



City Council Memorandum

To: City Council
From: Eric Maass, AICP, EDFP, Economic Development Coordinator
Date: November 2, 2022
Item: Adopt Resolution granting Business Subsidy and Purchase Agreement for PID 19-32002-01-021.

REQUEST:

Adopt the attached resolution approving sale of property and related Purchase Agreement and Business Subsidy Agreements for the sale of land to Intek Plastics in support of their 60,200 s.f. building expansion. The 3.1 acre parcel is generally located west of Enterprise Avenue between Cranky Ape and the Water Tower (PID 19-32002-01-021):

RECOMMENDATION:

Staff recommends adoption of the resolution approving the proposed Business Subsidy Agreement and Purchase Agreement for PID 19-32002-01-021 with minor modifications as may be requested by the City Attorney.

BACKGROUND INFORMATION:

History:

Intek Plastics is planning a 60,200 square feet addition to its corporate real estate portfolio. The proposed project would include \$6.6 million in construction and an additional \$1.6 million in machinery and equipment investments with a total private investment of \$8.2 million.

The City of Hastings previously applied for and were approved for funding through the State of Minnesota's Minnesota Investment Fund (MIF) and Job Creation Fund (JCF). The valuation of the proposed land to be sold is \$208,000. That amount is what was included as the City's contribution towards the applications for State funding. Those application was approved of by the City Council and were subsequently awarded a combined \$1,700,000 in funding from the State of Minnesota.

The Business Subsidy Agreement is necessary to outline criteria for awarding a business subsidy. For this project, the business subsidy is in the form of a reduced sale price of land to facilitate the expansion. The difference between the stated value and the sales price constitutes the amount of subsidy which will be structured in the form of a forgivable loan. This agreement is necessary as

a result of Minn. Stat., Sections 116J.993 to 116J.995 (“Business Subsidy Act”). The forgivable loan will be forgiven upon ten (10) years following the completion date of the project.

Financial Impact:

The City would sell the property for \$1.00/acre to Intek Plastics, Inc for a total sales price of \$3.00. As drafted, Intek Plastics would be responsible for all closing costs.

Advisory Commission Discussion:

HEDRA recommended unanimous approval of the proposed land sale.

ATTACHMENTS:

- Location Map
- Resolution
- Purchase Agreement
- Business Subsidy Agreement

Location Map



HASTINGS CITY COUNCIL RESOLUTION NO. _____

**A RESOLUTION APPROVING THE SALE OF PROPERTY TO
INTEK PLASTICS, LLC FOR STORMWATER IMPROVEMENTS
AND APPROVING THE RELATED PURCHASE AGREEMENT AND
BUSINESS SUBSIDY AGREEMENT**

Council member _____ introduced the following Resolution and moved its adoption:

WHEREAS, the City of Hastings (“City”) owns certain real property located in the City of Hastings, County of Dakota, State of Minnesota, legally described as follows:

Lot 2, Block 1, Hastings Industrial Park No. 3, except the South 520 feet of Lot 2, Block 1, Hastings Industrial Park No. 3, according to the recorded plat thereof, Dakota County, Minnesota.

Abstract Property
PID: 19-32002-01-021

(“Property”); and

WHEREAS, the City desires to sell the Property; and

WHEREAS, Intek Plastics, LLC, a Minnesota limited liability company (“Developer”), desires to purchase the Property for the purpose of constructing a pond and other stormwater improvements, as articulated in the Purchase Agreement (“Purchase Agreement”) and the Business Subsidy Agreement (“Business Subsidy Agreement”) between the parties; and

WHEREAS, on November 7, 2022, the City held a public hearing on the business subsidy for the sale of the Property and the City considered all of the information presented at the public hearing.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HASTINGS AS FOLLOWS:

1. The sale of the Property to Developer is in the public interest of the City and its people, furthers its general plan of economic development and furthers the aims and purposes of Minn. Stat. Sections 469.090 to 469.108; and the appropriate officials are authorized to take such action so as to effectuate such sale.
2. The City approves the Purchase Agreement, subject to minor modification as approved by the City Attorney, and the appropriate officials are authorized to take such action as to effectuate its execution and implementation.

3. The City approves the Business Subsidy Agreement, subject to minor modification as approved by the City Attorney, and the appropriate officials are authorized to take such action as to effectuate its execution and implementation.

Council member _____ moved a second to this resolution and upon being put to a vote it was adopted by the Council Members present.

Adopted by the Hastings City Council on November 7, 2022, by the following vote:

Ayes:

Nays:

Absent:

Mary Fasbender, Mayor

ATTEST:

Kelly Murtaugh, City Clerk

(City Seal)

STATE OF MINNESOTA)
COUNTY OF DAKOTA) ss.
CITY OF HASTINGS)

I, the undersigned, being the duly qualified and acting City Clerk of the City of Hastings, Minnesota, DO HEREBY CERTIFY, that I have carefully compared the attached copy of Resolution No. _____ - A Resolution Approving the Sale of Property to Intek Plastics, LLC for Stormwater Improvements and Approving the Related Purchase Agreement and Business Subsidy Agreement, with the original on file in my office and the same is a full, true and complete transcript therefore.

WITNESS, my hand as such City Clerk and the corporate seal of the City of Hastings this ____ day of _____, 20_____.

Kelly Murtaugh
City Clerk

SEAL

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “Agreement”) is entered into as of _____, 2022 (the “Effective Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Intek Plastics, LLC, a Minnesota limited liability company (“Buyer”).

