

**SECOND AMENDMENT TO
CONTRACT FOR PRIVATE REDEVELOPMENT**

THIS SECOND AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the ___ day of October, 2020 (the “Second Amendment”), is between the ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and GAUGHAN DEVELOPMENT LLC, a Minnesota limited liability company (the “Redeveloper”), and amends the Contract for Private Redevelopment, dated July 3, 2018 (the “Original Agreement”), between the Authority and the Redeveloper, as amended by the First Amendment to Contract for Private Development, dated December 18, 2019 (the “First Amendment”). The Original Agreement, as amended by the First Amendment and this Second Amendment is referred to herein as the “Agreement.”

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended (the “EDA Act”) and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; and

WHEREAS, the City has undertaken a program to promote economic development and job opportunities and to promote the development and redevelopment of land which is underutilized within the City, and in this connection created the Minnesota River Valley Housing and Redevelopment Project No. 1 (the “Project”) in an area (the “Project Area”) located in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”); and

WHEREAS, by resolution dated April 4, 1995, the City Council of the City transferred control, authority, and operation of the Project to the Authority, which currently administers the Project, exercising the powers of a housing and redevelopment authority under the HRA Act, in accordance with the EDA Act; and

WHEREAS, pursuant to the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise and promote the development of housing within the City; and

WHEREAS, the City and the Authority have established Tax Increment Financing District No. 19 (the “TIF District”), a redevelopment district, within the Project and have adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Project and promote the development of housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Redeveloper intends to acquire from the Authority certain property described in EXHIBIT A attached hereto (the “Redevelopment Property”) within the TIF District and proposes to develop approximately 170 market-rate luxury apartment units, including approximately 125 garage parking spaces and approximately 70 surface parking spaces (for a total of approximately 195 parking spaces on the Redevelopment Property, in addition to public street parking), and 3,000 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority is prepared to reimburse the Redeveloper for certain land acquisition costs, site improvement costs related to the Minimum Improvements, and other costs eligible to be reimbursed with tax increment; and

WHEREAS, the Authority believes that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Project has been undertaken and is being assisted; and

WHEREAS, the Authority and the Redeveloper entered into the Original Agreement, as amended by the First Amendment, in order to set forth the conditions of the Redeveloper’s construction of the Minimum Improvements; and

WHEREAS, the Redeveloper discovered additional contamination on the Redevelopment Property and costs of cleaning up the contamination are expected to be \$925,625; and

WHEREAS, the Authority has acquired certain parcels of the Redevelopment Property and has proposed to demolish the existing houses on such parcels, which is expected to cost \$131,200; and

WHEREAS, asbestos remediation will be required in connection with the demolition of the houses and the Authority has agreed to cause the remediation to occur with the proceeds of a grant from the Metropolitan Council; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

Amendments

Section 1.1. Amendments to Section 1.1 of the Agreement. The following definitions are hereby amended as follows (deleted language is stricken, and new language is underlined):

“Agreement” means the Contract for Private Redevelopment, dated July 3, 2018, between the Authority and the Redeveloper, as amended by the First Amendment to Contract for Private Development, dated December 18, 2019, as amended by the First Amendment and this Second Amendment.

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Redevelopment Property located in the TIF District and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting therefrom 10% of the Tax Increment to be used to reimburse the Authority for administrative expenses; provided, however, for as long as the

Redevelopment Property Purchase Price has not been paid in full to the Authority, “Available Tax Increment” shall mean Tax Increment attributable to the Redevelopment Property located in the TIF District and paid to the Authority by the County in the six (6) months preceding the Payment Date after (i) first deducting 10% of the Tax Increment to be used to reimburse the Authority for administrative expenses; and (ii) second deducting an additional 22.3% of the Tax Increment to be used to reimburse the Authority for the Redevelopment Property Purchase Price. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement.

Section 1.2. Additions to Section 1.1 of the Agreement. The following definitions are hereby added to Section 1.1 of the Agreement.

“DEED Grant” means the Contamination Cleanup Grant in the amount of \$332,732 received by the City from the Department of Employment and Economic Development for the purposes of cleaning up contamination.

“DEED Grant Agreement” means the Contamination Cleanup Grant Contract, Grant No. CCGP-19-0028-Z-FY20 (Riverfront Bluff Project), dated February 25, 2020. The DEED Grant Agreement is attached hereto as EXHIBIT I.

“Met Council Grant” means the Livable Communities Tax Base Revitalization Grant in the amount of \$458,600 received by the City from the Metropolitan Council for the purposes of cleaning up contamination.

“Met Council Grant Agreement” means an agreement that will be executed by the City and responsibilities assigned to the Redeveloper. The Met Council Grant Agreement is attached hereto as EXHIBIT J.

Section 1.3. Addition of Section 3.8 and Section 3.9 to the Agreement. The following sections shall be added to Article III of the Agreement.

Section 3.8. DEED Grant. The Redeveloper has been provided with a copy of the DEED Grant Agreement between the City and DEED. The Redeveloper agrees to comply with all of the requirements of the DEED Grant Agreement, including, but not limited to, the following:

- (a) The Redeveloper shall comply with all applicable OSHA regulations, including but not limited to, the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- (b) The Redeveloper shall list any vacant or new positions with the state workforce center pursuant to Minn. Stat. Section 116L.66, subd.1. The Redeveloper shall list any job vacancy in its personnel complement with MinnesotaWorks.net at www.minnesotaworks.net as soon as it occurs.
- (c) The Redeveloper shall ensure that all contractors and subcontractors performing work covered by the DEED Grant are paid for their work that is satisfactorily completed.
- (d) The Redeveloper shall comply with Minn. Stat. Section 471.345 if it is using DEED Grant funds for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair, or maintenance of real or personal property.
- (e) The Redeveloper shall have workers’ compensation insurance coverage or cause its contractors to have workers’ compensation insurance in compliance with Minn. Stat. Section 176.181, subd. 2.

- (f) The Redeveloper shall assist the City with preparing the annual reports required by the State.

Section 3.9. Met Council Grant. The Redeveloper has been provided with a copy of the Met Council Grant Agreement between the City and DEED. The Redeveloper agrees to comply with all of the requirements of the DEED Grant Agreement, including, but not limited to, the following:

- (a) The Redeveloper will use the Met Council grant funds solely for eligible costs under the MET Council Grant Agreement.
- (b) The Redeveloper shall assist with payment request forms and documentation to obtain disbursements of the Met Council Grant.
- (c) The Redeveloper shall establish and maintain accurate and complete records related to the Met Council grant funds.
- (d) The Redeveloper shall comply with all audit and reporting requirements.
- (e) The Redeveloper shall assist the City with preparing the semi-annual reports required by the Met Council.
- (f) The Redeveloper shall provide all necessary information to obtain a certificate of completion from the Met Council.

Section 1.4. Addition of Section 3.10 to the Agreement. The following section shall be added to Article III of the Agreement.

Section 3.10. Street and Storm Water Improvements. The Redeveloper will construct the road and stormwater improvements as described in EXHIBIT F. The Redeveloper agrees to pay a portion of the costs of the City's street and stormwater improvements adjacent to the Development Property, including restoration of part of the adjacent park following the construction of the storm water treatment system on the park property. The estimated total cost of the project is \$423,500 and is expected to be paid with the following funds:

City Contribution (from Capital Improvement Program)	\$296,450
City Contribution (from Capital Improvement Program)	25,410
EDA Contribution (from Interfund Loan)	38,115
Redeveloper Contribution	63,525
Total	\$423,500

Upon the Redeveloper's completion of the street and stormwater improvements described in EXHIBIT F, the City's engineer will inspect the improvements. Once the street and stormwater improvements are approved by the City's engineer, the City and the Authority shall provide the Redeveloper the City and Authority contributions described above within thirty (30) days of the City engineer's approval.

