee to submit a progress report when cleanup and site investigation activities are occurring and a final Project report when cleanup and site investigation work is completed. The form and content of the written reports will be determined by the Council. The reporting requirements of Sections 3.03 and 3.04 shall survive the expiration or termination of this Agreement.

3.04. Environmental Investigation Documents. Upon completion of the contamination cleanup and site investigation, the Grantee will submit to the Council a copy of the environmental site assessment documents including but not limited to Phase I environmental site assessment, Phase II environmental site assessment work plan, Phase II investigation report, focused feasibility study (if more than one remedy is proposed for Minnesota Pollution Control Agency review) and a Response Action Plan or Development Response Action Plan and addenda (if any), asbestos or hazardous materials surveys and asbestos or hazardous wastes management plan and approval of the Response Action Plan by the Minnesota Pollution Control Agency Voluntary Investigation and Cleanup Program and/or approval of the Development Response Action Plan by the Minnesota Pollution Control Agency Petroleum Brownfields Program ("PBP").

IV. AGREEMENT TERM

4.01. Term. This Agreement is effective upon execution of the Agreement by the Council. Unless terminated pursuant to Section 4.02, this Agreement expires on the Expiration Date identified at

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Page 1 of this Agreement. Notwithstanding Section 4.03, the two-year term of this Agreement may not be extended by amendment or otherwise. **ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.**

4.02. Termination. This Agreement may be terminated by the Council for cause at any time upon fourteen (14) calendar days' written notice to the Grantee. Cause shall mean a material breach of this Agreement. If this Agreement is terminated prior to the Expiration Date, the Grantee shall receive payment on a pro rata basis for eligible Project activities described or identified in Attachments A and B that have been completed prior to the termination. Termination of this Agreement does not alter the Council's authority to recover grant funds on the basis of a later audit or other review, and does not alter the Grantee's obligation to return any grant funds due to the Council as a result of later audits or corrections. If the Council determines the Grantee has failed to comply with the terms and conditions of this Agreement and the applicable provisions of the Metropolitan Livable Communities Act, the Council may take any action to protect the Council's interests and may refuse to disburse additional grant funds and may require the Grantee to return all or part of the grant funds already disbursed.

4.03. Amendments. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. Contamination cleanup and site investigations must be completed no later than the "Expiration Date" identified at Page 1 of this Agreement. If the Grantee needs a change to the Project, a change in the budget, or a change in grant-funded activities the Grantee must submit to the Council **AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO THE EXPIRATION DATE**, a complete, written amendment request. All requirements must be met for a request to be considered complete.

V. GENERAL PROVISIONS

5.01. Equal Opportunity. The Grantee agrees it will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation, or age and will take affirmative action to insure applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training.

5.02. Conflict of Interest. The members, officers, and employees of the Grantee shall comply with all applicable state statutory and regulatory conflict of interest laws and provisions.

5.03. Liability. Subject to the limitations provided in Minnesota Statutes chapter 466, to the fullest extent permitted by law, the Grantee shall defend, indemnify, and hold harmless the Council and its members, employees, and agents from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the conduct or

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implementation of the Project activities funded by this Grant, except to the extent the claims, damages, losses, and expenses arise from the Council's own negligence. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, United States Code, Title 42, sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code, Title 42, sections 6901 *et seq.* This obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this Section shall survive the expiration or termination of this Agreement. This indemnification shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466 or other applicable state or federal law.

5.04. Acknowledgments and Signage. The Grantee will acknowledge the financial assistance provided by the Council in promotional materials, press releases, reports, and publications relating to the Project activities described or identified in Attachments A and B which are funded in whole or in part with the grant funds. The acknowledgment will contain the following or comparable language:

*Financing for this project was provided by the Metropolitan Council
Metropolitan Livable Communities Fund*

Until the Project activities funded by this Agreement are completed, the Grantee will ensure the above acknowledgment language, or alternative language approved by the Council's authorized agent, is included on all signs (if any) located at the Project site that identify Project funding partners or entities providing financial support for the Project. The acknowledgments and signage should refer to the "Metropolitan Council" (not "Met Council" or "Metro Council").

5.05. Permits, Bonds and Approvals. The Council assumes no responsibility for obtaining any applicable local, state, or federal licenses, permits, bonds, authorizations, or approvals necessary to perform or complete the Project activities described or identified in Attachments A and B. The Grantee and its developer(s), if any, must comply with all applicable licensing, permitting, bonding, authorization, and approval requirements of federal, state, and local governmental and regulatory agencies, including conservation districts.

5.06. Subgrantees, Contractors, and Subcontractors. The Grantee shall include in any subgrant, contract, or subcontract for Project activities appropriate provisions to ensure subgrantee, contractor, and subcontractor compliance with all applicable state and federal laws and this Agreement. Along with such provisions, the Grantee shall require that contractors and subcontractors performing work covered by this Grant obtain all required permits, licenses, and certifications, and comply with all applicable state and federal Occupational Safety and Health Act regulations, especially the federal

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Hazardous Waste Operations and Emergency Response standards under Code of Federal Regulations, Title 29, sections 1910.120 and 1926.65.