RECITALS

Recital No. 1. City is the owner of certain real property located in Hastings, Dakota County, Minnesota, legally described on Exhibit A (the “Property”), attached hereto and incorporated herein by reference, with a tax assessed value according to Dakota County of \$163,000.00 and estimated market value of \$208,000.00.

Recital No. 2. Buyer desires to purchase the Property from City.

Recital No. 3. City will sell the Property to Buyer for \$1.00 per acre on the terms and conditions of this Agreement.

Recital No. 4. City believes that the sale of the Property pursuant to and in general fulfillment of this Agreement is in the vital and best interests of the City, will promote the health, safety, morals, and welfare of its residents, and will be in accord with the public purposes and provisions of the applicable State and local laws and requirements.

NOW, THEREFORE, in consideration of the covenants and the mutual obligations contain herein, the parties hereby covenant and agree with each other as follows:

1. **Sale.**

1.1. **Sale.** Subject to the terms and provisions of this Agreement, City shall sell the Property to Buyer, and Buyer shall purchase the Property from City.

1.2. **Purchase Price.** The purchase price to be paid by Buyer to City for the Property shall be Three and no/100 Dollar (\$3.00) (the “Purchase Price”) payable on the Closing Date subject to those adjustments, prorations and credits described in this Agreement, in cash or certified funds or by wire transfer pursuant to instructions from City or DCA Title, 7373 147th Street West, Apple Valley, MN 55124 (“Title”).

2. **Available Surveys, Tests, and Reports.** City will deliver to Buyer within ten (10) business days of the Effective Date, (a) copies of any surveys, soil tests, environmental reports, and any other studies and/or site analyses previously conducted on the Property and in the possession of City, and (b) copies of existing title work for the Property and in the possession of City (the “Due Diligence Materials”). City makes no representations or warranties regarding the accuracy of the Due Diligence Materials. If Buyer so requests, City shall request the preparers of any such surveys, soil tests, environmental reports, and any other studies and/or site analyses to re-issue or re-certify the same for the direct benefit of Buyer, at Buyer’s expense except as

otherwise provided in this Agreement, so that Buyer may rely on such site analyses or surveys as if prepared for Buyer in the first instance, but City makes no representation as to whether any such reissuance or recertification will be available.

3. **Buyer's Investigations.** For a period up to the Closing Date, City shall allow Buyer and Buyer's agents access to the Property without charge and at all times for the purpose of Buyer's investigation and testing of the Property, including surveying and testing of soil and groundwater ("Buyer's Investigations"); provided, however, Buyer shall not perform any invasive testing unless (a) City gives its prior written approval of Buyer's consultant that will perform the testing, which approval shall not be unreasonably withheld, conditioned or delayed, and (b) Buyer gives City reasonable prior notice of such testing. City shall have the right to accompany Buyer during any of Buyer's Investigations of the Property. Buyer shall provide to City copies of all third-party, non-confidential written test results and reports conducted as part of Buyer's Investigations. Except as otherwise provided herein, Buyer agrees to pay all of the costs and expenses associated with Buyer's Investigations, to cause to be released any lien on the Property arising as a result of Buyer's Investigations and to repair and restore, at Buyer's expense, any damage to the Property caused by Buyer's Investigations. Buyer shall indemnify and hold City and the Property harmless from all costs and liabilities, including, but not limited to, reasonable attorneys' fees, arising from Buyer's Investigations. The indemnification obligations provided herein shall survive the termination or cancellation of this Agreement. If this Agreement is terminated based upon any environmental condition as herein provided, and City requests, Buyer shall give City copies of any and all environmental reports obtained by Buyer, if any.

4. **Insurance; Risk of Loss.** City assumes all risk of destruction, loss or damage to the Property prior to the Closing Date. If, prior to the Closing Date, all or any portion of the Property or access thereto is condemned, taken by eminent domain, or damaged by cause of any nature, City shall immediately give Buyer written notice of such condemnation, taking or damage. After receipt of written notice of such condemnation, taking or damage (from City or otherwise), Buyer shall have the option (to be exercised in writing within thirty (30) days of receipt of such written notice from City) either (a) to require City to (i) convey the Property at Closing (as defined in Section 6) to Buyer in its damaged condition, upon and subject to all of the other terms and conditions of this Agreement without reduction of the Purchase Price, (ii) assign to Buyer at Closing all of City's right, title and interest in and to any claims City may have to insurance proceeds, condemnation awards and/or any causes of action with respect to such condemnation or taking of or damage to the Property or access thereto, and (iii) pay to Buyer at Closing by certified or official bank check all payments made prior to the Closing Date under such insurance policies or by such condemning authorities, or (b) to terminate this Agreement by giving written notice of such termination to City, whereupon this Agreement shall be terminated and thereafter neither party shall have any further obligations or liabilities to the other, except for such obligations as survive termination of this Agreement. If the right to terminate this Agreement is not exercised in writing within such thirty (30) day period, such right shall be deemed to have been waived. City shall not designate counsel, appear in, or otherwise act with respect to the condemnation proceedings without Buyer's prior written consent, which consent shall not be unreasonably withheld.