The City and the Redeveloper will enter into a separate developer's agreement for the construction of storm water, road, sidewalk and other required infrastructure similar to the concept in EXHIBIT F. The separate developer's agreement will provide that the Redeveloper will construct underground stormwater improvements in the adjacent park and will restore park property upon completion of the underground stormwater improvements. Upon the City engineer's inspection and approval of the underground stormwater improvements, the City shall take ownership of the underground stormwater improvements and shall maintain the underground stormwater improvements.

Section 1.5. Addition of Section 3.11 to the Agreement. The following section shall be added to Article III of the Agreement.

Section 3.11. Demolition of Existing Houses. The Authority will cause the structures located at 303 1st Avenue West, 313 1st Avenue West, and 116 Atwood St. North to be demolished. The demolition is expected to cost \$131,200. The Redeveloper agrees to pay the Authority for the costs of the demolition on or before Closing.

Section 1.6. Addition of Section 3.12 to the Agreement. The following section shall be added to Article III of the Agreement.

Section 3.12. Met Council and DEED Grant. The City shall use the proceeds of the Met Council and DEED Grants to finance the costs of asbestos remediation in connection with the demolition of the structures located at 303 1st Avenue West, 313 1st Avenue West, and 116 Atwood St. North. The Authority has expended approximately \$10,000 on asbestos removal and monitoring on the Development Property and it will be reimbursed from the proceeds of the Met Council or the DEED Grant for such expenditures. The remaining proceeds of the Met Council and DEED Grant funds will be utilized to pay the costs of additional contamination removal as set forth in EXHIBIT E. Both the Met Council and DEED Grants will be disbursed after the costs of remediation or demolition are paid by the City, the Authority, or the Redeveloper and requisitions for reimbursement are made to DEED or Met Council. Grant funds will be delivered to the City by DEED and Met Council and the City will deliver reimbursement amounts directly to the entity that paid the costs of remediation or demolition.

Section 1.7. Amendments to Section 4.3 of the Original Agreement. Section 4.3 of the Original Agreement is hereby amended as follows (deleted language is stricken, and new language is underlined):

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Redeveloper will commence the construction of the Minimum Improvements by ~~October 1, 2020~~ January 15, 2021 and shall substantially complete the Minimum Improvements by ~~October 1, 2022~~ May 31, 2023.

(b) Construction is considered to be commenced upon the beginning of physical improvements to the Redevelopment Property beyond grading.

(c) All work with respect to the Minimum Improvements to be constructed or provided by the Redeveloper on the Redevelopment Property must be in substantial conformity with the Construction Plans as submitted by the Redeveloper and approved by the Authority. The Redeveloper agrees for itself, its successors and assigns, and every successor in interest to the Redevelopment Property, or any part thereof, that the Redeveloper, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Redevelopment Property through the construction of the Minimum Improvements thereon, and that the construction will in any event be commenced and completed within the period specified in Section 4.3(a) hereof. Until construction of the Minimum Improvements has been completed, the Redeveloper will make reports, in the detail and at the times as may reasonably be requested by the Authority, as to the actual progress of the Redeveloper with respect to the construction.

Section 1.8. Addition of Section 6.4 to the Agreement. The following section shall be added to Article VI of the Agreement.

Section 6.4. Minimum Assessment Agreement.

(a) On or before the date of Closing, the Redeveloper shall execute the Minimum Assessment Agreement pursuant to Minnesota Statutes, Section 469.177, subdivision 8, specifying an assessor's minimum market value for the Development Property with the Minimum Improvements constructed thereon.

(b) The Minimum Assessment Agreement shall be substantially in the form attached hereto as EXHIBIT G. Nothing in the Minimum Assessment Agreement shall limit the discretion of the assessor to assign a market value to the property in excess of such assessor's minimum market value nor prohibit the Redeveloper from seeking through the exercise of legal or administrative remedies a reduction in such market value for property tax purposes; provided, however, that the Redeveloper shall not seek a reduction of such market value below the assessor's minimum market value in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect for the period described therein.

Section 1.9. Amendment to Exhibit A of the Original Agreement. Exhibit A of the Original Agreement (Description of Redevelopment Property) is hereby deleted in its entirety and replaced with the attached EXHIBIT A.

Section 1.10. Addition of Exhibit E to the Agreement. The attached EXHIBIT E (Additional Contamination Removal Costs) is hereby added to the Agreement.

Section 1.11. Addition of Exhibit F to the Agreement. The attached EXHIBIT F (Infrastructure Improvements) is hereby added to the Agreement.

Section 1.12. Addition of Exhibit G to the Agreement. The attached EXHIBIT G (Schematic of Building) is hereby added to the Agreement.

Section 1.13. Addition of Exhibit H to the Agreement. The attached EXHIBIT H (Form of Minimum Assessment Agreement) is hereby added to the Agreement.

Section 1.14. Addition of Exhibit I to the Agreement. The attached EXHIBIT I (Deed Grant Agreement) is hereby added to the Agreement.

Section 1.14. Addition of Exhibit J to the Agreement. The attached EXHIBIT J (Met Council Grant Agreement) is hereby added to the Agreement.

ARTICLE II

Miscellaneous

Section 2.1. Effective Date. The amendments made to the Original Agreement, as set forth in this Second Amendment, shall be effective as of the date and year first written above.

Section 2.2. Certain Defined Terms. Terms used in this Second Amendment and not defined herein shall have the meanings given in the Original Agreement.

Section 2.3. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 2.4. Recording. The Authority may record this Second Amendment with the County Recorder or the Registrar of Titles of the County, as the case may be. The Redeveloper shall pay all costs for recording.

Section 2.5. Confirmation of Original Agreement. Except as specifically amended by the First Amendment and this Second Amendment, the Original Agreement is hereby ratified and confirmed and remains in full force and effect.

IN WITNESS WHEREOF, the Authority has caused this Second Amendment to Contract for Private Redevelopment to be duly executed in its name and behalf and the Redeveloper has caused this Second Amendment to Contract for Private Redevelopment to be duly executed in its name and behalf, all as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Jay Whiting, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

GAUGHAN DEVELOPMENT LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2020, by
_____, the _____ of Gaughan Development LLC, a
Minnesota limited liability company, on behalf of the Redeveloper.