5.07. Stormwater Discharge and Water Management Plan Requirements. If any grant funds are used for urban site redevelopment, the Grantee shall at such redevelopment site meet or require to be met all applicable requirements of:

- (a) Federal and state laws relating to stormwater discharges including, without limitation, any applicable requirements of Code of Federal Regulations, Title 40, parts 122 and 123; and
- (b) The Council's *2040 Water Resources Policy Plan* and the local water management plan for the jurisdiction within which the redevelopment site is located.

5.08. Authorized Agent. Payment request forms, written reports, and correspondence submitted to the Council pursuant to this Agreement shall be directed to:

Metropolitan Council
Attn: LCA Grants Administration
390 Robert Street North
Saint Paul, Minnesota 55101-1805

5.09. Non-Assignment. Minnesota Statutes section 473.252, subdivision 3 requires the Council to distribute grant funds to eligible "municipalities," metropolitan-area counties, or "development authorities" for projects in municipalities participating in the Local Housing Incentives Account program. Accordingly, this Agreement is not assignable and shall not be assigned by the Grantee.

5.10. Authorization to Reproduce Images. The Grantee certifies that the Grantee: (a) is the owner of any renderings, images, perspectives, sections, diagrams, photographs, or other copyrightable materials (collectively, "copyrightable materials") that are in the Grantee's application, or are submitted to the Council as part of the grant application review process or after grant award, or that the Grantee is fully authorized to grant permissions regarding the copyrightable materials; and (b) the copyrightable materials do not infringe upon the copyrights of others. The Grantee agrees the Council has a nonexclusive royalty-free license and all necessary permissions to reproduce and publish the copyrightable materials for noncommercial purposes, including but not limited to press releases, presentations, reports, and on the internet. The Grantee also agrees the Grantee will not hold the Council responsible for the unauthorized use of the copyrightable materials by third parties.

5.11 Warranty of Legal Capacity. The individuals signing this Agreement on behalf of the Grantee and on behalf of the Council represent and warrant on the Grantee's and the Council's behalf respectively that the individuals are duly authorized to execute this Agreement on the Grantee's and the Council's behalf respectively and that this Agreement constitutes the Grantee's and the Council's valid, binding, and enforceable agreements.

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IN WITNESS WHEREOF, the Grantee and the Council have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective on the date of final execution by the Council.

CITY OF HOPKINS

METROPOLITAN COUNCIL

By: _____

By: _____

Title: _____

LisaBeth Barajas, Director
Community Development Division

Date: _____

Date: _____

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

ATTACHMENT A
PROJECT SUMMARY

This attachment comprises this page and the succeeding page(s) which contain(s) a summary of the Project identified in the application for Tax Base Revitalization Account contamination cleanup and site investigation grant funds submitted in response to the Council's notice of availability of Tax Base Revitalization Account grant funds for the Funding Cycle identified at Page 1 of this Agreement. The summary reflects the proposed Project for which the Grantee was awarded grant funds by the Council Action, and may reflect changes in Project funding sources, changes in funding amounts, or minor changes in the proposed Project that occurred subsequent to application submission. The application is incorporated into this Agreement by reference and is made a part of this Agreement as follows. If the application or any provision in the application conflicts with or is inconsistent with the Council Action, other provisions of this Agreement, or the Project Summary contained in this Attachment A, the terms, descriptions and dollar amounts reflected in the Council Action or contained in this Agreement and the Project Summary shall prevail. For the purposes of resolving conflicts or inconsistencies, the order of precedence is: (1) the Council Action; (2) this Agreement; (3) the Project Summary; and (4) the grant application.

Project Summary

Grant # SG-10536
Grant Type SEED
Applicant City of Hopkins
Project Name Cold Storage
Project Location 325 Blake Road North, Hopkins
Council District 5 – Steve Elkins

Project Detail

Contaminant history	The 16.8-acre site is currently used by a vacant cold storage facility that has begun decommissioning the refrigeration system. Contaminants of concern include asbestos-containing materials within the building, petroleum impacts and polynuclear aromatic hydrocarbons in the soils. (The grant request is for required abatement prior to demolition within the existing 277,000 square foot building only).
Funding	
Requested amount	\$805,706
Funding partner requests	\$0
Previous LCA funding	None
Match	25% of total eligible costs requested for reimbursement including environmental investigation and abatement plan costs incurred to date, whichever is less
Comments	Demolition costs to be reimbursed by a grant focused on accessing Cork/Tar Wall Insulation are limited to a maximum of \$480,000. Costs for decommissioning of the refrigeration system are <u>not</u> eligible for grant funding.
Use of Funds	
Amount	Uses to be completed by the end of the grant term
\$805,700	For asbestos abatement and limited demolition.