5. **Contingencies.**

5.1. **Buyer's Contingencies.**

A. Unless waived by Buyer in writing, Buyer's obligation to proceed to Closing shall be subject to (a) performance by City of its obligations hereunder, (b) the continued accuracy of City's representations and warranties provided in Section 9.1, and (c) Buyer's satisfaction, in Buyer's sole discretion, as to the contingencies described in this Section 5.1 within the time periods set forth below:

(1) On or before the Closing Date, Buyer shall have determined, in its sole discretion, that it is satisfied with (a) the results of and matters disclosed by Buyer's Investigations, surveys, soil tests, engineering inspections, hazardous substance and environmental reviews of the Property and (b) all other inspections and due diligence regarding the Property, including any Due Diligence Materials. If Buyer has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived.

(2) On or before the Closing Date, Buyer shall have determined the acceptability of the Property for its intended use and incidental uses thereto (collectively, the "Proposed Use"). All costs and expenses related to applying for and obtaining any governmental permits and approvals for the Property for the Proposed Use shall be the responsibility of the Buyer. If Buyer has not terminated this Agreement on or before the Closing Date, the contingency set forth in this paragraph shall be deemed waived.

(3) On or before the Closing Date, Buyer shall have obtained all appropriate approvals and permits necessary for the Proposed Use on the Property, which approvals may include, without limitation, access permits, signage permits, building permits, required licenses (the "Approvals"). All costs and expenses related to the preparation of any documentation necessary to create any plans, specifications or the like shall be the responsibility of the Buyer.

(4) On or before the Closing Date, Buyer shall have obtained all Land Use Entitlements. "Land Use Entitlements" means planning applications, including but not limited to, Plat, Site Plan, and Rezoning Approvals, obtained by Buyer for the Proposed Use.

(5) On or before the Closing Date, and without limitation of the terms of Sections 5.1(A)(1), 5.1(A)(2), 5.1(A)(3) and 5.1(A)(4), Buyer shall be satisfied that they may develop the Property in accordance with a site plan, architectural plan, building plan, grading and drainage plan and other plans and specifications satisfactory to Buyer in their sole discretion.

(6) On or before the Closing Date, Buyer shall have satisfied themselves, in Buyer's sole discretion, that access to and from roads and the Property is adequate for the Proposed Use, including without limitation, access to the Property from the adjacent road, median cuts and curb cuts.

(7) On or before the Closing Date, Buyer shall have satisfied themselves, in Buyer's sole discretion, that water and gas mains, electric power lines, sanitary and storm sewers and other utilities are available to the Property and are adequate for the Proposed Use, such that only service lines must be extended to service the Property for water, gas, electric, sanitary and storm sewer and other utilities.

(8) On or before the Closing Date, Buyer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in a form and substance satisfactory to Buyer in Buyer's sole discretion, not disclosing any encumbrance not acceptable to Buyer in Buyer's sole discretion (the "Approved Commitment"). If Buyer has not terminated this Agreement on or before the Closing Date, the Closing set forth in this paragraph shall be deemed waived.

(9) On or before the Closing Date, Buyer shall have received from Title an irrevocable commitment to issue a title insurance policy for the Property in the form of the Approved Commitment, subject only to such changes in title as are Permitted Encumbrances or as are acceptable to Buyer in Buyer's sole discretion.

(10) On or before the Closing Date, City shall have obtained releases of the Property from any and all mortgages or other monetary liens affecting any of the Property.

(11) On or before the Closing Date, Buyer shall have determined that it is satisfied with the books and records in City's possession, if any, including site plans, surveys, engineering or environmental reports associated with the Property.

(12) On or before the Closing Date, Buyer shall have secured financing that is satisfactory to Buyer in Buyer's sole discretion for the purpose of acquiring and constructing the Proposed Use.

(13) On or before the Closing Date, Buyer may obtain a Survey for the Property certified to Buyer and Title.

(14) On or before the Closing Date, Buyer shall have obtained any necessary company approval of the transaction.

(15) On or before the Closing Date, the parties shall have entered into a Stormwater Management Facilities Agreement for the Property.

(16) On or before the Closing Date, the parties shall have entered into a Business Subsidy Agreement for the Property.

(17) On or before the Closing Date, Buyer shall have approved the forms of all closing documents.

(18) City shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by City prior to the Closing Date.

(19) All representations and warranties of City contained in this Agreement shall be accurate as of the Closing Date.

The foregoing contingencies are for Buyer's sole and exclusive benefit and one (1) or more may be waived in writing by Buyer in its sole discretion. City shall reasonably cooperate with Buyer's efforts to satisfy such contingencies, at no out of pocket cost to City or assumption of any obligation or liability by Buyer except as otherwise provided herein. Buyer shall bear all cost and expense of satisfying Buyer's contingencies. If any of the foregoing contingencies have not been satisfied on or before the applicable date, then this Agreement may be terminated, at Buyer's option, by written notice from Buyer to City. Such written notice must be given on or before the applicable date, or Buyer's right to terminate this Agreement pursuant to this Section shall be waived. Upon termination, neither party shall have any further rights or obligations against the other regarding this Agreement or the Property, except for such obligations as survive termination of this Agreement.

B. If Buyer elects not to exercise any of the contingencies set out herein, such election may not be construed as limiting any representations or obligations of City set out in this Agreement, including, without limitation, any indemnity or representations with respect to environmental matters.

5.2. **City's Contingencies.** City's obligation to proceed to Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions:

A. On or before the Closing Date, City shall approve the sale of the Property for the Purchase Price.

B. Buyer shall have performed and satisfied all agreements, covenants and conditions required pursuant to this Agreement to be performed and satisfied by Buyer prior to the Closing Date.