Notary Public

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

EXHIBIT A

DESCRIPTION OF REDEVELOPMENT PROPERTY

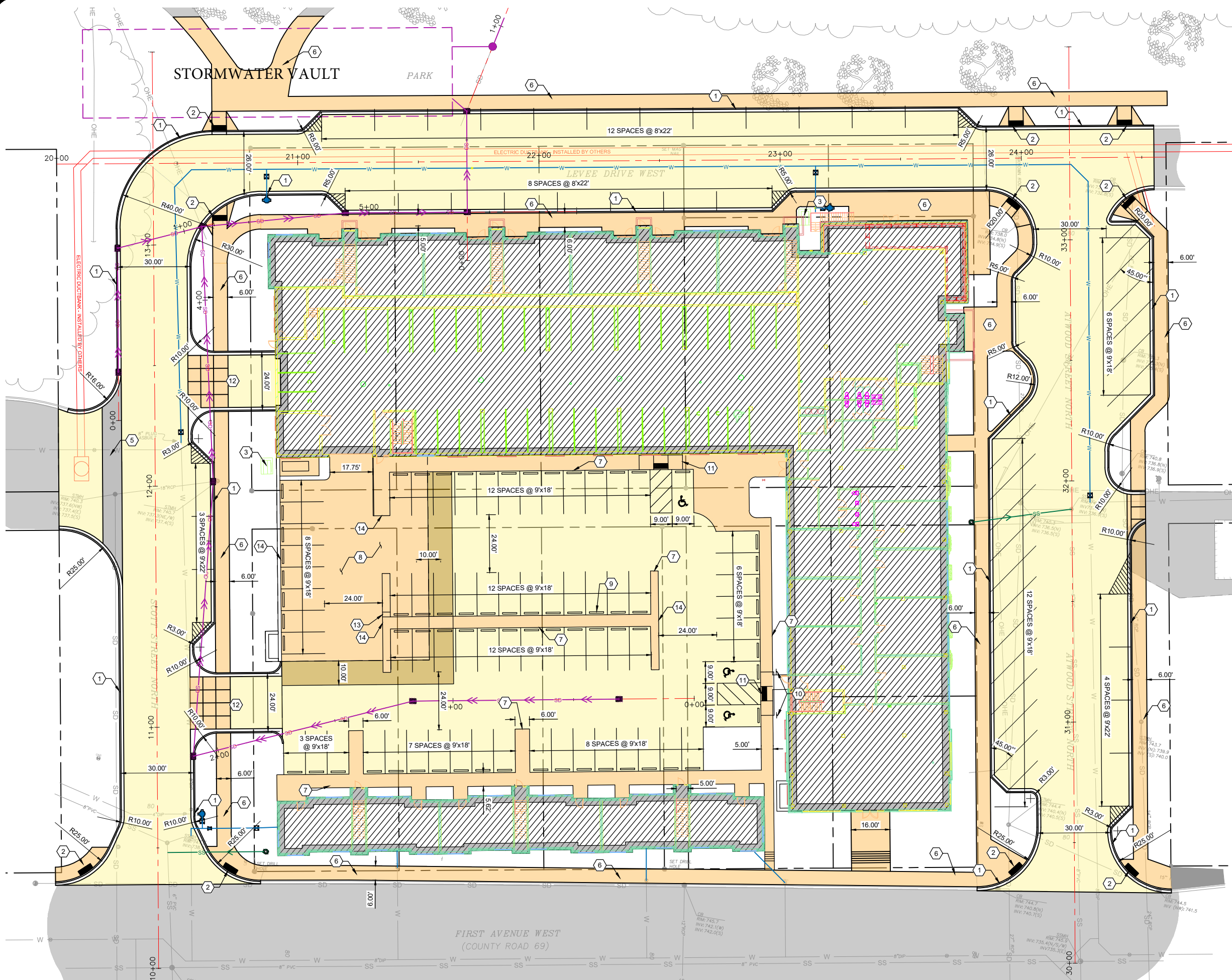
Lot 1, Block 1, River Bluff Addition, Scott County, Minnesota

EXHIBIT E

ADDITIONAL CONTAMINATION REMOVAL COSTS

Activities	Costs
Investigation and RAP Development	\$23,600
Contaminated Soil Excavation, Transport, and Disposal	737,425
Clean Fill Import, Placement, and Compaction	112,000
RAP Implementation, Oversight, and Reporting	52,600
Total	\$925,625

EXHIBIT F
INFRASTRUCTURE IMPROVEMENTS



- CONSTRUCTION NOTES**
- 1. CONSTRUCT CONCRETE PAVEMENT PER DETAIL 5002. SEE PLAN FOR SPECIFIC DIMENSIONS.
 - 2. CONSTRUCT ASPHALT PAVEMENT PER DETAIL 1004. SEE PLAN FOR SPECIFIC DIMENSIONS.
 - 3. CONSTRUCT CONCRETE APRON PER DETAIL 5004.
- ALL CURB RADIUS DIMENSIONS ARE OF THE BACK OF CURB UNLESS OTHERWISE NOTED.

- CONSTRUCTION NOTES**
- 1. INSTALL TYPE B-618 CURB AND GUTTER PER CITY OF SHAKOPEE DETAIL 1003
 - 2. INSTALL PEDESTRIAN CURB RAMP PER CITY OF SHAKOPEE DETAIL 5003
 - 3. TRANSFORMER LOCATION. REFER TO ELECTRICAL
 - 4. INSTALL 4" VALLEY GUTTER PER CITY OF SHAKOPEE DETAIL 4005 (MODIFIED TO 4")
 - 5. INSTALL 8" VALLEY GUTTER PER CITY OF SHAKOPEE DETAIL 4005
 - 6. INSTALL CONCRETE SIDEWALK PER CITY OF SHAKOPEE DETAIL 4001
 - 7. INSTALL THICKENED EDGE SIDEWALK PER DETAIL 4/C36
 - 8. INSTALL CONCRETE PAVEMENT OVER UNDERGROUND PARKING GARAGE. SEE STRUCTURAL PLANS FOR REINFORCEMENT AND THICKNESS
 - 9. INSTALL PRECAST CONCRETE WHEEL STOP PER DETAIL 3/C36
 - 10. INSTALL HANDICAP PARKING SIGN PER DETAIL 1/C36
 - 11. INSTALL PEDESTRIAN CURB RAMP PER DETAIL 2/C36
 - 12. INSTALL CONCRETE DRIVEWAY PER CITY OF SHAKOPEE DETAIL 4005
 - 13. INSTALL 2" CURB CUT THROUGH ISLAND PER DETAIL
 - 14. INSTALL SURMOUNTABLE CURB AND GUTTER PER CITY OF SHAKOPEE DETAIL 1003

SHAKOPEE MIX USE DEVELOPMENT
GAUGHAN CO.
SHAKOPEE, MINNESOTA

DRAWING TYPE
CONST
PREPARED BY
EJ
CHECKED / APPROVED
JN / CDM
DATE
SEP 2020
PROJECT NUMBER
14416-2018-001
SHEET
5 of 38
DRAWING
C5

EXHIBIT G

SCHEMATIC OF BUILDING



FIRST AVENUE WEST

1/8" = 1'-0"



FIRST AVENUE PERSPECTIVE
*A13 | 1/10/27

Shakopee, MN

05/25/18



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APARTMENT ENTRY

1/8" = 1'-0"

GAUGHAN

SCOTT STREET PERSPECTIVE
A14 | 1/26/27

Shakopee, MN

K&H Architecture
05/25/16
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RESTAURANT ENTRY

1/8" = 1'-0"

GAUGHAN

LEVÉE DRIVE PERSPECTIVE

*A15 | 1/10/2017



Shakopee, MN

05/25/18

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EXHIBIT H

FORM OF MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ____ day of _____, 2020 (the “Minimum Assessment Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY FOR THE CITY OF SHAKOPEE, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and GAUGHAN DEVELOPMENT LLC, a Minnesota limited liability company, its successors and assigns (the “Owner”).

WITNESSETH:

WHEREAS, the Authority and the Owner entered into a Contract for Private Redevelopment, dated July 3, 2018, as amended by the First Amendment to Contract for Private Redevelopment, dated December 18, 2019, and as further amended by the Second Amendment to Contract for Private Redevelopment, dated October 6, 2020, (collectively, the “Agreement”), concerning the property legally described on EXHIBIT A attached hereto (the “Redevelopment Property”); and

WHEREAS, pursuant to the Agreement, the Owner will develop on the Redevelopment Property approximately 170 market-rate luxury apartment units, including approximately 125 garage parking spaces and approximately 70 surface parking spaces (for a total of approximately 195 parking spaces on the Redevelopment Property, in addition to public street parking), and 3,000 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, the Authority and the Owner desire to establish a minimum market value for the Redevelopment Property and the Minimum Improvements to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subdivision 8; and

WHEREAS, the Authority and the County Assessor for Scott County, Minnesota have reviewed the plans for the Minimum Improvements which the Owner has agreed to construct on the Redevelopment Property pursuant to the Agreement; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made herein and in the Agreement by each to the other, do hereby agree as follows:

1. The Minimum Market Value for the Redevelopment Property with the Minimum Improvements shall be \$25,950,000 (the “Minimum Market Value”). The parties agree that the Minimum Market Value shall be placed against the Redevelopment Property as of January 2, 2022, for taxes payable beginning in 2023, notwithstanding any failure to start or complete construction of such Minimum Improvements by that date.

2. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date.

3. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The Owner shall pay all costs of recording this Minimum Assessment Agreement.

4. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

5. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the parties and their successors and assigns.

6. Each of the parties has authority to enter into this Minimum Assessment Agreement and to take all actions required of it and has taken all actions necessary to authorize the execution and delivery of this Minimum Assessment Agreement.

7. In the event any provision of this Minimum Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Redevelopment Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

9. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor may any of its terms be modified except by a writing authorized and executed by all parties hereto.

10. This Minimum Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

12. Subject to the terms of the Agreement, the Owner shall have the normal remedies available under the law to contest the Assessor's assessed value of the Redevelopment Property in excess of the Minimum Market Value.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Authority has caused this Minimum Assessment Agreement to be duly executed in its name and behalf and the Owner has caused this Minimum Assessment Agreement to be duly executed in its name and behalf, all as of the date and year first written above.

**ECONOMIC DEVELOPMENT AUTHORITY FOR
THE CITY OF SHAKOPEE, MINNESOTA**

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Jay Whiting, the President of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by William H. Reynolds, the Executive Director of the Economic Development Authority for the City of Shakopee, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

GAUGHAN DEVELOPMENT LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2020, by
_____, the _____ of Gaughan Development LLC, a
Minnesota limited liability company, on behalf of the Owner.

Notary Public

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

CERTIFICATION BY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Minimum Assessment Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market value assigned to such land and improvements at the property, legally described on EXHIBIT A attached hereto, shall be not less than \$25,950,000 as of January 2, 2022, for taxes payable beginning in 2023, until termination of the Minimum Assessment Agreement.

County Assessor for Scott County, Minnesota

STATE OF MINNESOTA)
) ss.
COUNTY OF SCOTT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by _____, the County Assessor of Scott County, Minnesota.

Notary Public

EXHIBIT A TO MINIMUM ASSESSMENT AGREEMENT
LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY

The Redevelopment Property is legally described as follows:

Lot 1, Block 1, River Bluff Addition, Scott County, Minnesota.

EXHIBIT B TO MINIMUM ASSESSMENT AGREEMENT

Section 469.177, subd. 8. Assessment Agreements. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully

executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.

EXHIBIT I
DEED GRANT AGREEMENT

STATE OF MINNESOTA
GRANT CONTRACT

SC #: 172313

DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT
BUSINESS AND COMMUNITY DEVELOPMENT DIVISION

Contamination Cleanup Grant Contract

Grant No: CCGP-19-0028-Z-FY20
Riverfront Bluff Project

This grant contract is between the State of Minnesota, acting through the Department of Employment and Economic Development, Business and Community Development Division, (State) and the City of Shakopee (Grantee).

Recitals

1. Under Minn. Stat. § 116J.554 the State is empowered to enter into this grant.
2. The State is in need of programs to do the following: reduce the potential threat of harmful contaminants to the public's health and the environment; to create new jobs and increase the tax base; and provide other public benefits by redeveloping polluted and unproductive sites.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State.

Grant Contract

1 Term of Grant Contract

- 1.1 **Effective date.** January 7, 2020, or the date the State obtains all required signatures under Minn. Stat. § 16B.98, subd. 5, whichever is later. Pursuant to Minn. Stat. § 16B.98, subd. 7, no payments will be made to the Grantee until this grant contract is fully executed.
- 1.2 **Expiration date.** December 31, 2022, or until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. Accounting; 10. Government Data Practices and Intellectual Property; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue; 15. Data Disclosure; 16. Reporting; 18. Conflict of Interest; 19. Minnesota Business Subsidy Law; and 20. State and Federal Environmental Standards.

2 Grantee's Duties

- 2.1 **Duties, Deliverables, and Completion Dates.** The Grantee, who is not a state employee, will perform the following duties and provide the deliverables as outlined below.
 - (a) Administer these grant funds in accordance with Minn. Stat. §§ 116J.551 – 116J.559 and the application submitted on November 1, 2019 for funding for the Riverfront Bluff Project, which is incorporated into this grant agreement and the provisions of this grant agreement. Any

modification made to the approved application must be approved by the State.

- (b) Promptly notify the State of any proposed material change in the scope of the project as submitted in the grant application, budget as defined in Section 4.1(a) below, or entire project's completion date, which must be approved by the State, prior to implementation.
- (c) Provide evidence to the State prior to the closeout of the grant that the cleanup and/or investigation has been completed and approved by the Minnesota Pollution Control Agency.
- (d) It is expected that the site will be redeveloped as proposed in the grant application and upon which funding was based. Any material change in the development plans for the site must be presented to the State and approved.
- (e) Adhere to all other requirements of this grant agreement.

2.2 *Provisions for Contracts and Sub-grants.*

- (a) ***Contract Provisions.*** The Grantee must include in any contract and sub-grant, in addition to provisions that define a sound and complete agreement, such provisions that require contractors and sub-grantees to comply with applicable state and federal laws. Along with such provisions, the Grantee must require that contractors performing work covered by this grant be in compliance with all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 CFR 1910.120 and 29 CFR 1926.65).
- (b) ***Ineligible Use of Grant Funds.*** The dollars awarded under this grant agreement are grant funds and shall only be used by Grantee or awarded by Grantee to third parties as grant funds and cannot take the form of a loan under any circumstance. Grantee shall not use, treat, or convert the grant funds into an interest-bearing loan, a non-interest-bearing loan, a deferred loan, a forgivable deferred loan, or any other type of loan. Further, Grantee shall include in any contract or sub-grant awarding the grant funds to a third party all the provisions and requirements of this grant agreement, including the requirement that these dollars are grant funds only and cannot be used, treated or converted into any type of loan.
- (c) ***Job Listing Agreements.*** Minn. Stat. § 116L.66, subd.1, requires a business or private enterprise to list any vacant or new positions with the state workforce center if it receives \$200,000 or more a year in grants from the State. If applicable, the business or private enterprise shall list any job vacancy in its personnel complement with MinnesotaWorks.net at www.minnesotaworks.net as soon as it occurs.
- (d) ***Payment of Contractors and Subcontractors.*** The Grantee must ensure that all contractors and subcontractors performing work covered by this grant are paid for their work that is satisfactorily completed.

3 **Time**

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant, time is of the essence.

4 **Consideration and Payment**

4.1 ***Consideration.*** State will pay the Grantee under this grant contract as follows:

(a) **Project Costs.** The following table represents the total Project Costs.

Activities	Amount
Investigation and RAP Development	\$23,600
Contaminated Soil Excavation, Transport, and Disposal	\$737,425
Clean Fill Import, Placement, and Compaction	\$112,000
RAP Implementation, Oversight, and Reporting	\$52,600
TOTAL	\$925,625

(b) **Total Obligation.** The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed \$332,732.

In accordance with Minn. Stat. § 116J.554, subd. 1, the grant may pay for up to 75 percent of the project costs for a qualifying site. This requires a local match of at least 25 percent. For the purpose of this project, the local match portion is \$592,893. Of the total match requirement, 12 percent of the cleanup costs as defined in Minn. Stat. § 116J.552, subd. 2 must come from the municipality's general fund, a property tax levy for that purpose, or other unrestricted money available to the municipality. The rest of the local match may be paid with tax increments, regional, state, or federal money available for the redevelopment of brownfields or any other money available to the municipality.

