

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: IV. D.

From: Ross Bintner P.E.
Environmental Engineer

Action
Discussion
Information

Date: February 19, 2013

Subject: Resolution No. 2013-22 Authorizing Metropolitan Council Sewer Rehabilitation Grant Agreement

Action Requested:

Authorize Mayor to sign attached resolution approving Mayor and City Manager to sign attached grant agreement.

Information / Background:

Inflow and infiltration (I/I) has been an issue with both the metropolitan region and the local sanitary sewer collection systems. I/I is clear water (rain or ground water) that makes its way into the waste water collection system and does not need to be treated by the Metropolitan Council's Waste Water Treatment Plants. The Minnesota Legislature has appropriated \$4,000,000 to the Metropolitan Council for a grant program to be administered by the Council for the purpose of providing grants to municipalities for capital improvements to public municipal wastewater collection systems to reduce the amount of I/I into the system.

The City of Edina is eligible for \$558,027 in reimbursement or up to one half of its eligible expenses (about 25% of total costs) to line sanitary sewers, seal manhole structures and mitigate flooding of I/I sanitary sewer collection infrastructure.

The monies from this grant will be utilized in a variety of 2012-2014 roadway reconstruction projects as well as CIP Project # UT-08-014, 2013-2014 Trunk Sanitary Sewer Lining. Due to grant monies coming from the state general obligation bonds there are stipulations on eligible costs such as property or easement ownership and prevailing wages law the City must meet. Staff feels these stipulations can be met.

Attachments:

Resolution No. 2013-22
Grant Agreement

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**RESOLUTION NO. 2013-22
APPROVING GRANT AGREEMENT NO. SG2013-006
BETWEEN THE METROPOLITAN COUNCIL AND THE CITY OF EDINA
FOR SEWER REHAB WORK (INFLOW AND INFILTRATION ABATEMENT PROJECTS)**

WHEREAS, the Minnesota Legislature has appropriated to the Metropolitan Council \$4,000,000 for a grant program to be administered by the Council for the purpose of providing grants to municipalities for capital improvements to public municipal wastewater collection systems to reduce the amount of inflow and infiltration to the Council's metropolitan sanitary sewer disposal system ("I/I Municipal Grant Program"); and

WHEREAS, the City of Edina submitted an application for grant funds and the Council identified the City has a contributor of excessive inflow and infiltration to the Council's metropolitan sanitary sewer disposal system and thus an eligible applicant for grant funds of \$558,027 under the I/I Municipal Grant Program;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Edina:

1. That the City Council Approves Grant Agreement No. SG2013-006 between the Metropolitan Council and the City of Edina and Authorizes the Mayor and City Manager to Sign.

Dated: February 19, 2013

Attest: _____
Debra A. Mangen, City Clerk

_____ James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of February 19, 2013, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 20____.

City Clerk

**Metropolitan Council
Municipal Publicly Owned Infrastructure
Inflow/Infiltration Grant Program**

**State of Minnesota
General Obligation Bond Proceeds**

**Grant Agreement – Construction Grant
for the**

Edina - Sewer Rehab Work (Pipe, Manhole & Flood
Mitigation)

Project

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GENERAL OBLIGATION GRANT PROCEEDS
MUNICIPAL PUBLICLY OWNED INFRASTRUCTURE
INFLOW/INFILTRATION GRANT PROGRAM
INTERGOVERNMENTAL GRANT AGREEMENT
BETWEEN
METROPOLITAN COUNCIL AND EDINA

This Intergovernmental Grant Agreement (“Grant Agreement”) is made this ____ day of _____, 201_, and entered into by and between Metropolitan Council a public corporation and political subdivision of the State of Minnesota (“Council”) and Edina, a Minnesota Municipal corporation (“Grantee”).

BACKGROUND RECITALS

1. The Minnesota Legislature has appropriated to the Council in the 2012 Session Laws Chapter 293, Section 17, subdivision 3, \$4,000,000 for a grant program to be administered by the Council for the purpose of providing grants to municipalities for capital improvements to public municipal wastewater collection systems to reduce the amount of inflow and infiltration to the Council’s metropolitan sanitary sewer disposal system (“I/I Municipal Grant Program”).

2. The monies allocated to fund the appropriation to the Council are proceeds of state general obligation bonds authorized to be issued under Article XI, § 5(a) of the Minnesota Constitution.

3. The Council has gone through a public process and formally adopted Guidelines for the I/I Municipal Grant Program. Grantee has read and understands the Council Guidelines (“Council Guidelines”).

4. Council has identified Grantee as a contributor of excessive inflow and infiltration to the Council’s metropolitan sanitary sewer disposal system and thus an eligible applicant for grant funds under the I/I Municipal Grant Program.

5. Pursuant to its authority under Minnesota Statutes § 444.075 [or other authority, if different], Grantee operates a municipal wastewater collection system

identified as Edina Wastewater Collection System (“Wastewater System”) and has submitted an application for grant funds including a timeline for an inflow and infiltration mitigation capital improvement project to the Wastewater System to the Council in accordance with Council’s Guidelines. For purposes of this Agreement, the term “Governmental Program” means the Wastewater System.

6. Council has reviewed and found eligible Grantee’s application for grant funds and has awarded such grant funds (“G.O. Grant”) to Grantee to construct a capital improvement project to Grantee’s pipeline as described in and in accordance with the terms and conditions of this Grant Agreement.

7. The Grantee’s receipt and use of the I/I Municipal Grant Program to acquire an ownership interest in and/or improve real property (the “Real Property”) and structures situated thereon (the “Facility”) will cause the Grantee’s ownership interest in all of such real property and structures to become “state bond financed property”, as such term is used in Minn. Stat. § 16A.695 (the “G.O. Compliance Legislation”) and in that certain “Third Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated June 19, 2012 (the “Commissioner’s Order”), even though such funds shall only be a portion of the funds being used to acquire such ownership interest and/or improve such real property and structures and that such funds may be used to only acquire such ownership interest and/or improve a part of such real property and structures.

8. Council and Grantee desire to set forth herein the provisions relating to the granting of such G.O. Grant and the disbursement thereof to Grantee and the operation of the Real Property and the Facility.

NOW, THEREFORE, in consideration of the G.O. Grant described and other provisions in this Agreement, Council and Grantee agree as follows:

Article I DEFINITIONS

Section 1.01 **Defined Terms.** As used in this Agreement, the following terms shall have the meanings set out respectively after each such term (the meanings to be equally applicable to both the singular and plural forms of the terms defined), unless the context specifically indicates otherwise:

“Advance(s)” – means an advance made or to be made by the Council to the Grantee and disbursed in accordance with the provisions contained in Article VI hereof.

“Agreement” - means this Metropolitan Municipal Publicly Owned Infrastructure Inflow/Infiltration Grant Program Grant Agreement - Construction Grant for the Edina - Sewer Rehab Work (Pipe, Manhole & Flood Mitigation) Project, as such exists on its original date and any amendments, modifications or restatements thereof.

“Approved Debt” – means public or private debt of the Public Entity that is consented to and approved, in writing, by the Commissioner of MMB, the proceeds of which were or will be used to acquire an ownership interest in or improve the Real Property and Facility, other than the debt on the G.O. Bonds. Approved Debt includes, but is not limited to, all debt delineated in **Attachment III** to this Agreement; provided, however, the Commissioner of MMB is not bound by any amounts delineated in such attachment unless he/she has consented, in writing, to such amounts.

“Architect”, if any - means N/A, which will administer the Construction Contract Documents on behalf of the Grantee.

“Certification” – means a certification in the form contained in Attachment 1-A to this Agreement and all amendments thereto, acknowledging that the Real Property and Facilities is state bond financed property within the meaning of Minn. Stat. § 16A.695, is subject to the requirements imposed by such statutes and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of the MMB.

“Code” - means the Internal Revenue Code of 1986, as amended from time to time, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

“Commissioner of MMB” - means the commissioner of the Minnesota Department of Management and Budget, and any designated representatives thereof.

“Commissioner’s Order” - means that certain “Third Order Amending Order of the Commissioner of Finance Relating to Use and Sale of State Bond Financed Property” executed by the Commissioner of Minnesota Management and Budget and dated June 19, 2012.

“Completion Date” – means November 30, 2014 the date of projected completion of the Project.

“Contractor” - means any person engaged to work on or to furnish materials and supplies for the Construction Items including, a general contractor.

“Construction Contract Documents” - means the document or documents, in form and substance acceptable to the Council, including but not limited to any construction plans and specifications and any exhibits, amendments, change orders, modifications thereof or supplements thereto, which collectively form the contract between the Grantee and the Contractor or Contractors for the completion of the Construction Items on or before the Completion Date for either a fixed price or a guaranteed maximum price.

“Construction Items” – means the work to be performed under the Construction Contract Documents.

“Council” - means the entity identified as the “Metropolitan Council” in the lead-in paragraph of this Agreement.

“Declaration” - means a declaration, or declarations, in the form contained in **Attachment I** to this Agreement and all amendments thereto, indicating that the Grantee’s ownership interest in the Real Property and Facility is state bond financed property within the meaning of the G.O. Compliance Legislation and is subject to certain restrictions imposed thereby.

“Draw Requisition” - means a draw requisition that the Grantee, or its designee, submits to the Council when an Advance is requested, as referred to in Section 6.02.

“Easement Premises” - means the real estate and structures, granted to the Grantee under an easement. “Event of Default” - means one or more of those events delineated in Section 2.07.

“Facility” means, the Wastewater Systems identified in Recital No. 5 of this Agreement which is located, or will be constructed and located, on the Real Property and all equipment that is a part thereof that was purchased with the proceeds.

“Fair Market Value” – means either (i) the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an

appraisal that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released, or (ii) the price bid by a purchaser under a public bid procedure after reasonable public notice, with the proviso that all liens and encumbrances on the property being sold that negatively affect the value of such property, will be paid and released at the time of acquisition by the purchaser.

“G.O. Bonding Legislation” – means the legislation delineated in Recital Nos. 1 and 2 hereinabove as the G.O. Bonding Legislation.

“G.O. Bonds” - means that portion of the state general obligation bonds issued under the authority granted in Article XI, § 5(a) of the Minnesota Constitution, the proceeds of which are used to fund the G.O. Grant and any state bonds issued to refund or replace such bonds.

“G.O. Compliance Legislation” - means Minn. Stat. § 16A.695 as such may subsequently be amended, modified or replaced from time to time unless such amendment, modification or replacement imposes an unconstitutional impairment of a contract right.

“G.O. Grant” means a grant of monies from the Council to the Grantee in the amount identified as the “G.O. Grant” in Section 2.01 (b) to this Agreement, as the amount thereof may be modified under the provisions contained herein.