C. All representations and warranties of Buyer contained in this Agreement shall be accurate as of the Closing Date.

D. There shall be no uncured default by Buyer of any of its obligations under this Agreement as of the Closing Date, not otherwise waived by City.

E. On or before the Closing Date, the parties shall have entered into a Stormwater Management Facilities Agreement for the Property.

F. On or before the Closing Date, the parties shall have entered into a Business Subsidy Agreement for the Property.

If any contingency contained in this Section 5.2 has not been satisfied on or before the date described herein, and if no date is specified, then the Closing Date, then this Agreement may be terminated by written notice from City to Buyer. If termination occurs all documents deposited by Buyer shall be immediately returned to Buyer, and all documents deposited by City shall be immediately returned to City and neither party will have any further rights or obligations with respect to this Agreement or the Property, except for such obligations that survive termination of this Agreement. All the contingencies in this Section 5.2 are specifically for the benefit of City, and City shall have the right to waive any contingency in this Section 5.2 by written notice to Buyer.

6. **Closing.** The closing of the purchase and sale contemplated by this Agreement (the “Closing”) shall occur on or before September 30, 2023, unless otherwise agreed to by the parties (the “Closing Date”). City agrees to deliver legal and actual possession of the Property to Buyer on the Closing Date.

6.1. **City’s Closing Documents and Deliveries.** On the Closing Date, City shall execute and/or deliver, as applicable, to Buyer the following:

A. **Warranty Deed.** A general warranty deed conveying title to the Property to Buyer, free and clear of all encumbrances, except the Permitted Encumbrances (the “Deed”). The Deed shall include as a covenant running with the land the conditions contained in Sections 10.7, 11 and 14.3 relating to the use of the Property. If the covenant is violated the authority may declare a breach of the covenant and seek a judicial decree from the district court declaring a forfeiture and a cancellation of the Deed.

B. **Stormwater Management Facilities Agreement.** City and Buyer shall enter into a Stormwater Management Facilities Agreement for the Property.

C. **Business Subsidy Agreement.** City and Buyer shall enter into a Business Subsidy Agreement for the Property.

D. **Bring Down Certificate.** City shall provide Buyer with a certificate recertifying that the representations and warranties of City contained in this Agreement are true and correct as of the Closing Date.

E. **FIRPTA Affidavit.** An affidavit of City certifying that City is not a “foreign person”, “foreign partnership”, foreign trust”, “foreign estate” or “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

F. **City’s Affidavit.** A standard owner’s affidavit (ALTA form) from City which may be reasonably required by Title to issue an owner’s policy of title insurance with respect to the Property with the so-called “standard exceptions” deleted.

G. **Settlement Statement.** A settlement statement with respect to this transaction.

H. **Copies of Resolutions.** City shall provide Buyer with copies of the resolutions for the various City and/or City public meetings showing City and/or various City commissions and/or councils have approved this transaction, Buyer’ CUP, Buyer’ site plan, zoning, and such other governmental approvals as may be required for Buyer’ Proposed Use.

I. **General Deliveries.** All other documents reasonably determined by Title to be necessary to transfer the Property to Buyer and to evidence that City (a) has satisfied all monetary indebtedness with respect thereto, (b) has obtained such termination statements or releases from such secured creditors as may be necessary to ensure that the Property is subject to no monetary liens, (c) has obtained all consents from third parties necessary to effect City’s performance of the terms of this Agreement, including, without limitation, the consents of all parties holding an interest in the Property, (d) has provided such other documents as are reasonably determined by Title to be necessary to issue policies of title insurance to Buyer with respect to the Property with the so-called “standard exceptions” deleted, and (e) has duly authorized the transactions contemplated hereby.

6.2. **Buyer Closing Documents and Deliveries.** On the Closing Date, Buyer shall execute and/or deliver, as applicable, to City the following:

A. **Payment of Purchase Price.** The Purchase Price, in accordance with the terms of Section 1.2.

B. **Stormwater Management Facilities Agreement.** City and Buyer shall enter into a Stormwater Management Facilities Agreement for the Property.

C. **Business Subsidy Agreement.** City and Buyer shall enter into a Business Subsidy Agreement for the Property.

D. **Bring-Down Certificate**. A certificate dated as of the Closing Date, signed by an authorized officer of Buyer, certifying that the representations and warranties of Buyer contained in this Agreement are true as of the Closing Date.

E. **Settlement Statement**. A settlement statement with respect to this transaction.

F. **FIRPTA Affidavit**. An affidavit of Buyer certifying that Buyer is not a “foreign person”, “foreign partnership”, foreign trust”, “foreign estate” nor a “disregarded entity” as those terms are defined in Section 1445 of the Internal Revenue Code of 1986, as amended.

G. **Buyer’s Affidavit**. A standard owner’s affidavit (ALTA form) from Buyer which may be reasonably required by Title to issue an owner’s policy of title insurance with respect to the Property with the so-called “standard exceptions” deleted.

H. **Evidence of Authority**. Buyer shall provide City with copies of the resolutions showing Buyer has met with necessary requirements to acquire the Property in accordance with this Agreement together with such proceedings, instruments and documents as may be reasonably required by Title as a condition precedent to issuing the Title Policy in Buyer’s name.

I. **General Deliveries**. All other documents reasonably determined by Title to be necessary to evidence that Buyer has duly authorized the transactions contemplated hereby and evidence the authority of Buyer to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by Buyer pursuant to this Agreement, or may be required of Buyer under applicable law, including any purchaser’s affidavits or revenue or tax certificates or statements.