(c) **Travel Expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract are considered administrative in nature and not permitted. This does not include costs for contractors to complete the activities listed in Section 4.1(a), which may be considered eligible at the discretion of the State.

4.2 **Payment**

(a) **Invoices.** The State will disburse funds to the Grantee pursuant to this Contract, based upon payment requests submitted by the Grantee and reviewed and approved by the State. Payment requests must be accompanied by supporting invoices that relate to the activities in the approved budget. The amount of grant funds requested by the Grantee cannot exceed seventy five percent (75%) of the total approved project costs incurred by the Grantee as supported by invoices. The State will provide payment request forms.

Invoices may be submitted on a monthly basis; however, at a minimum, an invoice for an award shall be submitted by the grantee for expenses incurred 25 days after the end date of the state fiscal year of June 30th. In order to ensure that all funds are drawn prior to the expiration date of the grant, all payment requests must be received at least 30 days prior to the grant-term expiration date.

(b) **Eligible Costs.** Eligible costs include the costs identified in the Section 4.1(a) of this Contract that are incurred during the contract period. The Grantee may not use these funds to provide loans to other entities or for administrative costs associated with managing the project this grant is funding. Pursuant to Minn. Stat. § 116J.552, subd. 2, costs of implementing the response action plan (RAP) incurred before the grant award date may be eligible at the discretion of the State, if the costs were completed after the RAP was approved by the Minnesota Pollution Control Agency and the RAP was approved within 180 days of the application deadline. Costs incurred for the development of

a RAP incurred prior to grant award may be considered eligible at the discretion of the State. Any reimbursement made for services provided prior to the effective date of the grant will be governed by the terms of the grant.

(c) **Program Income.** Program income generated from grant-funded activities on hand at the end of the grant period must be returned to the State unless the State has approved a re-use of the income.

4.3 **Contracting and Bidding Requirements.** Grantees that are municipalities must comply with Minn. Stat. § 471.345 if they are contracting funds from this grant agreement for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair, or maintenance of real or personal property.

5 **Conditions of Payment**

All services provided by the Grantee under this grant contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6 **Authorized Representative**

The State's Authorized Representative is Ryan Bloomberg, Grants Specialist, 332 Minnesota Street, Suite E200, St. Paul, MN 55101, 651-259-7452, ryan.bloomberg@state.mn.us, or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Michael Kerski, Director of Planning and Development, 485 Gorman Street, Shakopee, MN 55379, 952-233-9346, mkerski@shakopeemn.gov. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7 **Assignment, Amendments, Waiver, and Grant Contract Complete**

7.1 **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 **Amendments.**

(a) **Amendments.** Any amendments to this grant contract, with the exception of Grant Adjustment Notices (GANs), must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

(b) **Grant Adjustment Notices (GANs).** GANs must be approved by the State in writing and require a written change request by the Grantee. A GAN may be used for the purposes of transferring budget amounts between line items that do not change the contract value, or other grant status activity. All other changes require a formal amendment as stated in paragraph 7.2(a).

7.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

7.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8 **Liability**

Subject to the provisions and limitations of Minn. Stat. § 466, the Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

9 **Accounting**

Under Minn. Stat. § 16B.98, subd. 8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt, and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

The Grantee shall maintain adequate financial records consistent with generally accepted accounting principles. The Grantee shall submit accounting system records that track the use of grant proceeds and all matching funds by eligible Project Costs for each year in which grant disbursement and expenditures were made. The records shall reflect both expenditures and revenues and shall be submitted after all grant proceeds and matching funds have been expended or at the State's request.

10 **Government Data Practices and Intellectual Property**

10.1 **Government Data Practices.** The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

10.2 ***Intellectual Property Representations.*** The Grantee represents and warrants that Grantee's intellectual property used in the performance of this Contract does not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of Grantee's intellectual property used in the performance of this Contract infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing intellectual property as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

11 Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

12 Publicity and Endorsement

12.1 ***Publicity.*** Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract. For DEED logos and formatting, please contact Laura Winge at 651-259-7173 or laura.winge@state.mn.us.

12.2 ***Endorsement.*** The Grantee must not claim that the State endorses its products or services.

13 Governing Law, Jurisdiction, and Venue. Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14 Termination

14.1 *Termination by the State.* The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

14.2 *Termination for Cause.* The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. To validate that reasonable progress has been made, a Payment Request, as outlined in Section 4.2 must be submitted to the State before September 30, 2020 or such a later date requested by the Grantee and approved by the State, or the State's obligation to fund the Grant may be terminated. These invoices must be for eligible cleanup costs and does not include investigation costs incurred prior to the grant award. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

14.3 *Termination for Insufficient Funding.* The State may immediately terminate this grant contract if:

(a) It does not obtain funding from the Minnesota Legislature; or,

(b) If funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15 Data Disclosure

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

Other Provisions

16 Reporting

Grantee must submit to the State annual reports on the use of funds and the progress of the Project covering July 1st through June 30th of each year. The reports must be received by the State no later than July 25th of each year. The reports must identify specific Project goals listed in the application and quantitatively and qualitatively measure the progress of such goals. Grant payments shall not be made on grants, or subsequent grant awards made to the grantee, with past due progress reports. In addition, the Grantee shall submit a final report. The State will provide reporting forms.

17 Debarment and Suspension Certification

If applicable, the Grantee agrees to follow the President's Executive Order 12549 and the implementing regulation "Non-procurement Debarment and Suspension: Notice and Final Rule and Interim Final Rule," found at 53 FR 19189, May 26, 1988, as amended at 60 FR 33041, June 26, 1995, including Appendix B, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions;" unless excluded by law or regulation.

18 Conflict of Interest

The State will take steps to prevent individual and organizational conflicts of interest in reference to Grantees per Minn. Stat. § 16B.98 and Department of Administration, Office of Grants Management, Policy Number 08-01 Conflict of Interest Policy for State Grant-Making. When a conflict of interest concerning State grant-making is suspected, disclosed, or discovered, transparency shall be the guiding principle in addressing it.

In cases where a perceived, potential, or actual individual or organizational conflict of interest is suspected, disclosed, or discovered by the Grantee throughout the life of the grant agreement, they must immediately notify the State for appropriate action steps to be taken, as defined above.

19 Minnesota Business Subsidy Law

The Grantee must comply, if appropriate, with the Minnesota Business Subsidy Law, Minn. Stat. §§ 116J.993 – 116J.995.

20 State and Federal Environmental Standards

The Grantee must provide evidence that work performed under this grant complies with state and federal environmental standards. An approval from the Minnesota Pollution Control Agency or other appropriate state or federal agency is required upon completion of the cleanup activities.

The State and Grantee acknowledge their assent to this agreement and agree to be bound by its terms through their signatures entered below.

GRANTEE: I have read and I agree to all of the above provisions of this agreement and certify that the appropriate person(s) have executed the contract on behalf of the Grantee.