“Governmental Program” means the operation of the Real Property and the Facility for the purpose specified and identified in Recital No. 5 of this Agreement as the Governmental Program.

“Grantee” - means the entity identified as the “Grantee” in the lead-in paragraph of this Agreement.

“Initial Acquisition and Betterment Costs” – means the cost to acquire the Grantee’s ownership interest in the Real Property and Facility if the Grantee does not already possess the required ownership interest, and the costs of betterments of the Real Property and Facility; provided, however, the Council and the Commissioner of MMB are not bound by any specific amount of such alleged costs unless consented to in writing.

“Inspecting Engineer”, if any - means the Council's construction inspector, or its designated consulting engineer.

“Outstanding Balance of the G.O. Grant– means the portion of the G.O. Grant that has been disbursed to or on behalf of the Grantee minus any portion thereof previously paid back to the Commissioner of MMB.

“Ownership Value”, if any – means the value, if any, of the Grantee’s ownership interest in the Real Property and Facility that existed concurrent with the Grantee’s execution of this Agreement. Such value shall be established by way of an appraisal or by such other manner as may be acceptable to the Council and the Commissioner of MMB. The parties hereto agree and acknowledge that such value is ~~\$1,895,000~~ or N/A Not Applicable; provided, however, the Commissioner of MMB is not bound by any inserted dollar amount unless he/she has consented, in writing, to such amount. If no dollar amount is inserted and the blank “Not Applicable” is not checked, a rebuttable presumption that the Ownership Value is \$0.00 shall be created. *(The blank “Not Applicable” should only be selected and checked when a portion of the funds delineated in Attachment III attached hereto are to be used to acquire the Grantee’s ownership interest in the Real Property and, Facility, and in such event the value of such ownership interest should be shown in Attachment III and not in this definition for Ownership Value).*

“Project” - means the Grantee’s acquisition, of the ownership interests in the Real Property and, Facility denoted in Section 2.02 along with the performance of activities denoted in Section 2.03. *(If the Grantee is not using any portion of the G.O. Grant to acquire the ownership interest denoted in Section 2.02, then this definition for Project shall not include the acquisition of such ownership interest, and the value of such ownership interest shall not be included in Attachment III hereto and instead shall be included in the definition for Ownership Value under this Section.)*

“Real Property” - means the real property located in the County of HENNEPIN, State of Minnesota and identified in **Attachment II** to this Agreement by legal description, narrative description or diagram.

“Subsequent Betterment Costs” – means the costs of betterments of the Real Property and Facility that occur subsequent to the date of this Agreement, are not part of the Project, would qualify as a public improvement of a capital nature (as such term is used in Minn. Constitution Art. XI, §5(a) of the Minnesota Constitution), and the cost of which has been established by way of written documentation that is acceptable to and approved, in writing, by the Council and the Commissioner of MMB.

“Useful Life of the Real Property and Facility” – means (i) 30 years for Real Property that has no structure situated thereon or if any structures situated thereon will be removed, and no new structures will be constructed thereon, (ii) the remaining useful life of the Facility as of the effective date of this Agreement for Facilities that are situated on the Real Property as of the date of this Agreement, that will remain on the Real Property, and that will not be bettered, or (iii) the useful life of the Facility after the completion of the construction or betterments for Facilities that are to be constructed or bettered.

Article II
GRANT

Section 2.01(a). **Grant of Monies.** The Council shall make and issue the G.O. Grant to the Grantee, for payment of Project items as described in Attachment IV to this Agreement and disburse the proceeds in accordance with the provisions of this Agreement. The G.O. Grant is not intended to be a loan even though the portion thereof that is disbursed may need to be returned to the Council or the Commissioner of MMB under certain circumstances.

Section 2.01(b). **Maximum Expected Grant Amount (“Maximum Grant Amount”).** The Council will pay to Grantee a Maximum Grant Amount during the Grant Project activity period of up to \$558,027 (“Maximum Grant Amount”). However, in no event will the actual amount that the Council will pay to the Grantee for this Agreement exceed one-half of the actual amount expended by the Grantee on eligible expenses as specified in Section 2.01(a). Neither the Council nor the MMB shall bear any responsibility for a cost overrun which may be incurred by the Grantee in performance of the Project.

The actual Grant Amount will be determined by the Council upon submission by Grantee to Council of reasonable, eligible and verifiable costs submitted in accordance with the terms of this Agreement for the Grant Project as described in Attachment IV.

Section 2.02 **Public Ownership.** The Grantee acknowledges and agrees that the G.O. Grant is being funded with the proceeds of G.O. Bonds, and as a result thereof all of the Real Property and Facility must be owned by one or more public entities. Such ownership may be in the form of fee ownership or an easement. In order to establish that this public ownership requirement is satisfied, the Grantee represents and warrants to the Council that it has, or will acquire, the following ownership interests in the Real Property and Facility, and, in addition, that it possesses, or will possess, all easements necessary for the operation, maintenance and management of the Real Property and Facility in the manner specified in Section 2.04:

(Check the appropriate box for the Real Property for the Facility.)

Ownership Interest in the Real Property.

Fee simple ownership of the Real Property.

An easement for the Real Property that complies with the requirements contained in Section 2.06.

(If the term of the easement is for a term authorized by a Minnesota statute, rule or session law, then insert the citation: _____.)

Permit for pipe in [Permitter] right-of-way that complies with the requirements contained in Section 2.06.

Ownership Interest in the Facility.

Fee simple ownership of the Facility.

Not applicable because there is no Facility.

Section 2.03 **Use of Grant Proceeds.** The Grantee shall use the G.O. Grant solely to reimburse itself for expenditures it has already made in the performance of the Project as described in Attachment IV to this Agreement, and may not use the G.O. Grant for any other purpose. The Project as described in Attachment IV consists of the following:

(Check all appropriate boxes.)

Acquisition of fee simple title to the Real Property.

Acquisition of an easement for the Real Property.

Improvement of the Real Property.

Acquisition of fee simple title to the Facility.

Construction of the Facility.

Renovation of the Facility.

(Describe other or additional purposes.)

Further, Grantee agrees to perform and complete in a satisfactory manner the Project as described in Grantee's application for assistance under the Council's I/I Municipal Grant Program, which application is incorporated into Attachment IV of this Agreement by reference, and in accordance with the terms and conditions of this

Agreement. Specifically, the Grantee agrees to perform the Project in accordance with a specific timeline, all as described in Attachment IV and to undertake the financial responsibilities described in Attachment III to this Agreement. The Grantee has the responsibility for and obligation to complete the Project as described in Attachment III and IV. The Council makes no representation or warranties with respect to the success and effectiveness of the Project.

The G.O. Grant cannot be used for normal municipal operating or overhead costs related to the Project. G.O. Grant funds cannot be used for the costs of studies or for engineering or planning costs, or for equipment, machinery, supplies or other property necessary to conduct the Project except for equipment, supplies or other property which will be used primarily for the Project and that are specifically listed in Attachment IV.

Section 2.04 Operation of the Real Property and Facility. The Real Property and Facility must be used by the Grantee or the Grantee must cause such Real Property and Facility to be used for the operation of the Governmental Program or for such other use as the Minnesota legislature may from time to time designate, and for no other purposes or uses.

Grantee must annually determine that the Real Property and Facility is being used for the purpose required by this Agreement, and has or has not been sold, abandoned, leased or subjected to a management contract or an agreement for use of the Real Property and Facility and shall annually supply a statement from an officer of the Grantee, sworn to before a notary public, to such effect to the Council and the Commissioner of MMB.

For those programs, if any, that the Grantee will directly operate on all or any portion of the Real Property and Facility, the Grantee covenants with and represents and warrants to the Council that: (i) it has the ability and a plan to fund such programs, (ii) it has demonstrated such ability by way of a plan that it submitted to the Council, and (iii) it will annually adopt, by resolution, a budget for the operation of such programs that clearly shows that forecast program revenues along with other funds available for the operation of such program will be equal to or greater than forecast program expenses for each fiscal year, and will supply, upon request, to the Council and the Commissioner of MMB certified copies of such resolution and budget. For the purpose of this paragraph only, the budget(s) for the specific Governmental Program(s) supported by this G.O. Grant may be combined with other programs of the Grantee.

Section 2.05 Grantee Representations and Warranties. The Grantee further covenants with, and represents and warrants to the Council as follows:

A. It has legal authority to enter into, execute, and deliver this Agreement, the Certification or Declaration, and all documents referred to herein, has taken all actions necessary to its execution and delivery of such documents, and provided to the Council a copy of a resolution by its governing body which authorizes Grantee to enter into this Agreement, to undertake the I/I Municipal Grant Program and

Project, including the Grantee financial responsibilities as shown in Attachment IV and which also designates an authorized representative for the Project who is authorized to provide certifications required in this Agreement and submit pay claims for reimbursement of Project costs.

B. It has legal authority to use the G.O. Grant for the purpose or purposes described in this Agreement and has received a copy of, has read and understands the Council Guidelines for the Council's I/I Municipal Grant Program.

C. It has legal authority to operate the Governmental Program.

D. This Agreement, the Declaration or Certification as applicable and all other documents referred to herein are the legal, valid and binding obligations of the Grantee enforceable against the Grantee in accordance with their respective terms.

E. It will comply with all of the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, the Declaration or Certification as applicable and all other documents referred to herein.

F. It will comply with all of the provisions and requirements contained in and imposed by the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation.

G. It has made no material false statement or misstatement of fact in connection with its receipt of the G.O. Grant, and all of the information it has submitted or will submit to the Council or Commissioner of MMB relating to the G.O. Grant or the disbursement of any of the G.O. Grant is and will be true and correct. It agrees that all representations contained in its application for the G.O. Grant are material representations of fact upon which the Council relied in awarding this G.O. Grant and are incorporated into this Agreement by reference.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no material actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it relating to the Real Property and Facility, or its ownership interest therein, and it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Agreement, the Declaration or Certification as applicable, or any document referred to herein, or to perform any of the acts required of it in such documents.

I. Neither the execution and delivery of this Agreement, the Declaration or Certification, or any document referred to herein nor compliance with any of the terms, conditions, requirements, or provisions contained in any of such documents is prevented by, is a breach of, or will result in a breach of, any term, condition, or

provision of any agreement or document to which it is now a party or by which it is bound.

J. The contemplated use of the Real Property and Facility will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Project will be completed in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Project.

L. All applicable licenses, permits and bonds required for the performance and completion of the Project have been, or will be, obtained.

M. All applicable licenses, permits and bonds required for the operation of the Real Property and Facility in the manner specified in Section 2.04 have been, or will be, obtained.

N. It will operate, maintain, and manage the Real Property and Facility or cause the Real Property and Facility, to be operated, maintained and managed in compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or local political subdivisions having jurisdiction over the Real Property and Facility.