7. **Prorations**. City and Buyer agree to the following prorations and allocation of costs regarding this Agreement:

7.1. **Real Estate Taxes and Special Assessments**. General real estate taxes applicable to any of the Property due and payable in the year of Closing shall be prorated between City and Buyer on a daily basis as of 12:00 a.m. CT on the Closing Date based upon a calendar fiscal year, with City paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto. City shall pay in full all special assessments (and charges in the nature of or in lieu of such assessments) certified, levied, pending, postponed or deferred, or constituting a lien against the Property with respect to any of the Property as of the Closing Date. Buyer shall be responsible for any special assessments that are levied or become pending against the Property after the Closing Date, including, without limitation, those related to Buyer’s development of the Property.

7.2. **Title Evidence, Survey and Closing Fee.** Buyer shall pay all costs of the Commitment with respect to the Property, all costs of the Survey, if any, all premiums for any title insurance policy it desires with respect to the Property and all closing fees or charges imposed by Title.

7.3. **Recording Costs.** City shall pay the cost of recording all documents necessary to cure any Objections, as hereinafter defined. Buyer shall pay all recording costs with respect to the recording of the Deed, and any related development and planning documents, and for the recording of any mortgage required by Buyer, if any, and any mortgage registration tax, if any.

7.4. **Transfer Taxes.** Buyer shall pay all state deed tax regarding the Deed.

7.5. **Utilities.** All utility expenses, including water, fuel, gas, electricity, sewer and other services furnished to or provided for the Property, if any, shall be prorated between City and Buyer on a daily basis as of the Closing Date, with City paying those allocable to the period prior to the Closing Date and Buyer being responsible for those allocable to the Closing Date and subsequent thereto.

7.6. **Attorneys' Fees.** City and Buyer shall each pay its own attorneys' fees incurred in connection with this transaction, except as otherwise specifically set forth in this Agreement.

7.7. **Survival.** The obligations set forth in this Section 7 survive the Closing.

8. **Title Examination.** (i) Buyer shall, at Buyer's expense, order a current and updated title commitment for an owner's title insurance policy (ALTA Form 2006) issued by Title for the Property, and copies of all encumbrances described in the commitment (the "Commitment"); and, if desired, (ii) by the Closing Date, Buyer may at its sole option obtain, at Buyer's expense, an ALTA-certified survey bearing the legal description of the Property, and showing the area, dimensions and location of the Property and the matters shown in the Commitment (the "Survey" and, together with the Commitment, the "Title Evidence").

8.1. **Buyer's Objections.** Within ten (10) days after Buyer's receipt of the last of the Title Evidence, Buyer may make written objections ("Objections") to the form or content of the Title Evidence. The Objections may include, without limitation, any easements, restrictions or other matters which may interfere with the Proposed Use of the Property or matters which may be revealed by the Survey. Any matters reflected on the Title Evidence which are not objected to by Buyer within such time period or waived by Buyer in accordance with Section 8.2(B) shall be deemed to be permitted encumbrances ("Permitted Encumbrances"). Notwithstanding the foregoing, the following items shall be deemed Permitted Encumbrances: (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record which do not interfere with the Proposed Use, if any; (b) Reservation of minerals or mineral rights by the State of Minnesota, if any; (c) Utility and drainage easements which do not interfere with the Proposed Use; and (d)

Applicable laws, ordinances, and regulations. Buyer shall have the renewed right to object to the Title Evidence as the same may be revised or endorsed from time to time.

8.2. **City's Cure**. City shall be allowed twenty (20) days after the receipt of Buyer's Objections to cure the same but shall have no obligation to do so. If such cure is not completed within said period, or if City elects not to cure such Objections, Buyer shall have the option to do any of the following:

- A. Terminate this Agreement with respect to all of the Property.
- B. Waive one or more of its objections and proceed to Closing.

If Buyer so terminates this Agreement, neither City nor Buyer shall be liable to the other for any further obligations under this Agreement (except for such obligations as survive termination of this Agreement).

9. **Warranties and Representations**.

9.1. **By City**. City warrants and represents the following to Buyer, and acknowledges that Buyer has relied on such representations and warranties in agreeing to enter into this Agreement:

A. This Agreement has been duly executed and delivered and constitutes the legal, valid and binding obligation of City enforceable in accordance with its terms. City has been duly formed under the laws of the State of Minnesota and is in good standing under the laws of the jurisdiction in which the Property is located, is duly qualified to transact business in the jurisdiction in which the Property is located, and has the requisite power and authority to enter into and perform this Agreement and the documents and instruments required to be executed and delivered by City pursuant hereto. This Agreement and the documents and instruments required to be executed and delivered by City pursuant hereto have each been duly authorized by all necessary action on the part of City and such execution, delivery and performance does and will not conflict with or result in a violation of City's organizational agreement or any judgment or order.

B. The execution, delivery and performance by City of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to City, or (b) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which City is a party or by which it or any of its properties may be bound.

C. To City's knowledge, except as contemplated herein, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by, any governmental or public body or authority,

or any other entity, is required on the part of City to authorize, or is required in connection with, the execution, delivery and performance of, or the legality, validity, binding effect or enforceability of, this Agreement.