By William P. Mars
(Name)

Mayor LPM

Date 2/18/2020

And

By Lon J. Hensen
(Name)

Clerk Rog Hensen

Date 2/18/2020

STATE OF MINNESOTA by and through the Department of Employment and Economic Development

By Ken McKim
Deputy Commissioner

Date February 25, 2020

ENCUMBERED:

Department of Employment and Economic Development

By Robin Culbertson
(Name)

Date Encumbered 02/05/2020

(Individual signing certified that funds have been encumbered as required by Minnesota Statutes 16A.15 and 16C.05)

PR 52000 SC 172313 PO 3000398225

EXHIBIT J OF THE AGREEMENT
MET COUNCIL GRANT AGREEMENT

677974v.2(JAE)
SH235-25

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

GRANTEE: City of Shakopee		GRANT NO. SG-14106
PROJECT: Riverfront Bluff		
GRANT AMOUNT: \$ 458,600		FUNDING CYCLE: Spring 2020
COUNCIL ACTION: June 24, 2020		EXPIRATION DATE: June 30, 2023
COUNCIL AUTHORIZED AGENT: Josiah Waderich josiah.waderich@metc.state.mn.us		

**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, 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

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, all grant funds will be expended prior to the “Expiration Date” identified above, and Project development or redevelopment construction will have “commenced” before the Expiration Date.

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:

**TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM**

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 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 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 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) **Commenced.** For the purposes of Sections 2.08 and 5.03, “commenced” means significant physical improvements have occurred in furtherance of the Project (e.g., a foundation is being constructed or other tangible work on a structure has been initiated). In the absence of significant physical improvements, visible staking, engineering, land surveying, soil testing, cleanup site investigation, or pollution cleanup activities are not evidence of Project commencement for the purposes of this Agreement.

(c) **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 grant funds.

(d) **Development Authority.** “Development Authority” means a statutory or home rule charter city, 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.

(e) **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.

(f) **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

TAX BASE REVITALIZATION ACCOUNT CONTAMINATION CLEANUP GRANT PROGRAM

negotiated affordable and life-cycle housing goals for the Municipality pursuant to Minnesota Statutes section 473.254.

- (g) **Project.** Unless clearly indicated otherwise by the context of a specific provision of this Agreement, “Project” means the development or redevelopment project identified in the application for Tax Base Revitalization Account funds for which grant funds were requested. Grant-funded activities typically are components of the Project.
- (h) **Project Costs.** “Project Costs” means all costs as defined in Minnesota Statutes section 116J.552, subdivision 7.
- (i) **Site.** “Site” means the polluted land proposed by the Grantee to be cleaned up 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. Grant Amount. The Council will grant to the Grantee the “Grant Amount” identified at Page 1 of this Agreement. The Council’s obligation to reimburse the Grantee for eligible grant-funded expenditures shall not exceed the Grant Amount. 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. Authorized Use of Grant Funds. The Grant Amount made available to the Grantee under this Agreement shall be used only for Cleanup Costs for the cleanup of the Site described in the application for Tax Base Revitalization Account funds. A 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 cleanup grant funds must be used is attached to and incorporated into this Agreement as Attachment B. Grant funds must be used for cleanup 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.

2.04. Ineligible Uses. Grant funds must be used for costs directly associated with the specific proposed Project 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; operating expenses; planning costs, including comprehensive planning costs; and prorated lease and salary costs. Grant funds may not be used for costs of Project activities that occurred prior to the Council Action, unless the pre-award costs were for:

TAX BASE REVITALIZATION ACCOUNT
CONTAMINATION CLEANUP GRANT PROGRAM

- (a) Site investigation work that occurred within 180 days of the Funding Cycle application due date and is identified as a grant-funded activity in Attachment A; or
- (b) Project cleanup activities that occurred within 180 days of the Funding Cycle application due date that were expressly approved by the Council Action and are described or identified in Attachments A and B.

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, real property 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. The Grantee agrees to comply with any "business subsidy" requirements of Minnesota Statutes sections 116J.993 to 116J.995 that apply to the Grantee's expenditures or uses of the grant funds.

2.05. Loans for Low-Income Housing Tax Credit Projects. If consistent with the application and the Project activities described in Attachment A or if requested in writing by the Grantee, the Grantee may structure the grant assistance to the Project as a loan so the Project Owner can take advantage of federal and state low-income housing tax credit programs. The Grantee may use the grant funds as a loan for a low-income housing tax credit Project, subject to the terms and conditions stated in Sections 2.03 and 2.04 and the following additional terms and conditions:

- (a) The Grantee covenants and represents to the Council that the Project is a rental housing project that received or will receive an award of low-income housing tax credits under section 42 of the Internal Revenue Code of 1986, as amended, and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the metropolitan area.
- (b) The Grantee will execute a loan agreement with the Project Owner. Prior to disbursing any grant funds for the Project, the Grantee will provide to the Council a copy of the loan agreement between the Grantee and the Project Owner.
- (c) The Grantee will submit annual written reports to the Council that certify: (1) the grant funds continue to be used for the Project for which the grant funds were awarded; and (2) the Project is a "qualified low-income housing project" under section 42 of the Internal Revenue Code of 1986, as amended. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual certification reports during the initial "compliance period" and any "extended use period," or until such time as the Council terminates this annual reporting requirement by written notice to the Grantee.
- (d) The grant funds made available to the Grantee and disbursed to the Project Owner by the Grantee in the form of a loan may be used only for the grant-eligible activities and Project

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components for which the Grantee was awarded the grant funds. For the purposes of this Agreement, the term "Project Owner" means the current Project Owner and any Project Owner successor(s).

- (e) Pursuant to Section 2.04, the grant funds made available to the Grantee and disbursed to the Project Owner in the form of a loan shall not be used by the Grantee, the Project Owner or others to supplant or replace: (1) grant or loan funds obtained for the Project from other sources; or (2) Grantee contributions to the Project, including financial assistance, real property or other resources of the Grantee; or (3) funding or budgetary commitments made by the Grantee or others prior to the Council Action, unless specifically authorized in Attachment A. The Council will not make the grant funds available to the Grantee in a lump sum payment, but will disburse the grant funds to the Grantee on a reimbursement basis pursuant to Section 2.10.
- (f) By executing this Agreement, the Grantee: (1) acknowledges that the Council expects the loan will be repaid so the grant funds may be used to help fund other activities consistent with the requirements of the Metropolitan Livable Communities Act; (2) covenants, represents and warrants to the Council that the Grantee's loan to the Project Owner will meet all applicable low-income housing tax credit program requirements under section 42 of the Internal Revenue Code of 1986, as amended (the "Code"), and the low-income housing tax credit program administered by the Minnesota Housing Finance Agency or a program administered by the Minneapolis/Saint Paul Housing Finance Board or another designated housing credit agency that sub-allocates low-income housing tax credits in the metropolitan area; and (3) agrees to administer its loan to the Project Owner consistent with federal and state low-income housing tax credit program requirements.
- (g) The Grantee will, at its own expense, use diligent efforts to recover loan proceeds: (1) when the Project Owner becomes obligated to repay the Grantee's loan or defaults on the Grantee's loan; (2) when the initial thirty-year "compliance period" expires, unless the Council agrees in writing that the Grantee may make the grant funds available as a loan to the Project Owner for an "extended use period"; and (3) if noncompliance with low-income housing tax credit program requirements or some other event triggers the Project Owner's repayment obligations under its loan agreement with the Grantee. The Grantee must repay to the Council all loan repayment amounts the Grantee receives from the Project Owner. The Grantee shall not be obligated to repay the grant funds to the Council except to the extent the Project Owner repays its loan to the Grantee, provided the Grantee has exercised the reasonable degree of diligence and used administrative and legal remedies a reasonable and prudent housing finance agency would use to obtain payment on a loan, taking into consideration (if applicable) the subordinated nature of the loan. At its discretion, the Council may: (1) permit the Grantee to use the loan repayment from the Project Owner to continue supporting affordable housing components of the Project; or (2) require the Grantee to remit the grant funds to the Council.
- (h) If the Grantee earns any interest or other income from its loan agreement with the Project Owner, the Grantee will: (1) use the interest earnings or income only for the purposes of implementing the Project activities for which the grant was awarded; or (2) remit the interest earnings or income to the Council. The Grantee is not obligated to earn any interest or other income from its loan agreement with the Project Owner, except to the extent required by any applicable law.

