

ENVIRONMENTAL RESPONSE FUND GRANT AGREEMENT  
BETWEEN THE CITY OF ST. LOUIS PARK ECONOMIC DEVELOPMENT AUTHORITY AND  
HENNEPIN COUNTY DEPARTMENT OF ENVIRONMENTAL SERVICES

This Agreement is made on Feb. 21, 2006 by and between the County of Hennepin, State of Minnesota ("County" or "Grantor" at A2300 Government Center, Mpls, MN 55487) by and through its Department of Environmental Services ("Department") and the City of St. Louis Park Economic Development Authority (EDA), 5005 Minnetonka Boulevard, St. Louis Park, Minnesota 55416 ("Grantee").

Grantee has made application to the County for a grant to be used for site acquisition and contaminated soil cleanup at the National Lead / Golden Auto Site, located at 7003 Lake Street, 6651 Highway 7 and 6625 - 6633 Hampshire Avenue, in St. Louis Park, which application is incorporated into this Agreement by reference.

In consideration of the mutual promises set forth below, the parties agree as follows:

1. GRANT AMOUNT AND COMPLETION

The County shall grant to the Grantee a sum not to exceed Four Million Seven Hundred and Fifty Thousand Dollars (\$ 4,750,000.00) which funds shall be only for expenses incurred in performing activities specified in the Application and as may be further described in Exhibit A to this Agreement or as approved by County staff. Approved assessment and/or clean-up activities as may be described in the application and Exhibit A are referred to herein as the "Project". Administrative costs incurred by the Grantee are not eligible for reimbursement via this Agreement.

Grantee agrees to complete the Project within two (2) years of execution of this Agreement and within the terms stated herein. Any material change in the scope of the Project, including time schedule and budget, must be approved in writing by the County. Funds made available pursuant to this Agreement shall be used only for expenses incurred in performing such purposes and activities described in the Application and this Agreement.

2. ACCOUNTING AND RECORD KEEPING

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

Grantee agrees that the County, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the Grantee and involve transactions relating to this Agreement. Such materials shall be maintained and such access and rights shall be in force and effect during the period of the Agreement and for six (6) years after its termination or cancellation.

3. PAYMENT / REPAYMENT

Grantor will disburse funds to Grantee on or before February 28, 2006. Upon sale of land acquired with Grant funds, the Grantee shall deposit or cause to be deposited, proceeds from such sale into the Environmental Response Fund. Proceeds to be deposited shall include any amount agreed upon by the Grantee and Hennepin County or any amount determined by a Court or State agency to be due to the Environmental Response Fund, from the sale of the land,

#### 4. REPORTING

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

#### 5. CONTRACTS

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

In accordance with Hennepin County's policies against discrimination, Grantee agrees that it shall not exclude any person from full employment rights or participation in or the benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin; and no person who is protected by applicable Federal or State laws, rules, or regulations against discrimination shall be otherwise subjected to discrimination.

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

#### 6. TERMINATION, CANCELLATION AND ASSIGNMENT

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

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

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

#### 7. INDEPENDENT CONTRACTOR

The Grantee shall select the means, method, and manner of performing the activities herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the Grantee as the agent, representative, or employee of the County for any purpose or in any manner whatsoever. The Grantee is to be and shall remain an independent contractor with respect to all services and activities performed under this Agreement. Any and all personnel of the Grantee or other persons while engaged in the performance of any work or services required by the Grantee under this Agreement shall have no contractual relationship with the County, and shall not be considered employees of the County. Any and all claims that may or might arise under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of said personnel, arising out of employment or alleged employment including without limitation, claims of discrimination against the Grantee, its officers, agents, contractors, or employees shall in no way be the responsibility of the County. The Grantee shall defend, indemnify and hold harmless the County, its officials, officers, agents, and employees from any and all such claims irrespective of any determination of any pertinent tribunal, agency, board, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the County, including, without limitation, tenure rights, medical and hospital care, sick leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

## 8. INDEMNIFICATION

The Grantee agrees to defend, indemnify and hold harmless, the County, its officials, officers, agents and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of the Grantee, its contractors or subcontractors or anyone directly or indirectly employed by them, and/or any party that directly or indirectly benefits from the activities specified in this Agreement, and/or anyone for whose acts and/or omissions they may be liable in the performance of the activities specified in this Agreement and against all loss by reason of the failure of the Grantee to perform fully, in any respect, all obligations under this Agreement.

## 9. INSURANCE

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

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

	<u>Limits</u>
General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal and Advertising Injury	1,000,000
Each Occurrence –	
Combined Bodily Injury and Property Damage	1,000,000
  
2. Automobile Liability – Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned, and hired automobiles. 1,000,000
  
3. Workers' Compensation and Employer's Liability:
  - a. Workers' Compensation Statutory  
If the contractor is based outside the State of Minnesota, coverage must apply to Minnesota laws.
  
  - b. Employer's Liability. Bodily Injury by:

Accident – Each accident	100,000
Disease – Policy Limit	500,000
Disease – Each Employee	100,000
  
4. Professional Liability – Per Claim and Aggregate 1,000,000

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

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

An umbrella or excess policy over primary liability coverages is an acceptable method to provide the required insurance limits. The above establishes minimum insurance requirements. It is the sole responsibility of the Grantee to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of policies shall be submitted to the County upon written request.

The Grantee shall not commence work until it and any contractors have obtained the required proof of insurance which clearly evidences required insurance coverages.

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

#### 10. MERGER AND MODIFICATION

It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supercedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be part of this Agreement.

Any alterations, variations, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

#### 11. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and performance under it. The Grant provided by this Agreement is made from the Environmental Response Fund which is governed by the provisions of Minn. Stat. Section 383B.81. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

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COUNTY BOARD APPROVAL

GRANTEE, having signed this agreement, and the Hennepin County Board of Commissioners having duly approved this agreement on the 9 of August, 2006, and pursuant to such approval, the proper County officials having signed this agreement, the parties hereto agree to be bound by the provisions herein set forth.

Reviewed by the County Attorney's Office

[Signature]  
Assistant County Attorney

Date: 2/1/06

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

By: [Signature]  
Chair of Its County Board

Date: 2/22/06

ATTEST: [Signature]  
Deputy/Clerk of County Board

And: [Signature]  
Assistant/Deputy/County Administrator

By: [Signature]  
Assistant County Administrator, Public Works

Date: 2/22/06

Recommended for Approval

By: [Signature]  
Director, Department of Environmental Services

Date: 2-22-06

GRANTEE

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

Name: CITY OF ST. LOUIS PARK EDA

By: [Signature]

Date: 2-22-06

\*GRANTEE shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time Grantee returns the Agreement to the County. Documentation is not required for a sole proprietorship.

**Exhibit A**

**City of St. Louis Park EDA**

Project Summary:

The 11.6 acre site is occupied by a parking lot and three commercial buildings. The project consists of the demolition of the buildings and construction of a 99,000 square foot industrial building and associated paved parking. The site is contaminated with lead, cadmium, arsenic and petroleum compounds as a result of its past use as a lead smelter and salvage yard. An ERF grant of \$4,750,000 is awarded to the City of St. Louis Park EDA for property acquisition costs, demolition costs, and contaminated soil cleanup

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

**Approved Budget for National Lead / Golden Auto Site:**

Property Acquisition, Site Assessment	
Demolition Costs, and soil cleanup	\$ 4,750,000 .
Total:	\$ 4,750,000

Required Documentation to be Submitted to Hennepin County:

Consultant/Contractor/MPCA Invoices

RAP Implementation Report

MPCA Approval Letters

Annual Project Progress/Summary Report(s).