O. It has complied with the financial responsibility requirements contained in Section 7.23.

P. While this Agreement is in effect, it will not, without the prior written consent of the Council and the Commissioner of MMB, allow any voluntary lien or encumbrance or involuntary lien or encumbrance that can be satisfied by the payment of monies and which is not being actively contested to be created or exist against the Grantee's ownership interest in the Real Property or Facility. Provided, however, the Council and the Commissioner of MMB will consent to any such lien or encumbrance that secures the repayment of a loan the repayment of which will not impair or burden the funds needed to operate the Real Property and Facility in the manner specified in Section 2.04, and for which the entire amount is used (i) to acquire additional real estate that is needed to so operate the Real Property and Facility in accordance with the requirements imposed under Section 2.04 and will be included in and as part of the Grantee's ownership interest in the Real Property and Facility, and/or (ii) to pay for capital improvements that are needed to so operate the Real Property and Facility in accordance with the requirements imposed under Section 2.04.

Q. It reasonably expects to possess the ownership interest in the Real Property and Facility described Section 2.02 for the entire Useful Life of the Real

Property and Facility, and it does not expect to sell, transfer or abandon such ownership interest.

R. It does not reasonably expect to receive payments under a contract for use of the Real Property or Facility, including leases or management contracts, in excess of the amount the Grantee needs and is authorized to use to pay the operating expenses of the portion of the Real Property and Facility that is the subject of such contract or to pay the principal, interest, redemption premiums, and other expenses on any Approved Debt.

S. It will supply, or cause to be supplied, whatever funds are needed above and beyond the amount of the G.O. Grant to complete and fully pay for the Project.

T. The Construction Items will be completed substantially in accordance with the Construction Contract Documents by the Completion Date, and all such items along with the Facility will be situated entirely on the Real Property.

U. It will require the Contractor or Contractors to comply with all rules, regulations, ordinances, and laws bearing on its performance under the Construction Contract Documents.

V. If all or any portion of the Governmental Program does not qualify for the Waiver of Real Property Declaration granted by MMB, a copy of which is attached to and incorporated hereto as Attachment V, it has submitted to the Commissioner of MMB a written request that a declaration need not be recorded against the Real Property and if applicable, the Facility because such recording would be unduly onerous or impracticable and has received from the Commissioner of MMB a written waiver stating that a Declaration need not be recorded against the Real Property and if applicable, the Facility, a copy of which waiver is attached to the Certification submitted as Attachment IA of this Agreement. [Grantee should delete this Section if Grantee does not intend to apply for Waiver or intends to apply under Council's Waiver.]

W. It has executed and submitted a copy of one or more of the following to the Council and Minnesota Management and Budget, such that all parts of the facility are covered by one of the following:

1. For all or part of the Governmental Programs which qualifies for the Waiver of Real Property Declaration granted by Minnesota Management and Budget to the Council and attached as Attachment V, the Certification attached as Attachment IA of this Grant Agreement; or

2. For all or part of the Governmental Program which does not qualify for the Waiver of Real Property Declaration granted to the Council, but for which Grantee has obtained a Waiver of Real Property Declaration from the Minnesota Management and Budget pursuant to Section 2.05 (V) of

this Agreement, the Certification attached as Attachment IA, together with a copy of the waiver; or

3. A fully executed Declaration in the form attached to this Agreement as Attachment I, such Declaration recorded or to be promptly recorded with the appropriate governmental office, and a copy of such recorded Declaration to be delivered to the Council and Minnesota Management and Budget.

X. It shall furnish such satisfactory evidence regarding the representations and warranties described herein as may be required and requested by either the Council or the Commissioner of MMB.

Section 2.06 Ownership by Easement.

A. A Real Property/Facility easement must comply with the following provisions.

1. The Grantee is the grantee of easement and the easement creates the functional equivalency of fee ownership for the length of its term.

2. It must be permanent for a term that is equal to or greater than 125% of the Useful Life of the Real Property and Facility, or such other period of time specifically authorized by a Minnesota statute, rule or session law.

3. It must not contain any requirements or obligations of the Grantee that if not complied with could result in a termination thereof.

4. It must contain a provision that provides sufficient authority to allow the Grantee to operate the Real Property and Facility in accordance with the requirements imposed under Section 2.04.

5. It must not contain any provisions that would limit or impair the Grantee's operation of the Real Property and Facility in accordance with the requirements imposed under Section 2.04.

6. It must allow for a transfer thereof in the event that the grantee under the easement makes the necessary determination to sell its interest therein, and allow such interest to be transferred to the purchaser of such interest.

B. The provisions contained in this Section are not intended to and shall not prevent the Grantee from including additional provisions in the easement that are not inconsistent with or contrary to the requirements contained in this Section.

C. The Grantee shall fully and completely comply with all of the terms, conditions and provisions contained in the easement, and shall file the easement in the Office of the County Recorder or the Registrar of Titles.

Section 2.07 Event(s) of Default. The following events shall, unless waived in writing by the Council and the Commissioner of MMB, constitute an Event of Default under this Agreement upon either the Council or the Commissioner of MMB giving the Grantee 30 days written notice of such event and the Grantee's failure to cure such event during such 30 day time period for those Events of Default that can be cured within 30 days or within whatever time period is needed to cure those Events of Default that cannot be cured within 30 days as long as the Grantee is using its best efforts to cure and is making reasonable progress in curing such Events of Default, however, in no event shall the time period to cure any Event of Default exceed 6 months unless otherwise consented to, in writing, by the Council and the Commissioner of MMB.

A. If any representation, covenant, or warranty made by the Grantee in this Agreement, in any Draw Requisition, in any other document furnished pursuant to this Agreement, or in order to induce the Council to disburse any of the G.O. Grant shall prove to have been untrue or incorrect in any material respect or materially misleading as of the time such representation, covenant, or warranty was made.

B. If the Grantee fails to fully comply with any provision, term, condition, covenant, or warranty contained in this Agreement, the Declaration, or any other document referred to herein.

C. If the Grantee fails to fully comply with any provision, term, condition, covenant or warranty contained in the G.O. Compliance Legislation, the Commissioner's Order, or the G.O. Bonding Legislation.

D. If the Grantee fails to complete the Project, or cause the Project to be completed, by the Completion Date.

E. If the Grantee fails to provide and expend the full amount of the financial responsibilities required under Section 7.23 for the Project.

F. If a Declaration is required, if the Grantee fails to record the Declaration and deliver copies thereof as set forth in Section 2.05.V.

Notwithstanding the foregoing, any of the above delineated events that cannot be cured shall, unless waived in writing by the Council and the Commissioner of MMB, constitute an Event of Default under this Agreement immediately upon either the Council or the Commissioner of MMB giving the Grantee written notice of such event.

Section 2.08 Remedies. Upon the occurrence of an Event of Default and at any time thereafter until such Event of Default is cured to the satisfaction of the Council, the Council or the Commissioner of MMB may enforce any or all of the following remedies.

A. The Council may refrain from disbursing the G.O. Grant provided, however, the Council may make such disbursements after the occurrence of an Event of Default without thereby waiving its rights and remedies hereunder.

B. If the Event of Default involves a failure to comply with any of the provisions contained herein other than the provisions of Sections 4.01 or 4.02, then either the Council or the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Outstanding Balance of the G.O. Grant be returned to it, and upon such demand the Grantee shall return such amount to the Council or the Commissioner of MMB.

C. If the Event of Default involves a failure to comply with the provisions of Sections 4.01 or 4.02, then either the Council or the Commissioner of MMB, as a third party beneficiary of this Agreement, may demand that the Grantee pay the amounts that would have been paid if there had been full and complete compliance with such provisions, and upon such demand the Grantee shall pay such amount to the Council or the Commissioner of MMB.

D. Either the Council or the Commissioner of MMB, as a third party beneficiary of this Agreement, may enforce any additional remedies they may have in law or equity.

The rights and remedies herein specified are cumulative and not exclusive of any rights or remedies that the Council or the Commissioner of MMB would otherwise possess.

If the Grantee does not repay the amounts required to be paid under this Section or under any other provision contained in this Agreement within 30 days of demand by the Council or the Commissioner of MMB, or any amount ordered by a court of competent jurisdiction within 30 days of entry of judgment against the Grantee and in favor of the Council and/or the Commissioner of MMB, then such amount may, unless precluded by law, be taken from or off-set against any aids or other monies that the Grantee is entitled to receive from the Council or State of Minnesota. In addition, the Council may use the provisions of Minn. Stat. § 473.521, subd. 4 to collect the amounts required to be paid under this Section or under any other provision contained in this Agreement.

Section 2.09 Notification of Event of Default. The Grantee shall furnish to the Council and the Commissioner of MMB, as soon as possible and in any event within 7 days after it has obtained knowledge of the occurrence of each Event of Default or each event which with the giving of notice or lapse of time or both would constitute an Event of Default, a statement setting forth details of each Event of Default or event which with the giving of notice or upon the lapse of time or both would constitute an Event of Default and the action which the Grantee proposes to take with respect thereto.

Section 2.10 **Survival of Event of Default.** This Agreement shall survive any and all Events of Default and remain in full force and effect even upon the payment of any amounts due under this Agreement, and shall only terminate in accordance with the provisions contained in Section 2.12 and at the end of its term in accordance with the provisions contained in Section 2.11.

Section 2.11 **Term of Grant Agreement.** This Agreement shall, unless earlier terminated in accordance with any of the provisions contained herein, remain in full force and effect for the time period starting on the effective date hereof and ending on the date that corresponds to the date established by adding a time period equal to 125% of Useful Life of the Real Property and Facility to the date on which the Real Property and Facility is first used for the operation of the Project after such effective date. If there are no uncured Events of Default as of such date this Agreement shall terminate and no longer be of any force or effect, and the Commissioner of MMB shall execute whatever documents are needed to release the Real Property and Facility from the effect of this Agreement and any Declarations or Certifications, as applicable.

Section 2.12 **Modification and/or Early Termination of Grant.** If the Project is not started on or before the date that is six (6) months from the effective date of this Agreement or all of the G.O. Grant has not been disbursed as of the date that is two (2) years from July 1, 2012, or such other date to which the Grantee and the Council may agree in writing, then the Council's obligation to fund the G.O. Grant shall terminate. In such event, (i) if none of the G.O. Grant has been disbursed by such dates then the Council's obligation to fund any portion of the G.O. Grant shall terminate and this Agreement shall terminate and no longer be of any force or effect, and (ii) if some but not all of the G.O. Grant has been disbursed by such dates then the Council shall have no further obligation to provide any additional funding for the G.O. Grant and this Agreement shall remain in full force and effect but shall be modified and amended to reflect the amount of the G.O. Grant that was actually disbursed as of such date. This provision shall not, in any way, affect the Grantee's obligation to complete the Project by the Completion Date.