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2.06. Deferred Loans. If consistent with the application and the Project Summary, the Grantee may use the grant funds to make deferred loans (loans made without interest or periodic payments) for the purposes of implementing the Project activities described or identified in Attachments A and B. The Grantee will submit annual written reports to the Council that report on the uses of the grant funds. The form and content of the report will be determined by the Council. This annual reporting requirement is in addition to the reporting requirements stated in Section 3.03. Notwithstanding the Expiration Date identified at Page 1 of this Agreement and referenced in Section 5.01, the Grantee will submit the annual reports until the deferred loan is repaid, or until such time as the Council terminates this annual reporting requirement by written notice from the Council. At its discretion, the Council may: (a) permit the Grantee to use loan repayments to continue supporting affordable housing components of the Project; or (b) require the Grantee to remit the grant funds to the Council.

2.07. Restrictions on Loans or Grants 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 2.07 shall be included in all subgrants.

2.08. Project Commencement and Changes. The Project for which grant funds were requested must be “commenced” prior to the Expiration Date. 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.

2.09. Loss of Grant Funds. The Grantee agrees to remit to the Council in a prompt manner: any unspent grant funds, including any grant funds that are not expended prior to the Expiration Date identified at Page 1 of this Agreement; any grant funds that are not used for the authorized purposes; and any interest earnings described in Section 2.11 that are not used for the purposes of implementing the grant-funded Project activities described or identified in Attachments A and B. 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 grant-funded 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.

2.10. 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. The Council will disburse grant funds on a reimbursement basis or a “cost incurred” basis. To obtain reimbursement under this Agreement, the Grantee shall provide the Council with evidence

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that eligible grant-funded activities, (or a portion thereof) for which reimbursement is requested, have been satisfactorily completed. The Grantee shall describe the grant-eligible activities for which reimbursement is requested and shall provide sufficient documentation of grant-eligible expenditures, invoices and payment documents, and such other information as the Council reasonably requests. The Council will make the final determination whether the expenditures are eligible for reimbursement under this Agreement, and verify the total amount requested from the Council. Reimbursement of any cost does not constitute a waiver by the Council of any Grantee noncompliance with this Agreement. Payment requests must also include the following documentation:

- (a) Contaminated fill disposal documentation (showing unit rates, one manifest per truck per load, and weight/load tickets); and
- (b) A spreadsheet matching manifest, load tickets and final weights.
- (c) 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 shall disburse grant funds for all grant-eligible expenditures within thirty-five (35) days of the receipt of satisfactory documentation from the Grantee. **NOTWITHSTANDING THE PROVISIONS OF THIS SECTION 2.10, THE COUNCIL WILL NOT DISBURSE ANY GRANT FUNDS TO THE GRANTEE UNLESS THE GRANTEE HAS ADOPTED A FAIR HOUSING POLICY AS REQUIRED BY SECTION 6.04.**

2.11. Interest Earnings. If the Grantee earns any interest or other income from the grant funds received from the Council under this Agreement, the Grantee will use the interest earnings or income only for the purposes of implementing the Project activities described or identified in Attachments A and B.

2.12. Effect of Grant. Issuance of this grant neither implies any Council responsibility for the contamination at the Site nor imposes any obligation on the Council to participate in the cleanup of the 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 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 5.01 and 5.02, 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

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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 report to the Council written progress reports on a semi-annual basis by January 31 (for the period July 1 through December 31) and July 31 (for the period January 1 through June 30) of each calendar year during the term of this Agreement. The Grantee reports shall describe the status of the Project activities described or identified in Attachments A and B. The report shall also describe the project spending for the current reporting period and projected spending for future reporting periods. 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 progress reports and the Final Report will be determined by the Council. In addition to the required status reports and the Final Report, the Grantee must submit to the Council by April 15 of the year following the expiration of this Agreement and by April 15 of each of the succeeding three (3) years, an annual written report that includes information about redevelopment activities, net tax capacity of the Site, and jobs resulting from Site cleanup. The form and content of the annual written report 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. Certificate of Completion. Upon completion of the Site cleanup, the Grantee will provide to the Council:

- (a) For hazardous waste or substance contamination, a copy of a certificate of completion for the Site issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes section 115B.175, or a letter from the Agency indicating that the approved voluntary response action plan for the Site has been implemented to the satisfaction of the Agency and that the Agency is issuing a determination that no further action is required under Minnesota Statutes sections 115B.01 to 115B.08 to address the identified release; or
- (b) For asbestos contamination, either: (1) a copy of a statement from the Grantee's licensed asbestos abatement contractor that the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health; or (2) a final asbestos abatement implementation report that shows the project-specific asbestos project plan and asbestos-related work for the Site have been completed in accordance with the rules of the Minnesota Department of Health; or
- (c) For petroleum contamination, a copy of a site closure letter issued by the Minnesota Pollution Control Agency pursuant to Minnesota Statutes chapter 115C; or

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- (d) For lead abatement or regulated lead work: (1) a copy of the contractor firm certification to conduct lead-based paint activities in residential or child-occupied facilities per Code of Federal Regulations, Title 40, section 745.89 and Minnesota Statutes section 144.9505; and (2) a statement or other documentation from the certified contractor that the lead abatement or regulated work at the Site has been completed in accordance with applicable provisions of Code of Federal Regulations, Title 40, part 745 and state laws, rules and standards governing lead abatement according to the Lead Poisoning Prevention Act, Minnesota Statutes sections 144.9501 to 144.9512 and Minnesota Rules parts 4761.2000 to 4761.2700.

IV. RECOVERY AND REPAYMENT

4.01. Recovery of Funds. If the Grantee recovers funds pursuant to an action under Minnesota Statutes section 115B.04, or other law, to recover the reasonable and necessary Project Costs incurred to clean up the Site, the Grantee shall repay to the Council that portion of the grant as provided in Section 4.04.

4.02. Assignment of Rights. Upon request of the Council, the Grantee shall assign to the Council the Grantee's right to recover the funds described in Section 4.01, shall prepare and submit a certification of the Project Costs incurred, and shall cooperate in any cost recovery action brought by the Council.

4.03. Expenses of Recovery. The reasonable litigation expenses or other costs of legal or technical assistance incurred by the Grantee, the Council, or both, may be deducted from recovery obtained in accordance with Sections 4.01 or 4.02 and reimbursed to the entity incurring such costs before proceeds of the recovery are distributed in accordance with Section 4.04.

4.04. Reimbursement. Subject to the deduction provided in Section 4.03, amounts recovered either by the Grantee or the Council from responsible persons and all other amounts otherwise received by the Grantee or the Council for cleanup of the Site shall be used to reimburse the Grantee, the Council, or any other nonresponsible party who contributed funds for cleanup of the Site in proportion to their respective payments for response costs.

4.05. Survival of Recovery and Repayment Provisions. The provisions of Sections 4.01 through 4.04 shall survive the expiration or termination of this Agreement.

V. AGREEMENT TERM

5.01. Term. This Agreement is effective upon execution of this Agreement by the Council. Unless terminated pursuant to Section 5.02, this Agreement expires on the Expiration Date identified at Page 1 of this Agreement. **ALL GRANT FUNDS NOT EXPENDED BY THE GRANTEE PRIOR TO THE EXPIRATION DATE SHALL REVERT TO THE COUNCIL.**

5.02. 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 and any amendments 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

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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.