D. To City's knowledge, there are no actions, suits or proceedings pending or threatened against or affecting City or any of its properties, before any court or arbitrator, or any governmental department, board, agency or other instrumentality which in any of the foregoing (a) challenges the legality, validity or enforceability of this Agreement, or (b) if determined adversely to City, would have a material adverse effect on the ability of City to perform its obligations under this Agreement.

E. City has not received written notice, and has no knowledge, of (a) any pending or contemplated annexation or condemnation proceedings, or purchase in lieu of the same, affecting or which may affect all or any part of the Property, (b) any proposed or pending proceeding to change or redefine the zoning classification of all or any part of the Property, (c) any proposed changes in any road patterns or grades which would adversely and materially affect access to the roads providing a means of ingress or egress to or from all or any part of the Property, or (d) any uncured violation of any legal requirement, restriction, condition, covenant or agreement affecting all or any part of the Property or the use, operation, maintenance or management of all or any part of the Property.

F. To City's knowledge, there are no wells, underground or above ground storage tanks of any size or type, or sewage treatment systems located on any portion of the Property. To City's knowledge, there has been no methamphetamine production on or about any portion of the Property. To City's knowledge, the sewage generated by the Property, if any, goes to a facility permitted by the Minnesota Pollution Control Agency and there is no "individual sewage treatment system" (as defined in Minnesota Statutes § 115.55, Subd. 1(g)) located on the Property.

G. City is not a "foreign person," "foreign corporation," "foreign trust," "foreign estate" or "disregarded entity" as those terms are defined in Section 1445 of the Internal Revenue Code.

H. To City's knowledge, except as may be disclosed as part of the Due Diligence Materials, (i) no condition exists on the Property that may support a claim or cause of action under any Environmental Law (as defined below) and there are no Hazardous Substances (as defined below) on the Property, (ii) there has been no release, spill, leak or other contamination or otherwise onto the Property, and (iii) there are no restrictions, clean ups or remediation plans regarding the Property. To City's knowledge, except as may be disclosed as part of the Due Diligence Materials, there is no buried waste or debris on any portion of the Property. "Environmental Law" shall mean (a) the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended, or

any similar state law or local ordinance, (b) the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., (c) the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., (d) the Clean Air Act, 42 U.S.C. § 7401, et seq., (e) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (f) the Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq., (g) any law or regulation governing aboveground or underground storage tanks, (h) any other federal, state, county, municipal, local or other statute, law, ordinance or regulation, including, without limitation, the Minnesota Environmental Response and Liability Act, Minn. Stat. § 115B.01, et seq., (i) all rules or regulations promulgated under any of the foregoing, and (j) any amendments of the foregoing. “Hazardous Substances” shall mean polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel, and shall include, without limitation, substances defined as “hazardous substances,” “toxic substances,” “hazardous waste,” “pollutants or contaminants” or similar substances under any Environmental Law.

I. To City’s knowledge, there are no leases, tenancies unrecorded agreements or other contracts of any nature or type relating to, affecting or serving the Property that will not be terminated as of the Closing Date.

J. There will be no indebtedness or sums due attributable to the Property which will remain unpaid after the Closing Date.

As used in this Agreement, the term “to City’s knowledge” shall mean and refer to only the current actual knowledge of the designated representative of City and shall not be construed to refer to the knowledge of any other officer, manager, director, agent, authorized person, employee or representative of City, or any affiliate of City, or to impose upon such designated representative any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon such designated representative any individual personal liability. As used herein, the term “designated representative” shall refer to John Hinzman. City represents and warrants that the foregoing individual is the representative of City most knowledgeable regarding the Property.

The representations, warranties and other provisions of this Section 9.1 shall survive Closing; provided, however, City shall have no liability with respect to any breach of a particular representation or warranty if Buyer shall fail to notify City in writing of such breach within two (2) years after the Closing Date, and provided further that City shall have no liability with respect to a breach of the representations and warranties set forth in this Agreement if Buyer has actual knowledge of City’s breach thereof prior to Closing and Buyer consummates the acquisition of the Property as provided herein.

Buyer acknowledges and agrees that, except as expressly specified in this Agreement and/or in any documents executed and delivered by City at Closing, City has not made, and City hereby specifically disclaims, any representation, warranty or covenant of any kind, oral or written, expressed or implied, or arising by operation of law, with respect

to the Property, including, but not limited to, any warranties or representations as to the habitability, merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, utilities, valuation, governmental approvals, the compliance of the Property with governmental laws, or any other matter or item regarding the physical condition of the Property. Buyer agrees that except as expressly specified in this Agreement and/or in any documents executed and delivered by City at Closing, Buyer shall accept the Property and acknowledges that the sale of the Property as provided for herein is made by City on an “AS IS,” “WHERE IS,” and “WITH ALL FAULTS” basis. Buyer is an experienced purchaser of property such as the Property and Buyer has made or will make its own independent investigation of the Property. The limitations set forth in this paragraph shall survive the Closing and shall not merge in the deed.

9.2. **By Buyer.** Buyer warrants and represents the following to City, and acknowledges that City has relied on such representations and warranties in agreeing to enter into this Agreement:

A. Buyer is a limited liability company, duly organized and in good standing under the laws of the state of Minnesota and is not in violation of any provisions of its company documents or its operating agreement.

B. Buyer has all requisite authority to enter into this Agreement and to perform all of its obligations under this Agreement.