This Agreement shall also terminate and no longer be of any force or effect upon the Grantee's sale of its ownership interest in the Real Property and Facility in accordance with the provisions contained in Section 4.01 and transmittal of all or a portion of the proceeds of such sale to the Commissioner of MMB in compliance with the provisions contained in Section 4.02, or upon the termination of Grantee's ownership interest in the Real Property and Facility if such ownership interest is by way of an easement. Upon such termination the Commissioner of MMB shall execute, or have executed, and deliver to the Grantee such documents as are required to release the Grantee's ownership interest in the Real Property and Facility, from the effect of this Agreement and the Declaration.

Section 2.13 **Excess Funds.** If the full amount of the G.O. Grant and any matching funds referred to in Section 7.23 are not needed to complete the Project, then, unless language in the G.O. Bonding Legislation indicates otherwise, the G.O. Grant

shall be reduced by the amount not needed. Any funds awarded by the Council under this Agreement that have i) not been properly expended for the Project in accordance with Attachments III and IV; ii) were expended by the Grantee but subsequently reimbursed to Grantee or its agents, or iii) constitute a total reimbursement in excess of 50% of the actual eligible spending will be repaid to the Council if paid and the unearned part of the award canceled.

Article III.

Contents of Article III have been deliberately omitted from this Agreement.

Article IV SALE

Section 4.01 **Sale.** The Grantee shall not sell any part of its ownership interest in the Real Property and Facility unless all of the following provisions have been complied with fully.

- A. The Grantee determines, by official action, that such ownership interest is no longer usable or needed for the operation of the Governmental Program, which such determination may be based on a determination that the portion of the Real Property or Facility to which such ownership interest applies is no longer suitable or financially feasible for such purpose.
- B. The sale is made as authorized by law.
- C. The sale is for Fair Market Value.
- D. The written consent of the Commissioner of MMB has been obtained.

The acquisition of the Grantee's ownership interest in the Real Property and Facility at a foreclosure sale, by acceptance of a deed-in-lieu of foreclosure, or enforcement of a security interest in personal property used in the operation thereof, by a lender that has provided monies for the acquisition of the Grantee's ownership interest in or betterment of the Real Property Facility shall not be considered a sale for the purposes of this Agreement if after such acquisition the lender operates such portion of the Real Property and Facility in a manner which is not inconsistent with the requirements imposed under Section 2.04 and the lender uses its best efforts to sell such acquired interest to a third party for Fair Market Value. The lender's ultimate sale or disposition of the acquired interest in the Real Property and Facility shall be deemed to be a sale for the purposes of this Agreement, and the proceeds thereof shall be disbursed in accordance with the provisions contained in Section 4.02.

The Grantee may participate in any public auction of its ownership interest in the Real Property and Facility and bid thereon; provided that the Grantee agrees that if it is the successful purchaser it will not use any part of the Real Property or Facility for the Governmental Program.

Section 4.02 Proceeds of Sale. Upon the sale of the Grantee's ownership interest in the Real Property and Facility the proceeds thereof after the deduction of all costs directly associated and incurred in conjunction with such sale and such other costs that are approved, in writing, by the Commissioner of MMB, but not including the repayment of any debt associated with the Grantee's ownership interest in the Real Property and Facility, shall be disbursed in the following manner and order.

A. The first distribution shall be to the Commissioner of MMB in an amount equal to the Outstanding Balance of the G.O. Grant, and if the amount of such net proceeds shall be less than the amount of the Outstanding Balance of the G.O. Grant then all of such net proceeds shall be distributed to the Commissioner of MMB.

B. The remaining portion, after the distribution specified in Section 4.02A, shall be distributed to (i) pay in full any outstanding Approved Debt, (ii) reimburse the Grantee for its Ownership Value, and (iii) to pay interested public and private entities, other than any such entity that has already received the full amount of its contribution (such as the Council under Section 402.A and the holders of Approved Debt paid under this Section 4.02.B), the amount of money that such entity contributed to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs. If such remaining portion is not sufficient to reimburse interested public and private entities for the full amount that such entities contributed to the acquisition or betterment of the Real Property and Facility, then the amount available shall be distributed as such entities may agree in writing and if such entities cannot agree by an appropriately issued court order.

C. The remaining portion, after the distributions specified in Sections 4.02.A and B, shall be divided and distributed to the Council, the Grantee, and any other public and private entity that contributed funds to the Initial Acquisition and Betterment Costs and the Subsequent Betterment Costs, other than lenders who supplied any of such funds, in proportion to the contributions that the Council, the Grantee, and such other public and private entities made to the acquisition and betterment of the Real Property and Facility as such amounts are part of the Ownership Value, Initial Acquisition and Betterment Costs, and Subsequent Betterment Costs.

The distribution to the Council shall be made to the Commissioner of MMB, and the Grantee may direct its distribution to be made to any other entity.

All amounts to be disbursed under this Section 4.02 must be consented to, in writing, by the Commissioner of MMB, and no such disbursements shall be made without such consent.

The Grantee shall not be required to pay or reimburse the Council or the Commissioner of MMB for any funds above and beyond the full net proceeds of such sale, even if such net proceeds are less than the amount of the Outstanding Balance of the G.O. Grant.

Article V.

COMPLIANCE WITH G.O. COMPLIANCE LEGISLATION AND THE COMMISSIONER'S ORDER

Section 5.01. **State Bond Financed Property.** The Grantee and the Council acknowledge and agree that the Grantee's ownership interest in the Real Property and Facility is, or when acquired by the Grantee will be, "state bond financed property", as such term is used in the G.O. Compliance Legislation and the Commissioner's Order, and, therefore, the provisions contained in such statute and order apply, or will apply, to the Grantee's ownership interest in the Real Property and Facility.

Section 5.02 **Preservation of Tax Exempt Status.** In order to preserve the tax-exempt status of the State G.O. Bonds, the Grantee agrees as follows:

A. It will not use the Real Property or Facility, or use or invest the G.O. Grant or any other sums treated as "bond proceeds" under Section 148 of the Code including "investment proceeds," "invested sinking funds," and "replacement proceeds," in such a manner as to cause the G.O. Bonds to be classified as "arbitrage bonds" under Section 148 of the Code.

B. It will deposit into and hold all of the G.O. Grant that it receives under this Agreement in a segregated non-interest bearing account until such funds are used for payments for the Project in accordance with the provisions contained herein.

C. It will, upon written request, provide the Commissioner of MMB all information required to satisfy the informational requirements set forth in the Code including, but not limited to, Sections 103 and 148 thereof, with respect to the G.O. Bonds.

D. It will, upon the occurrence of any act or omission by the Grantee that could cause the interest on the State G.O. Bonds to no longer be tax exempt and upon direction from the Commissioner of MMB, take such actions and furnish such documents as the Commissioner of MMB determines to be necessary to ensure that the interest to be paid on the State G.O. Bonds is exempt from federal taxation, which such action may include either: (i) compliance with proceedings intended to classify the State G.O. Bonds as a "qualified bond" within the meaning of Section

141(e) of the Code, (ii) changing the nature of the use of the Real Property or Facility so that none of the net proceeds of the State G.O. Bonds will be used, directly or indirectly, in an “unrelated trade or business” or for any “private business use” (within the meaning of Sections 141(b) and 145(a) of the Code), or (iv) compliance with other Code provisions, regulations, or revenue procedures which amend or supersede the foregoing.

E. It will not otherwise use any of the G.O. Grant, including earnings thereon, if any, or take or permit to or cause to be taken any action that would adversely affect the exemption from federal income taxation of the interest on the G.O. Bonds, nor otherwise omit, take, or cause to be taken any action necessary to maintain such tax exempt status, and if it should take, permit, omit to take, or cause to be taken, as appropriate, any such action, it shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 5.03 Changes to G.O. Compliance Legislation or the Commissioner’s Order. In the event that the G.O. Compliance Legislation or the Commissioner’s Order is amended in a manner that reduces any requirement imposed against the Grantee, or if the Grantee’s ownership interest in the Real Property or Facility is exempt from the G.O. Compliance Legislation and the Commissioner’s Order, then upon written request by the Grantee the Council shall enter into and execute an amendment to this Agreement to implement herein such amendment to or exempt the Grantee’s ownership interest in the Real Property and Facility from the G.O. Compliance Legislation or the Commissioner’s Order.

Article VI. DISBURSEMENT OF GRANT PROCEEDS

Section 6.01 The Advances. The Council will make no advances of the G.O. Grant to Grantee. The disbursement of the G.O. Grant shall be in the form of reimbursement for eligible costs as provided ahead in this Article VI.

Section 6.02 Draw Requisitions. Whenever the Grantee desires a disbursement of a portion of the G.O. Grant, which shall be no more often than once each calendar quarter, the Grantee shall submit to the Council a Draw Requisition duly executed on behalf of the Grantee or its designee. Each Draw Requisition with respect to construction items shall be limited to amounts equal to: (i) the total value of the classes of the work by percentage of completion as approved by the Grantee and the Council, plus (ii) the value of materials and equipment not incorporated in the Project but delivered and suitably stored on or off the Real Property in a manner acceptable to the Council.

Notwithstanding anything herein to the contrary, no Draw Requisition for materials stored on or off the Real Property will be made unless the Grantee shall advise the

Council, in writing, of its intention to so store materials prior to their delivery and the Council has not objected thereto.

At the time of submission of each Draw Requisition, other than the final Draw Requisition, the Grantee shall submit to the Council such supporting evidence as may be requested by the Council to substantiate all payments which are to be made out of the relevant Draw Requisition or to substantiate all payments then made with respect to the Project.

At the time of submission of the final Draw Requisition which shall not be submitted before completion of the Project, including all landscape requirements and off-site utilities and streets needed for access to the Real Property and Facility and correction of material defects in workmanship or materials (other than the completion of punch list items) as provided in the Construction Contract Documents, the Grantee shall submit to the Council: (i) such supporting evidence as may be requested by the Council to substantiate all payments which are to be made out of the final Draw Requisition or to substantiate all payments then made with respect to the Project, and (ii) satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities, and that all requisite certificates of occupancy and other approvals have been issued.

Section 6.03 Additional Funds. If the Council shall at any time in good faith determine that the sum of the undisbursed amount of the G.O. Grant plus the amount of all other funds committed to the Project is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the Project, then the Council may send written notice thereof to the Grantee specifying the amount which must be supplied in order to provide sufficient funds to complete the Project. The Grantee agrees that it will, within 10 calendar days of receipt of any such notice, supply or have some other entity supply the amount of funds specified in the Council's notice.