5.03. Amendments and Extension. The Council and the Grantee may amend this Agreement by mutual agreement. Amendments or an extension of this Agreement shall be effective only on the execution of written amendments signed by authorized representatives of the Council and the Grantee. If the Grantee needs a change to the Project, additional time within which to complete the grant-funded activities and commence 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. **THE EXPIRATION DATE MAY BE EXTENDED, BUT THE PERIOD OF ANY EXTENSION(S) SHALL NOT EXCEED TWO (2) YEARS BEYOND THE ORIGINAL EXPIRATION DATE IDENTIFIED AT PAGE 1 OF THIS AGREEMENT.**

VI. AFFORDABILITY; AFFIRMATIVE FAIR HOUSING

6.01. Affordability Term. If the Project for which the grant funds were awarded includes affordable housing units, the Grantee shall, through written instruments or otherwise, ensure the affordable units will remain affordable for a minimum period of fifteen (15) years. The Grantee's obligation under this section may be satisfied if other Project funding sources (*e.g.*, the Minnesota Housing Finance Agency or HUD) or state or federal laws (*e.g.*, low-income housing tax credit programs) require an affordability term of at least fifteen (15) years. For the purposes of this section, "affordable housing unit" means a unit that is affordable to households at 80 percent or less of the Area Median Income ("AMI"), as established by HUD, unless the Grantee's application stated an affordability standard lower than 80 percent of AMI, in which case the Grantee's lower affordability standard shall apply. The affordability requirements of this section shall survive the expiration or termination of this Agreement.

6.02. Affirmative Fair Housing Marketing Plans. If the Project for which the grant funds were awarded is a housing project, or includes housing units (whether market rate or affordable), the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements an affirmative fair housing marketing plan for Project housing units. For the purposes of this section, "affirmative fair housing marketing plan" means an affirmative fair housing marketing plan that substantially conforms to affirmative fair housing marketing plans published by the U.S. Department of Housing and Urban Development ("HUD") or sample affirmative fair housing marketing plans published by the Minnesota Housing Finance Agency. The affirmative fair housing marketing plan requirement under this section shall continue for the minimum affordability term specified in Section 6.01 and shall survive the expiration or termination of this Agreement.

6.03. Section 8 Housing Choice Vouchers. If the Project is a housing project, or includes housing units (whether market rate or affordable) and the Grantee stated in its application that the Project housing units would be made available to households participating in the federal Housing Choice

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Voucher program, the Grantee shall, through written instruments or otherwise, ensure the Project owner (and any subsequent owner(s)) adopts and implements a policy under which the Project owner will not refuse to lease Project units to households or individuals participating in the Housing Choice Voucher program because those households or individuals are Housing Choice Voucher program participants. The Housing Choice Voucher requirement under this section shall continue for the minimum affordability term specified in Section 6.01 and shall survive the expiration or termination of this Agreement.

6.04. Fair Housing Policy. If the Project will include a housing component, the Grantee must adopt a Fair Housing Policy. For the purposes of this section, the term “Fair Housing Policy” means a written statement regarding the Grantee’s commitment to fair housing that contains at least the following elements: a purpose statement; procedures for complaint identification and referral; a designated fair housing officer; and an outline of the internal and external actions the Grantee will undertake to advance fair housing. A best practices guide, as well as a copy of a model local fair housing policy is available at: <https://metro council.org/Handbook/Files/Resources/Best-Practices/Fair-Housing-Policy-Guide.aspx>

VII. GENERAL PROVISIONS

7.01. 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.

7.02. 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.

7.03. 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 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.

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7.04. 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 Project or construction sites 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").

7.05. 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.

7.06. 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 Hazardous Waste Operations and Emergency Response standards under Code of Federal Regulations, Title 29, sections 1910.120 and 1926.65. If the Project for which the grants were awarded includes affordable units, the Grantee's subgrant agreement(s) shall expressly include the applicable affordability and affirmative fair housing requirements of Sections 6.01, 6.02, and 6.03.

7.07. 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.

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7.08. 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

7.09. 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.

7.10. 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 renew process or after grand 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.

7.11 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.

7.12. Counterparts. This Agreement may be executed in counterpart, each of which counterpart constitutes an original, but both of which together constitute one instrument.

7.13. Electronic Signatures. The electronic signatures of the Council’s and the Grantee’s authorized representatives shall be valid as an original signature of the authorized representatives and shall be effective to bind the Council and the Grantee under this Agreement. This Agreement containing, or to which there is affixed, an electronic signature shall be deemed to: (a) be “written” or “in writing”; (b) have been signed; and (c) constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. “Electronic signature” also means a manually signed original signature that is then transmitted by any electronic means, including without limitation a faxed version of an original signature or an electronically scanned and transmitted version (*e.g.*, via PDF) of an original signature. The Council’s or the Grantee’s failure to produce the original signature of any electronically transmitted signature shall not affect the enforceability of this Agreement.

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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 SHAKOPEE

By: LRM

Title: Mayor

Date: 8/18/2020

By: [Signature]

Title: City Administrator

Date: 8/18/2020

METROPOLITAN COUNCIL

By: [Signature]

LisaBeth Barajas, Director
Community Development Division

Date: Aug 20, 2020

Approved as to form:

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 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 Cleanup Site Locations; and (4) the grant application.

Project Summary

Grant # SG-14106
Grant Type Contamination Cleanup
Applicant City of Shakopee
Project Name Riverfront Bluff
Project Location 303, 313, 321, & 339 1st Avenue West, and 116 & 126 Atwood Street North, Shakopee
Council District 4 – Deb Barber

Project Detail

Contaminant history	The 1.9-acre site includes a mix of vacant residential and commercial buildings. Historically, the site was part of a limestone quarry and later as a gravel pit before the first commercial building was constructed. Prior tenants have included a printing company and an auto repair business. Contaminants of concern include Polycyclic Aromatic Hydrocarbons (PAHs) measured as benzo(a)pyrene equivalents and metals (lead, mercury) and tetrachloroethylene (PCE), as well as debris with asbestos in the fill soil and asbestos-containing material (ACM) within the buildings. Additional soil vapor sampling is planned.
Redevelopment project to start construction by the end of the grant term	Expected benefits include 170 market-rate apartments with 6,400 square feet of commercial space.
Jobs (FTEs)	32 FTE
Net tax capacity increase	\$337,472
Acres cleaned	1.9
Total housing units	170
Affordable units	0

Funding

Recommended amount	\$458,600
Funding partner requests	\$332,732 from DEED
Previous LCA funding	\$0
Comments	Costs related to disposal of special regulated wastes, soil vapor mitigation, and dewatering are not eligible for grant funding. Volume of clean fill eligible for grant reimbursement must be equal or less than the volume of contaminated fill soil removed from the subject property.

Use of Funds

Amount	Uses to be completed by the end of the grant term
\$458,600	For asbestos survey, asbestos abatement plan, additional soil vapor sampling, asbestos abatement (including vermiculite in masonry blocks), and contaminated soil remediation and related environmental oversight.

ATTACHMENT B

CLEANUP SITE LOCATION(S)

This attachment comprises this page and the succeeding page(s) which contain aerial photography or drawings that identify the specific location(s) within the Project boundaries or the Site(s) for which the Grantee must use the grant funds. The attached photography or drawings also may identify the types of eligible cleanup activities for which the grant funds must be used at specific locations within the Project boundaries or within the Site(s).

TBRA Cleanup Site Location(s)

LCA Aerial TBRA Project: Riverfront Bluff Development | Map ID: 1572540339034



- TOD Area
- Project
- Active Transit Stops
- Transit Routes (AU)
- Parcels



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<https://giswebdata.mn.state.mn.us/gisdata/notes.aspx>