Section 6.04 Conditions Precedent to Any Draw. The obligation of the Council to make Draws hereunder (including the initial Advance) shall be subject to the following conditions precedent:

A. The Council shall have received a Draw Requisition for such amount of funds being requested, which such amount when added to all prior requests for Draws shall not exceed the amount of the G.O. Grant delineated in Section 1.01.

B. For all or any portion of the Governmental Program which qualifies for a waiver of Real Property Declaration granted to either the Council (Attachment V) or Grantee, the Council shall have either received the duly executed Certification attached to this Agreement as Attachment 1A or for all or any portion of the Governmental Program which does not qualify for a Waiver of Real Property Declaration, a copy of duly executed Declaration that has been duly recorded in the appropriate governmental office, with all of the recording information displayed

thereon, or evidence that such Declaration will promptly be recorded and delivered to the Council.

C. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that (i) the Grantee has legal authority to and has taken all actions necessary to enter into this Agreement and the Certification or the Declaration, as applicable, and (ii) this Agreement and the Declaration or Certification, as applicable, are binding on and enforceable against the Grantee.

D. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that the Grantee has sufficient funds to fully and completely pay for the Project and all other expenses that may occur in conjunction therewith.

E. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that the Grantee is in compliance with the matching funds requirements, if any, contained in Section 7.23.

F. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, showing that the Grantee possesses the ownership interest delineated in Section 2.02.

G. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that the Real Property and Facility, and the contemplated use thereof are permitted by and will comply with all applicable use or other restrictions and requirements imposed by applicable zoning ordinances or regulations, and, if required by law, have been duly approved by the applicable municipal or governmental authorities having jurisdiction thereover.

H. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that that all applicable and required building permits, other permits, bonds and licenses necessary for the Project have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

I. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that that all applicable and required permits, bonds and licenses necessary for the operation of the Real Property and Facility in the manner specified in Section 2.04 have been paid for, issued, and obtained, other than those permits, bonds and licenses which may not lawfully be obtained until a future date or those permits, bonds and licenses which in the ordinary course of business would normally not be obtained until a later date.

J. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that the Project will be completed in a manner that will allow the Real Property and Facility to be operated in the manner specified in Section 2.04.

K. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that the Grantee has the ability and a plan to fund the operation of the Real Property and Facility in the manner specified in Section 2.04.

L. The Council shall have received evidence upon request, and in form and substance acceptable to the Council, that the insurance requirements under Section 7.01 have been satisfied.

M. CONTENTS HAVE BEEN DELIBERATELY OMITTED FROM THIS AGREEMENT.

N. No Event of Default under this Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse shall have occurred and be continuing.

O. The Council shall have received evidence upon request, and, in form and substance acceptable to the Council, that the Contractor will complete the Construction Items substantially in conformance with the Construction Contract Documents and pay all amounts lawfully owing to all laborers and materialmen who worked on the Construction Items or supplied materials therefore, other than amounts being contested in good faith. Such evidence may be in the form of payment and performance bonds in amounts equal to or greater than the amount of the fixed price or guaranteed maximum price contained in the Construction Contract Documents that name the Council and the Grantee dual obligees thereunder, or such other evidence as may be acceptable to the Grantee and the Council.

P. No determination shall have been made by the Council that the amount of funds committed to the Project is less than the amount required to pay all costs and expenses of any kind that may reasonably be anticipated in connection with the Project, or if such a determination has been made and notice thereof sent to the Grantee under Section 6.03, then the Grantee has supplied, or has caused some other entity to supply, the necessary funds in accordance with such section or has provided evidence acceptable to the Council that sufficient funds are available.

Q. The Grantee has supplied to the Council all other items that the Council may reasonably require.

Section 6.05 **Construction Inspections.** The Grantee and the Architect, if any, shall be responsible for making their own inspections and observations of the

Construction Items, and shall determine to their own satisfaction that the work done or materials supplied by the Contractors to whom payment is to be made out of each Advance has been properly done or supplied in accordance with the Construction Contract Documents.

Article VII.
MISCELLANEOUS

Section 7.01 **Insurance.** The Grantee shall, upon acquisition of the ownership interest delineated in Section 2.02, insure the Facility, if such exists, in an amount equal to the full insurable value thereof (i) by self insuring under a program of self insurance legally adopted, maintained and adequately funded by the Grantee, or (ii) by way of builders risk insurance and fire and extended coverage insurance with a deductible in an amount acceptable to the Council under which the Council and the Grantee are named as loss payees. If damages which are covered by such required insurance occur, then the Grantee shall, at its sole option and discretion, either: (y) use or cause the insurance proceeds to be used to fully or partially repair such damage and to provide or cause to be provided whatever additional funds that may be needed to fully or partially repair such damage, or (z) sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith in accordance with the provisions contained in Section 4.01.

If the Grantee elects to only partially repair such damage, then the portion of the insurance proceeds not used for such repair shall be applied in accordance with the provisions contained in Section 4.02 as if the Grantee's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Grantee's ownership interest in the Real Property and Facility. If the Grantee elects to sell its ownership interest in the damaged Facility and portion of the Real Property associated therewith, then such sale must occur within a reasonable time period from the date the damage occurred and the cumulative sum of the insurance proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the insurance proceeds being so applied within a reasonable time period from the date they are received by the Grantee.

If the Grantee elects to maintain general comprehensive liability insurance regarding the Real Property and Facility, then the Grantee shall have the Council named as an additional named insured therein.

At the written request of either the Council or the Commissioner of MMB, the Grantee shall promptly furnish to the requesting entity all written notices and all paid premium receipts received by the Grantee regarding the required insurance; or certificates of insurance evidencing the existence of such required insurance.

If the Grantee fails to provide and maintain the insurance required under this Section, then the Council may, at its sole option and discretion, obtain and maintain

insurance of an equivalent nature and any funds expended by the Council to obtain or maintain such insurance shall be due and payable on demand by the Council and bear interest from the date of advancement by the Council at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365-day year. Provided, however, nothing contained herein, including but not limited to this Section, shall require the Council to obtain or maintain such insurance, and the Council's decision to not obtain or maintain such insurance shall not lessen the Grantee's duty to obtain and maintain such insurance.

Section 7.02 **Condemnation.** If after the Grantee has acquired the ownership interest delineated in Section 2.02 all or any portion of the Real Property and Facility is condemned to an extent that the Grantee can no longer comply with the provisions contained in Section 2.04, then the Grantee shall, at its sole option and discretion, either: (i) use or cause the condemnation proceeds to be used to acquire an interest in additional real property needed for the Grantee to continue to comply with the provisions contained in Section 2.04 and to fully or partially restore the Facility and to provide or cause to be provided whatever additional funds that may be needed for such purposes, or (ii) sell the remaining portion of its ownership interest in the Real Property and Facility in accordance with the provisions contained in Section 4.01. Any condemnation proceeds which are not used to acquire an interest in additional real property or to restore the Facility shall be applied in accordance with the provisions contained in Section 4.02 as if the Grantee's ownership interest in the Real Property and Facility had been sold, and such amounts shall be credited against the amounts due and owing under Section 4.02 upon the ultimate sale of the Grantee's ownership interest in the remaining Real Property and Facility. If the Grantee elects to sell its ownership interest in the portion of the Real Property and Facility that remains after the condemnation, then such sale must occur within a reasonable time period from the date the condemnation occurred and the cumulative sum of the condemnation proceeds plus the proceeds of such sale must be applied in accordance with the provisions contained in Section 4.02, with the condemnation proceeds being so applied within a reasonable time period from the date they are received by the Grantee.

As recipient of any of condemnation awards or proceeds referred to herein, the Council agrees to and will disclaim, assign or pay over to the Grantee all of such condemnation awards or proceeds it receives so that the Grantee can comply with the requirements that this Section imposes upon the Grantee as to the use of such condemnation awards or proceeds.

Section 7.03 **Use, Maintenance, Repair and Alterations.** The Grantee shall (i) keep the Real Property and Facility, in good condition and repair, subject to reasonable and ordinary wear and tear, (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Real Property and promptly restore in like manner any portion of the Facility which may be damaged or destroyed thereon and pay when due all claims for labor performed and materials furnished therefore, (iii) comply with all laws, ordinances, regulations, requirements, covenants, conditions and restrictions now or hereafter affecting the Real

Property or Facility, or any part thereof, or requiring any alterations or improvements thereto, (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair, (v) comply with the provisions of any easement if its ownership interest in the Real Property and Facility is by way of such easement, and (vi) comply with the provisions of any condominium documents and any applicable reciprocal easement or operating agreements if the Real Property and Facility, is part of a condominium regime or is subject to a reciprocal easement or use agreement.

The Grantee shall not, without the written consent of the Council and the Commissioner of MMB, (a) permit or suffer the use of any of the Real Property or Facility, for any purpose other than the purposes specified in Section 2.04, (b) remove, demolish or substantially alter any of the Real Property or Facility, except such alterations as may be required by laws, ordinances or regulations or such other alterations as may improve such Real Property or Facility by increasing the value thereof or improving its ability to be used to operate the Governmental Program thereon or therein, (c) do any act or thing which would unduly impair or depreciate the value of the Real Property or Facility, (d) abandon the Real Property or Facility, (e) commit or permit any waste or deterioration of the Real Property or Facility, (f) remove any fixtures or personal property from the Real Property or Facility, that was paid for with the proceeds of the G.O. Grant unless the same are immediately replaced with like property of at least equal value and utility, or (g) commit, suffer or permit any act to be done in or upon the Real Property or Facility, in violation of any law, ordinance or regulation.

If the Grantee fails to maintain the Real Property and Facility in accordance with the provisions contained in this Section, then after a notice and a reasonable time to cure the deficiency, the Council may perform whatever acts and expend whatever funds that are necessary to so maintain the Real Property and Facility and the Grantee irrevocably authorizes and empowers the Council to enter upon the Real Property and Facility, to perform such acts as may be necessary to so maintain the Real Property and Facility. Any actions taken or funds expended by the Council hereunder shall be at its sole option and discretion, and nothing contained herein, including but not limited to this Section, shall require the Council to take any action, incur any expense, or expend any funds, and the Council shall not be responsible for or liable to the Grantee or any other entity for any such acts that are undertaken and performed in good faith and not in a negligent manner. Any funds expended by the Council to perform such acts as may be necessary to so maintain the Real Property and Facility shall be due and payable on demand by the Council and bear interest from the date of advancement by the Council at a rate equal to the lesser of the maximum interest rate allowed by law or 18% per annum based upon a 365 day year.

Section 7.04 Records Keeping and Reporting. The Grantee shall maintain or cause to be maintained books, records, documents and other evidence pertaining to the costs or expenses associated with the Project and operation of the Real Property and Facility needed to comply with the requirements contained in this Agreement, the G.O. Compliance Legislation, the Commissioner's Order, and the G.O. Bonding Legislation, and upon request shall allow or cause the entity which is maintaining such items to allow

the Council, auditors for the Council, the Legislative Auditor for the State of Minnesota, or the State Auditor for the State of Minnesota, to inspect, audit, copy, or abstract, all of such items. The Grantee shall use or cause the entity which is maintaining such items to use generally accepted accounting principles in the maintenance of such items, and shall retain or cause to be retained (i) all of such items that relate to the Project for a period of 6 years from the date that the Project is fully completed and placed into operation, and (ii) all of such items that relate to the operation of the Real Property and Facility for a period of 6 years from the date such operation is initiated. Grantee shall maintain and provide to the Metropolitan Council, as reasonably requested, documentation that determines for capital projects where the 2012 State bond grant funding is insufficient by itself to complete the project, whether additional funding from other sources (including any required match) is sufficient and has been committed to fund the project as required by M.S. Sec. 16A.502. Grantee shall collect, maintain and, upon completion of the Project, provide to the Council written documentation of the jobs created or retained as a result of the Project as required by Minn. Stat. § 16A.633. The documentation must include, but is not limited to, the following information: the number and types of jobs for the Project, whether the jobs are new or retained, where the jobs are located and the pay ranges of the jobs. The Grantee shall provide the documentation to the Council at the time and in the manner required by the Council.

Section 7.05 Inspections by Council. Upon reasonable request by the Council and without interfering with the normal use of the Real Property and Facility, the Grantee shall allow the Council to inspect, take and use photos of the Real Property and Facility.

Section 7.06 Data Practices. The Grantee agrees with respect to any data that it possesses regarding the G.O. Grant, the Project, or the operation of the Real Property and Facility, to comply with all of the provisions and restrictions contained in the Minnesota Government Data Practices Act contained in Chapter 13 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.07 Non-Discrimination. The Grantee agrees to not engage in discriminatory employment practices regarding the Project, or operation or management of the Real Property and Facility, and it shall, with respect to such activities, fully comply with all of the provisions contained in Chapters 363A and 181 of the Minnesota Statutes that exist as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time.

Section 7.08 Worker's Compensation. The Grantee agrees to comply with all of the provisions relating to worker's compensation contained in Minn. Stat. §§ 176.181 subd. 2 and 176.182, as they may be amended, modified or replaced from time to time, with respect to the Project and the operation or management of the Real Property and Facility.

Section 7.09 Antitrust Claims. The Grantee hereby assigns to the Council and the Commissioner of MMB all claims it may have for over charges as to goods or

services provided with respect to the Project, and operation or management of the Real Property and Facility that arise under the antitrust laws of the State of Minnesota or of the United States of America.

Section 7.10. CONTENTS OF SECTION 7.10 HAVE BEEN DELIBERATELY OMITTED FROM THIS AGREEMENT.

Section 7.11 **Prevailing Wages.** The Grantee agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Project and the operation of the Governmental Program on or in the Real Property and Facility. By agreeing to this provision, the Grantee is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the Governmental Program on or in the Real Property and Facility.

Section 7.12 **Liability.** The Grantee and the Council agree that they will, subject to any indemnifications provided herein, be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the Council and the Commissioner of MMB is governed by the provisions contained in Minn. Stat. § 3.736, Minn. Stat. and chapter 466 as it may be amended, modified or replaced from time to time. If the Grantee is a “municipality” as such term is used in chapter 466 of the Minnesota Statutes that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time, then the liability of the Grantee, including but not limited to the indemnification provided under Section 7.13, is governed by the provisions contained in such Chapter 466.

Section 7.13 **Indemnification by the Grantee.** The Grantee shall bear all loss, expense (including attorneys’ fees), and damage in connection with the Project and operation of the Real Property and Facility, and agrees to indemnify and hold harmless the Council, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees from all claims, demands and judgments made or recovered against the Council, the Commissioner of MMB, and the State of Minnesota, their agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property of the Council, the Commissioner of MMB, or the State of Minnesota, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Project or operation of the Real Property and Facility, whether or not due to any act of omission or commission, including negligence of the Grantee or any contractor or his or their employees, servants or agents, and whether or not due to any act of omission or commission (excluding, however, negligence or breach of statutory duty) of the Council, the Commissioner of MMB, or the State of Minnesota, their employees, servants or agents.

The Grantee further agrees to indemnify, save, and hold the Council, the Commissioner of MMB, and the State of Minnesota, their agents and employees,

harmless from all claims arising out of, resulting from, or in any manner attributable to any violation by the Grantee, its officers, employees, or agents, of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 7.06.

The Grantee's liability hereunder shall not be limited to the extent of insurance carried by or provided by the Grantee, or subject to any exclusions from coverage in any insurance policy.

Section 7.14 Relationship of the Parties. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Grantee, the Council, or the Commissioner of MMB, nor shall the Grantee be considered or deemed to be an agent, representative, or employee of the Council, the Commissioner of MMB, or the State of Minnesota in the performance of this Agreement, the Project, or operation of the Real Property and Facility.

The Grantee represents that it has already or will secure or cause to be secured all personnel required for the performance of this Agreement and the Project, and the operation and maintenance of the Real Property and Facility. All personnel of the Grantee or other persons while engaging in the performance of this Agreement, the Project, or the operation and maintenance of the Real Property and Facility shall not have any contractual relationship with the Council, the Commissioner of MMB, or the State of Minnesota, and shall not be considered employees of any of such entities. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Grantee, its officers, agents, contractors, or employees shall in no way be the responsibility of the Council, the Commissioner of MMB, or the State of Minnesota. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the Council, the Commissioner of MMB, or the State of Minnesota including, but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

Section 7.15 Notices. In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and shall be sufficient if personally served or sent by prepaid, registered, or certified mail (return receipt requested), to the business address of the party to whom it is directed. Such business address shall be that address specified below or such different address as may hereafter be specified, by either party by written notice to the other:

To the Public Entity Grantee at:

City of Edina
7450 Metro Blvd
Edina, MN - 55439
Attention: Ross Bintner

To the State Entity Council at:

Metropolitan Council
390 Robert Street North
St. Paul, MN 55101
Attention: Regional Administrator

To the Commissioner of MMB at:

Minnesota Department of Management and Budget
400 Centennial Office Bldg.
658 Cedar Street
St. Paul, MN 55155
Attention: Commissioner

Section 7.16 **Binding Effect and Assignment or Modification.** This Agreement and the Declaration shall be binding upon and inure to the benefit of the Grantee and the Council, and their respective successors and assigns. Provided, however, that neither the Grantee nor the Council may assign any of its rights or obligations under this Agreement or the Declaration without the prior written consent of the other party. No change or modification of the terms or provisions of this Agreement or the Declaration shall be binding on either the Grantee or the Council unless such change or modification is in writing and signed by an authorized official of the party against which such change or modification is to be imposed.

Section 7.17 **Waiver.** Neither the failure by the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in any one or more instances to insist upon the complete and total observance or performance of any term or provision hereof, nor the failure of the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, to exercise any right, privilege, or remedy conferred hereunder or afforded by law shall be construed as waiving any breach of such term, provision, or the right to exercise such right, privilege, or remedy thereafter. In addition, no delay on the part of the Grantee, the Council, or the Commissioner of MMB, as a third party beneficiary of this Agreement, in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or the exercise of any other right or remedy.

Section 7.18 **Entire Agreement.** This Agreement, the Declaration or Certification, as applicable, and the documents, if any, referred to and incorporated herein by reference embody the entire agreement between the Grantee and the Council, and there are no other agreements, either oral or written, between the Grantee and the Council on the subject matter hereof.

Section 7.19 **Choice of Law and Venue.** All matters relating to the validity, construction, performance, or enforcement of this Agreement or the Declaration shall be determined in accordance with the laws of the State of Minnesota. All legal actions initiated with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued in the State of Minnesota District Court located in the City of St. Paul, County of Ramsey, State of Minnesota.

Section 7.20 **Severability.** If any provision of this Agreement is finally judged by any court to be invalid, then the remaining provisions shall remain in full force and effect and they shall be interpreted, performed, and enforced as if the invalid provision did not appear herein.

Section 7.21 **Time of Essence.** Time is of the essence with respect to all of the matters contained in this Agreement.

Section 7.22 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but such counterparts shall together constitute one and the same instrument.

Section 7.23 **Grantee Financial Responsibilities.** The Grantee must fulfill its financial responsibilities for the Project as shown on Attachment III to this Agreement.

(If there are no matching funds requirements then insert the word "NONE".)

Section 7.24 **Source and Use of Funds.** The Grantee represents to the Council and the Commissioner of MMB that **Attachment III** is intended to be and is a source and use of funds statement showing the total cost of the Project and all of the funds that are available for the completion of the Project, and that the information contained in such **Attachment III** correctly and accurately delineates the following information.

A. The total cost of the Project detailing all of the major elements that make up such total cost and how much of such total cost is attributed to each such major element.

B. The source of all funds needed to complete the Project broken down among the following categories:

- (i) State funds including the G.O. Grant, identifying the source and amount of such funds.
- (ii) Matching funds, identifying the source and amount of such funds.
- (iii) Other funds supplied by the Grantee, identifying the source and amount of such funds.
- (iv) Loans, identifying each such loan, the entity providing the loan, the amount of each such loan, the terms and conditions of each such loan, and all collateral pledged for repayment of each such loan.

(v) Other funds, identifying the source and amount of such funds.

C. Such other financial information that is needed to correctly reflect the total funds available for the completion of the Project, the source of such funds and the expected use of such funds.

If any of the funds included under the source of funds have conditions precedent to the release of such funds, then the Grantee must provide to the Council and the Commissioner of MMB a detailed description of such conditions and what is being done to satisfy such conditions.

The Grantee shall also supply whatever other information and documentation that the Council or the Commissioner of MMB may request to support or explain any of the information contained in **Attachment III**.

The value of the Grantee's ownership interest in the Real Property and Facility should only be shown in **Attachment III** if such ownership interest is being acquired and paid for with funds shown in such **Attachment III**, and for all other circumstances such value should be shown in the definition for Ownership Value in Section 1.01 and not included in such **Attachment III**.

The funds shown in **Attachment III** and to be supplied for the Project may, subject to any limitations contained in the G.O. Bonding Legislation, be provided by either the Grantee.

Section 7.25 **Project Completion Schedule.** The Grantee represents to the Council and the Commissioner of MMB that **Attachment IV** correctly and accurately delineates the projected schedule for the completion of the Project.

Section 7.26 **Third-Party Beneficiary.** The Governmental Program will benefit the State of Minnesota and the provisions and requirements contained herein are for the benefit of both the Council and the State of Minnesota. Therefore, the State of Minnesota, by and through its Commissioner of MMB, is and shall be a third-party beneficiary of this Agreement.

Section 7.27 **Grantee Tasks.** Any tasks that this Agreement imposes upon the Grantee may be performed by such other entity as the Grantee may select or designate, provided that the failure of such other entity to perform said tasks shall be deemed to be a failure to perform by the Grantee.

Section 7.28 **Council and Commissioner Required Acts and Approvals.** The Council and the Commissioner of MMB shall not (i) perform any act herein required or authorized by it in an unreasonable manner, (ii) unreasonably refuse to perform any act that it is required to perform hereunder, or (iii) unreasonably refuse to provide or withhold any approval that is required of it herein.

Section 7.29 **Applicability to Real Property and Facility.** This Agreement applies to the Grantee's ownership interest in the Real Property and if a Facility exists to the Facility. The term "if applicable" appearing in conjunction with the term "Facility" is meant to indicate that this Agreement will apply to a Facility if one exists, and if no Facility exists then this Agreement will only apply to the Grantee's ownership interest in the Real Property.

Section 7.30 **E-Verification.** The Grantee agrees and acknowledges that it is aware of Governor's Executive Order 08-01 regarding e-verification of employment of all newly hired employees to confirm that such employees are legally entitled to work in the United States, and that it will, if and when applicable, fully comply with such order and impose a similar requirement in any Use Agreement to which it is a party.

Section 7.31 **Additional Requirements.** The Grantee and the Council agree to comply with the following additional requirements. In the event of any conflict or inconsistency between the following additional requirements and any other provisions or requirement contained in this Agreement, the following additional requirements contained in this Section shall control.

Section 7.32 **Termination Due to Lack of Funds.** Grantee recognizes that Council's obligation to reimburse Grantee for eligible Project costs is dependent upon Council's receipt of funds from the State of Minnesota appropriated to Council under 2010 Session Laws Chapter 189, Section 16, subdivision 3. Should the State of Minnesota terminate such appropriation or should such funds become unavailable to Council for any reason, Council shall, upon written notice to Grantee of termination or unavailability of such funds, have no further obligations for reimbursement or otherwise under this Grant Agreement. In the event of such written notice to Grantee by Council of termination or unavailability of funds, Grantee has no further obligation to complete the Grant Program as required by this Grant Agreement.

Section 7.33 **Grant Program Remainder Funds.** Subsequent to Council approval of the final certifications of project completion submitted by all grant recipients of I/I Municipal Grant Program funds, the Council will determine whether any I/I Municipal Grant Program funds remain available for allocation and distribution to Grantees ("Remainder Funds"). In the event Remainder Funds are available, the Council may, at its sole discretion, allocate and distribute the Remainder Funds to grantees who have received I/I Municipal Grant Program funds, provided, however, that such distribution, when added to the Grant Funds already received by any I/I Municipal Grant Program grantee shall not exceed fifty percent (50%) of the eligible expenses for the Project. The Council will make such allocation and distribution of the Remainder Funds in accordance with the Council Guidelines for the I/I Municipal Grant Program. Alternatively, at its discretion, the Council may roll the Remainder Funds into a subsequent I/I Municipal Grant Program or similar eligible program.

IN TESTIMONY HEREOF, the Grantee and the Council have executed this General Obligation Bond Proceeds Grant Agreement Construction Grant for the Edina - Sewer Rehab Work (Pipe, Manhole & Flood Mitigation) Project on the day and date indicated immediately below their respective signatures.

GRANTEE:

_____,
a _____

By: _____

Its: _____

Dated: _____, _____

And: _____

Its: _____

Dated: _____, _____

METROPOLITAN COUNCIL:

By: _____

Its: _____

Dated: _____, _____

Attachment I to Grant Agreement

**State of Minnesota
General Obligation Bond Financed
DECLARATION**

The undersigned has the following interest in the real property located in the County of _____, State of Minnesota that is legally described in **Exhibit A** attached and all facilities situated thereon (collectively referred to as the "Restricted Property"):

(Check the appropriate box.)

a fee simple title,

a lease, or

an easement,

and as owner of such fee title, lease or easement, does hereby declare that such interest in the Restricted Property is hereby made subject to the following restrictions and encumbrances:

- A. The Restricted Property is bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in paragraph B below, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, or its successor, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and
- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in that Municipal Publicly-Owned Infrastructure Inflow/Infiltration Grant Agreement [No. _____] between [Grantee] and Metropolitan Council dated _____, ____ (the "G.O. Grant Agreement").

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for as long as the G.O. Grant Agreement is in force and effect; at which time it shall be released therefrom by way of a written release in recordable form signed by both the _____ of Metropolitan Council and the Commissioner of Minnesota Management and Budget, or their successors, and such written release is recorded in the real estate records relating to the Restricted Property. This Declaration may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota Management and Budget.

Exhibit A to Declaration
LEGAL DESCRIPTION OF RESTRICTED PROPERTY

Attachment I-A

**State of Minnesota
General Obligation Bond Financed
CERTIFICATION**

The undersigned hereby certifies as follows:

This Certification is being submitted pursuant to the Waiver of Real Property Declaration granted by Minnesota Management and Budget to Metropolitan Council for Municipal Publicly-Owned Infrastructure Inflow/Infiltration projects or the portions thereof which lie entirely within public road, street and highway rights-of-way and utility easements.

Edina certifies that Edina has read and will comply with the terms and conditions of the Waiver of Real Property Declaration, a copy of which is attached as Attachment V to the Municipal Publicly-Owned Infrastructure Inflow/Infiltration Grant Agreement [No. SG2013-006] between Edina and Metropolitan Council (the "G.O. Grant Agreement") and further, that the Governmental Program which is the subject of and described in the G.O. Grant Agreement qualifies for the Waiver of Real Property Declaration.

The undersigned owns fee title to property and/or permanent easement and/or other easement which meets the requirements of this Agreement for wastewater collection purposes and/or permit for pipe in [identify Permitter, e.g., Hennepin Co.] public right of way which meets the requirements of this Agreement for wastewater collection purposes and a wastewater collection system within the fee title, permanent easement, and/or the other easement and wastewater collection system being located in HENNEPIN County, Minnesota. The fee title property, permanent easement and/or other easement and the wastewater collection system therein is referred to as "Restricted Property" and is described in Exhibit A attached hereto by legal description, narrative description or diagram.

As the owner of the Restricted Property, the undersigned hereby acknowledges the following restrictions and encumbrances with respect to the Restricted Property:

- A. The Restricted Property is State bond financed property within the meaning of Minn. Stat. § 16A.695 that exists as of the effective date of the grant agreement identified in paragraph B below, is subject to the encumbrance created and requirements imposed by such statutory provision, and cannot be sold, mortgaged, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget, or its successor, which approval must be evidenced by a written statement signed by said commissioner and attached to the deed, mortgage, encumbrance or instrument used to sell or otherwise dispose of the Restricted Property; and

- B. The Restricted Property is subject to all of the terms, conditions, provisions, and limitations contained in the G.O. Grant Agreement.

The Restricted Property shall remain subject to this State of Minnesota General Obligation Bond Financed Declaration for as long as the G.O. Grant Agreement is in force and effect; at which time it shall be released therefrom by way of a written release in recordable form signed by both the Metropolitan Council and the Commissioner of Minnesota Management and Budget, or their successors, and such written release is recorded in the real estate records relating to the Restricted Property. This Certification may not be terminated, amended, or in any way modified without the specific written consent of the Commissioner of Minnesota Management and Budget, or its successor.

_____ [Grantee], a

By: _____

Title: _____

Dated: _____

Exhibit A to Certification
DESCRIPTION OF RESTRICTED PROPERTY

2013-2014 TRUNK LINING PROJECT

**Attachment II to Grant Agreement
LEGAL DESCRIPTION OF REAL PROPERTY**

(For Projects for which a Certification is being submitted, use the description attached to the Certification submitted.)

PORTIONS OF ARODEN PARK, PAMELA PARK AND
BRAEMAR GOLF COURSE TRUNK SEWERS.

**Attachment III to Grant Agreement
SOURCE AND USE OF FUNDS FOR THE PROJECT**

Grantee's Financial Responsibility

Item	Cost, \$s	Grantee's Responsibility to Pay in \$s	Amount Eligible For Reimbursement with Grant Fund, in \$s	Amount Eligible For Reimbursement with Grant Fund, in %
PIPE	\$1,333,944	\$1,000,458	\$333,486	25%
MANHOLE	\$561,088	\$420,816	\$140,272	25%
FLOW METER	\$898,723	\$853,835	\$44,938	5%

Note that if a project's final eligible capital expenses are: 1) more than the Final Reimbursement Allocation percentage as determined by the Council, no additional grant funds will be awarded, except as may be provided under section 7.33, and 2) less than the Final Reimbursement Allocation percentage as determined by the Council, the percentage will not be increased so the amount eligible for reimbursement will effectively be reduced.

Source of Funds		Use of Funds	
Identify Source of Funds	Amount	Identify Items	Amount
State G.O. Funds		Ownership Acquisition	
G.O. Grant	\$ 518,696	and Other Items Paid	
		for	
		with G.O. Grant Funds	
Other State Funds		Purchase of Ownership	\$ _____
	\$ _____	Interest	
	\$ _____	Other Items of a	
	\$ _____	Capital	
	\$ _____	Nature	
Sub-Total	\$ _____	PIPE LINING	\$ 1,333,914
		MH PUMPS	\$ 561,088
Matching Funds		FLOOD MITIGATION	\$ 898,773
	\$ _____	Sub Total	\$ 2,793,805
	\$ _____		
Sub Total	\$ _____	Items Paid for with	
		Non- G.O. Grant Funds	
Other Grantee Funds			\$ _____
UTILITY FUND	\$ 2,275,109		\$ _____
	\$ _____		\$ _____
Sub-Total		Sub Total	\$ _____
Loans			
	\$ _____		
	\$ _____		
Sub-Total	\$ _____		
Other Funds			
	\$ _____		
	\$ _____		
Sub-Total	\$ _____		
Prepaid Project Expenses			
	\$ _____		
	\$ _____		
Sub-Total	\$ _____		
TOTAL FUNDS	\$ 2,793,805	TOTAL COSTS	\$ 2,793,805



Attachment IV to Grant Agreement

PROJECT DESCRIPTION AND PROJECT COMPLETION SCHEDULE

Attachment V to Grant Agreement

WAIVER OF REAL PROPERTY DECLARATION



June 19, 2012

VIA E-MAIL

John Atkins
MCES Budget Manager
Metropolitan Council
390 Robert St N
St. Paul, MN 55101

Re: Waiver of Real Property Declaration – 2012 Metropolitan Cities Inflow and Infiltration Grants

Dear Mr. Atkins:

I have reviewed your letter dated June 13, 2012 requesting a waiver pursuant to Section 7.02(b) of the Third Order Amending Order of Commissioner of Finance dated August 26, 2010 (the "Commissioner's Order") of the requirement that a real property declaration be recorded in connection with grants to metropolitan-area cities to address inflow and infiltration into local sanitary sewer collection systems from the Metropolitan Council appropriation in Laws 2012, ch. 293, sec. 17, subd. 3.

In response to your request, I waive the requirement that a declaration be recorded for the portion of such projects which lies entirely within public road, street and highway rights-of-way and utility easements. However, a declaration will need to be executed and recorded for any portion of a project which is on land outside of such areas.

Please note that this letter only waives the requirement that a declaration be recorded. The property will remain bond-financed property and subject to all the other requirements of Minn. Stat. Sec. 16A.695 and the Commissioner's Order.

This waiver is conditional upon our receiving a signed copy of the bond-financed property Certification in the form which the Metropolitan Council has been using for its grants from its 2010 I&I bonding appropriation from each grantee who receives a grant from this program, in which such grantee acknowledges that the project property is bond-financed property and thus is subject to all the other requirements of Minn. Stat. Sec. 16A.695 and the Commissioner's Order. A photocopy of each signed Certification should be sent to Gay Greiter, Capital Budget Coordinator at Minnesota Management & Budget, at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Schowalter", written over a light blue horizontal line.

James Schowalter
Commissioner

Cc: Gay Greiter, MMB
Jason Willett, Metropolitan Council
Jeanne Matross, Metropolitan Council



2012 MCES Infiltration and Inflow Grant Application

ENGINEERING DEPARTMENT
CITY OF EDINA

2012 MCES Infiltration and Inflow Grant Application OCTOBER 26, 2012

- Improvements:** The City of Edina (City) has completed and will perform work in accordance to the Municipal Publicly Owned Infrastructure I/I Grant guidelines. The requested grant will fund cured in place pipe projects, sump drain installation projects, manhole cover replacement project, sanitary sewer manhole repair projects, and sanitary sewer spot repairs.
- Location:** The project will include various areas throughout the City associated with street and utility reconstruction projects and specific sanitary sewer rehabilitation projects. Sanitary sewer manhole cover replacement and sanitary sewer manhole rehabilitation will be spread throughout the City.
- Benefits:** These projects will help to eliminate inflow and infiltration (I & I) from entering the sanitary sewer system and will reduce future infrastructure expansion projects for MCES.
- Justification:** The City has identified approximately 6,000 LF of sanitary sewer pipe located in areas where I&I could be significant and where roots and cracks have been identified in past inspections and maintenance. The City of Edina inspects its entire sanitary system or 195 miles of mainline pipe, 23 lift stations, 5 miles of force main, and 5000+ sanitary manholes on a 3-5 year rotating basis to monitor the condition of the system and plan maintenance actions to extend system function and reduce I&I. The estimated replacement value of the entire system is estimated at \$67 million. The projects included in this grant application will maintain a portion of this system with an estimated replacement value of \$1.895 million. The useful life of the system varies by component, but the system is made of durable materials and designed to last in excess of 40 years.
- Cost:** The estimated project costs is \$2,793,805, of which \$1,184,157 are grant eligible expense (see attached for breakdown). The majority of the work will be performed by contractors through a competitive bid process. The only exception will be the replacement of the sanitary sewer lids, a portion of which, may be completed by city employees.

Appendix:

- Estimated Cost Breakdown (July 2012 to June 2014 projects)
- Map Showing Inverts Sanitary Sewer Elevation in Relation to Modeled Ground Water Elevation



July 2012 to June 2014 Summary of Edina's Eligible Costs for MCES I&I Grant Reimbursement

PROJECT	ITEM DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL COST
2012 Viking Hills (actual)	CASTING ASSEMBLY (R-1728)	EACH	21	\$925.00	\$19,425
2012 Countryside (actual)	4" PVC C900 SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	19.0	\$65.00	\$1,235
	4" PVC SDR 35 SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	15.0	\$169.00	\$2,535
	6" PVC SUMP DRAIN CLEANOUT	EACH	15.0	\$193.00	\$2,895
	6" PVC SUMP DRAIN SDR 35 - OPEN CUT	LF	1666.0	\$9.47	\$15,777
	6" C900 SUMP DRAIN PIPE OPEN CUT	LF	1513.0	\$11.27	\$17,052
	CASTING ASSEMBLY (R-1728)	EACH	24.0	\$872.00	\$20,928
2012 Richmond Hills (actual)	6" PVC SUMP DRAIN SDR 35	LF	4127.0	\$9.96	\$41,105
	6" C900 SUMP DRAIN PIPE	LF	3210.0	\$10.79	\$34,636
	4" PVC C900 SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	59.0	\$78.00	\$4,602
	4" PVC SDR 35 SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	36.0	\$136.00	\$4,896
	6" PVC SUMP DRAIN CLEANOUT	EACH	32.0	\$232.00	\$7,424
	SANITARY SEWER SERVICE WYE	LF	7.0	\$324.00	\$2,268
	10" PVC SDR 35 SANITARY SEWER PIPE (12'-14')	LF	361.0	\$61.59	\$22,234
	SANITARY SEWER SPOT REPAIR (10" PVC SEWER PIPE SDR 35)(11'-18" DEPTH)	LF	219.0	\$183.21	\$40,123
	CEMENTICIOUS LINER - SANITARY SEWER MANHOLE	LF	220.0	\$96.00	\$21,120
	CASTING ASSEMBLY (R-1733)	EACH	43.0	\$800.00	\$34,400
2013 Mendelsohn (estimate)	6" PVC SUMP DRAIN SDR 35 - OPEN CUT	LF	295.0	\$30.00	\$8,850
	4" PVC SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	46.0	\$280.00	\$12,880
	6" HDPE SDR 17 SUMP DRAIN (IPS) (HDD)	LF	3145.0	\$22.00	\$69,190
	SANITARY SEWER SPOT REPAIR (10" PVC SEWER PIPE SDR 35)(10'-12' DEPTH)	LF	110.0	\$225.00	\$24,750
	SANITARY SEWER SPOT REPAIR (10" PVC SEWER PIPE SDR 26)(19'-21' DEPTH)	LF	50.0	\$300.00	\$15,000
	CURED-IN-PLACE-PIPE LINER FOR 9" VCP SANITARY SEWER	LF	2900.0	\$36.00	\$104,400
	CASTING ASSEMBLY (R-1728)	EACH	7.0	\$850.00	\$5,950
2013 Normandale (estimate)	4" PVC SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	7.0	\$280.00	\$1,960
	6" PVC SUMP DRAIN CLEANOUT	EACH	7.0	\$295.00	\$2,065
	6" HDPE SDR 17 SUMP DRAIN (IPS) (HDD)	LF	700.0	\$22.00	\$15,400
	CURED-IN-PLACE-PIPE LINER FOR 8" VCP SANITARY SEWER	LF	3200.0	\$36.00	\$115,200
	CURED-IN-PLACE-PIPE LINER FOR 9" VCP SANITARY SEWER	LF	1800.0	\$36.00	\$64,800
	SANITARY SEWER SPOT REPAIR (10" PVC SEWER PIPE SDR 35)(10'-12' DEPTH)	LF	375.0	\$225.00	\$84,375
	SANITARY SEWER SPOT REPAIR (8" PVC SEWER PIPE SDR 35)(10'-12' DEPTH)	LF	315.0	\$225.00	\$70,875
	REPAIR SANITARY SERVICE WYE	EACH	70.0	\$300.00	\$21,000
	CEMENTICIOUS LINER - SANITARY SEWER MANHOLE	LF	140.0	\$96.00	\$13,440
	CASTING ASSEMBLY (R-1733)	EACH	35.0	\$800.00	\$28,000
2013 Braemar Hills (estimate)	6" PVC SUMP DRAIN SDR 35 - OPEN CUT	LF	650.0	\$30.00	\$19,500
	6" HDPE SDR 17 SUMP DRAIN (IPS) (HDD)	LF	2880.0	\$22.00	\$63,360
	4" PVC SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	51.0	\$280.00	\$14,280
	CURED-IN-PLACE-PIPE LINER FOR 9" VCP SANITARY SEWER	LF	1493.0	\$36.00	\$53,748
	SANITARY SEWER SPOT REPAIR (10" PVC SEWER PIPE SDR 35)(10'-12' DEPTH)	LF	30.0	\$225.00	\$6,750
	CASTING ASSEMBLY (R-1733)	EACH	22.0	\$850.00	\$18,700
2013 Lake Edina (estimate)	6" PVC SUMP DRAIN SDR 35 - OPEN CUT	LF	920.0	\$30.00	\$27,600
	4" PVC SUMP DRAIN INLET (TEE, STUB & PLUG)	EACH	240.0	\$280.00	\$67,200
	6" HDPE SDR 17 SUMP DRAIN (IPS) (HDD)	LF	21106.0	\$22.00	\$464,332
	SANITARY SEWER SPOT REPAIR (10" PVC SEWER PIPE SDR 35)(10'-12' DEPTH)	LF	145.0	\$225.00	\$32,625
	SANITARY SEWER SPOT REPAIR (10" PVC SEWER PIPE SDR 26)(19'-21' DEPTH)	LF	25.0	\$300.00	\$7,500
	CURED-IN-PLACE-PIPE LINER FOR 9" VCP SANITARY SEWER	LF	2411.0	\$36.00	\$86,796
	CASTING ASSEMBLY (R-1728)	EACH	87.0	\$875.00	\$76,125
2013-14 Minnehaha Trunk (pre-design)	CURED-IN-PLACE-PIPE LINER	LF	9500.0	\$42.00	\$399,000
	SANITARY SEWER SPOT REPAIR	LF	730.0	\$250.00	\$182,500
	MANHOLE REHABILITATION AND REPAIR	LF	360.0	\$250.00	\$90,000
	CEMENTICIOUS LINER - SANITARY SEWER MANHOLE	LF	1300.0	\$110.00	\$143,000
	CASTING ASSEMBLY		100.0	\$900.00	\$90,000
10% eligible <input type="checkbox"/>					
50% eligible <input type="checkbox"/>					
Total Work Completed =					\$2,793,805
100% Eligible Work Done =					\$293,528
10% of eligible work category =					\$89,877
50% of eligible work category =					\$800,752
Total Eligible Work Done and Planned =					\$1,184,157
Pipe replacement, rehabilitation, or lining =					\$1,333,944
Manhole Sealing =					\$267,560
Manhole Lids =					\$293,528
Sump Drain Tile =					\$898,773