C. The execution, delivery and performance by Buyer of this Agreement will not (a) violate any provision of any law, statute, rule or regulation or any order, writ, judgment, injunction, decree, determination or award of any court, governmental agency or arbitrator presently in effect having applicability to Buyer, (b) violate or contravene any provision of the articles of incorporation or bylaws of Buyer, or (c) result in a breach of or constitute a default under any indenture, loan or credit agreement or any other agreement, lease or instrument to which Buyer is a party or by which it or any of its properties may be bound.

D. Buyer have received no notice or communication from any local, state or federal official that the activities of the Buyer or City on the Property may be or will be in violation of any environmental law or regulation. Buyer is aware of no facts, the existence of which would cause it to be in violation of any local, state, or federal environmental law, regulation or review procedure or which give any person a valid claim under any of the foregoing.

E. Buyer shall have satisfied the terms and conditions contained in this Agreement prior to the Closing Date or posted surety bonds for future fulfillment of all requirements contained in this Agreement.

The representations, warranties and other provisions of this Section 9.2 shall survive Closing; provided, however, Buyer shall have no liability with respect to any breach of a particular

representation or warranty if City shall fail to notify Buyer in writing of such breach within two (2) years after the Closing Date.

10. **Additional Obligations of City.**

10.1. **Licenses and Permits.** City shall transfer to Buyer all transferable rights, if any, in any permits or licenses held by City with respect to the Property.

10.2. **Condition of the Property at Closing.** On the Closing Date, City shall deliver to Buyer exclusive vacant possession of the Property.

10.3. **Further Assurances.** From and after the Closing Date, City agrees to execute, acknowledge and deliver to Buyer such other documents or instruments of transfer or conveyance as may be reasonably required to carry out its obligations pursuant to this Agreement.

10.4. **Non-Assumption of Contracts or Other Obligations.** The parties understand and agree that Buyer is only acquiring certain of City's real property assets and that this Agreement and any related agreements shall not be construed to be in any manner whatsoever an assumption by Buyer of any agreements, indebtedness, obligations or liabilities of City which are owing with respect to the operation of the Property prior to the Closing Date.

10.5. **Mortgages.** On or before the Closing Date, City shall satisfy all mortgage and/or lien indebtedness with respect to all or any portion of the Property and shall obtain recordable releases of the Property from any and all such mortgages or other liens affecting all or any portion of the Property.

10.6. **Zoning; Other Approvals.** Buyer may elect to seek certain Approvals as defined in Section 5.1(A)(3) and Land Use Entitlements as defined in Section 5.1(A)(4) in order for Buyer to develop the Property for the Proposed Use. City, at no out-of-pocket cost to City, or the assumption of any obligations or liabilities by City, will reasonably cooperate with Buyer's efforts to obtain the Approvals and Land Use Entitlements at or prior to Closing. City hereby grants Buyer the right to file and prosecute applications and petitions for the Approvals, Land Use Entitlements and any special use permits and variances desired by Buyer; provided, however, any special use permits or variances shall be contingent on the occurrence of the Closing and shall not be binding upon City or the Property unless and until the Closing occurs. City, at no out-of-pocket cost to City, or the assumption of any obligations or liabilities by City, agrees to cooperate with Buyer in the filing and prosecution of such applications and petitions, including the filing of the same in City's name, if required.

10.7. **Certificate of Completion.**

A. As part of the development of the Property, Buyer will be constructing a pond and other stormwater improvements (“Minimum Improvements”) pursuant to the final plans submitted by Buyer to the City (“Construction Plans”).

B. After substantial completion of the Minimum Improvements in accordance with the Construction Plans and all terms of this Agreement, City will furnish Buyer with a Certificate of Completion. Such certification by City shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement and in the Deed with respect to the obligations of Buyer to construct the Minimum Improvements and the dates for the beginning and completion thereof. The Certificate of Completion shall only be issued after issuance of a certificate of occupancy by the City.

C. The Certificate of Completion provided for in this Section 10.7 shall be in such form as will enable it to be recorded in the proper county office in Dakota County, Minnesota for the recordation of deeds and other instruments pertaining to the Property. If City shall refuse or fail to provide such certification in accordance with the provisions of this Section 10.7, City shall, within thirty (30) days after written request by Buyer, provide Buyer with a written statement, indicating in adequate detail in what respects Buyer have failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default of a material term of this Agreement, and what measures or acts will be necessary, in the reasonable opinion of City, for Buyer to take or perform in order to obtain such certification.

D. **Reconstruction of Minimum Improvements.** If the Minimum Improvements are damaged or destroyed before completion thereof and issuance of a Certificate of Completion, to the extent payment is actually made to Buyer under a valid and collectible insurance policy in connection with such specific claim, issue or matter, Buyer agrees, for itself and its successors and assigns, to reconstruct the Minimum Improvements within one (1) year of the date of the damage or destruction. The Minimum Improvements shall be reconstructed in accordance with the approved Construction Plans, or such modifications thereto as may be requested by Buyer and approved by City, which approval will not be unreasonably withheld. Buyer’s obligation to reconstruct the Minimum Improvements pursuant to this Section 10.7(D) shall end when the Certificate of Completion is issued.

This Section 10.7 shall survive Closing.

11. **Prohibition Against Sale; Encumbrances.**

11.1 **Prohibition Against Sale of Minimum Improvements for Ten (10) Years.** Buyer represent and agree that their use of the Property and other undertakings pursuant to

the Agreement, are, and will be, for the purpose of development of the Property and not for speculation in land holding. Buyer further recognizes that in view of the importance of the construction of the Minimum Improvements on the Property to the general welfare of the City and the substantial assistance that has been made available by City for the purpose of making such development possible, the fact that any act or transaction involving or resulting in a significant change in the identity of Buyer are of particular concern to City. Buyer further recognizes that it is because of such qualifications and identity that City is entering into the Agreement with Buyer, and, in so doing, is further willing to accept and rely on the obligations of Buyer for the faithful performance of all undertakings and covenants hereby by it to be performed. For the foregoing reasons, Buyer represent and agree that, prior to the issuance of the Certificate of Completion, there shall be no sale of the Property or the Minimum Improvements by Buyer for ten (10) years from the Closing Date nor shall Buyer suffer any such sale to be made, without the prior written approval of City.

A. As security for the obligations of Buyer under this Agreement, Buyer represents and agrees that prior to the issuance of the Certificate of Completion, Buyer will maintain its existence as a Minnesota limited liability company and shall not consolidate with or merge into another entity and shall not dissolve or otherwise dispose of all or substantially all of its assets except as permitted by this Agreement. Nothing herein shall prevent Buyer from selling or issuing additional membership interests in Buyer. Buyer and any entity succeeding to all or part of Buyer's rights in the Minimum Improvements or any part under this Section ("Successor Buyer") may consolidate with or merge into another entity or sell or otherwise transfer to a company or limited liability company, or other legal entity, or an individual, all or any part of its interest in this Agreement and the Minimum Improvements and thereafter be discharged from liability hereunder to the extent of the interest so transferred, if Buyer or such Successor Buyer, as applicable, is not in default of any of its material obligations under this Agreement, if the transferee company, limited liability company, entity or individual enters into a written agreement assuming all of the obligations of Buyer under this Agreement not retained by Buyer, if any, with respect and to the extent of the interest so transferred, in form and substance reasonably acceptable to City, and the transferee company, limited liability company, entity or individual is financially capable of and has experience in performing the obligations of Buyer under this Agreement and is approved by City. In the event of a consolidation, merger or sale in accordance with this subsection, Buyer or other transferor shall not be liable for any actions of the Successor Buyer or purchaser or have any liability under this Agreement with respect to matters arising subsequent to such consolidation, merger or sale which relate to the interest so transferred.

B. Buyer or any Successor Buyer may not sell, transfer, lease or convey the Property and its rights and obligations under this Agreement with respect to such parcel to another entity, whether or not such Successor Buyer is under common management and control with Buyer, or is related to Buyer, except in accordance with the terms of this Agreement. Except as provided in Section 11.1

no such sale, transfer, conveyance or lease shall be effective or recognized for any purpose hereunder, unless:

(1) The Successor Buyer will assume all of Buyer's obligation under any agreement relative to a credit provider and the Successor Buyer is approved by the credit provider and enters into a written assumption agreement reasonably acceptable to the credit provider; and

(2) The Successor Buyer will assume all of Buyer's financial obligations to City and the Successor Buyer is approved by City and enters into a written assumption agreement in form and substance reasonably acceptable to City.

11.2 Limitation Upon Encumbrance of Property. Prior to the issuance of the Certificate of Completion, except for financing approved by City pursuant to Section 5.1(A)(12), Buyer agrees not to engage in any financing creating any mortgage or other encumbrance or lien upon the Property or the Minimum Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property or the Minimum Improvements, other than the liens or encumbrances directly and solely related to construction of the Minimum Improvements and approved by City, which approval shall not be withheld or delayed unreasonably if City determines that such lien or encumbrance will not threaten its security in the Property or the Minimum Improvements.

This Section 11 shall survive Closing.

12. Commissions. It is acknowledged that there is not a broker for City or Buyer.

13. Notice. Any notice to be given by one party hereto shall be personally delivered (including messenger delivery), by email at the address set forth below, or be sent by registered or certified mail, or by a nationally recognized overnight courier which issues a receipt, in each case postage prepaid, to the other party at the addresses in this Section (or to such other address as may be designated by notice given pursuant to this Section), and shall be deemed given upon personal delivery, three (3) days after the date postmarked, one (1) business day after delivery to such overnight courier, or immediately upon personal delivery or delivery by email. Attorneys for each party shall be authorized to give and receive notices for each such party.

If to City: City of Hastings
Attn: John Hinzman
101 4th Street East
Hastings, MN 55033

with a copy to: Korine L. Land
LeVander, Gillen & Miller, P.A.
1305 Corporate Center Drive, Suite 300
Eagan, MN 55121

If to Buyer: Intek Plastics, LLC
 Attn: _____
 1700 Gervais Avenue
 Maplewood, MN 55109

14. **Default; Remedies.**

14.1 **Events of Default Defined.** Each and every one of the following shall be an Event of Default under this Agreement:

A. Failure by City or Buyer to proceed to Closing on the Property after compliance with or the occurrence of all conditions precedent to Closing;

B. Failure by Buyer to commence and complete construction of the Minimum Improvements, unless such failure is caused by an Unavoidable Delay. "Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused, which are the direct result of strikes, other labor troubles, weather, fire, or other casualty to the Minimum Improvements; litigation commenced by third parties which, by injunction or other similar judicial action, results in delays, or acts of any federal, state or local governmental unit (other than City in exercising its rights under this Agreement) that result in delays;

C. Failure by Buyer to pay real estate taxes or special assessments on the Property and Minimum Improvements as they become due;

D. Use by Buyer or others of the Minimum Improvements for purposes other than those contemplated and permitted by this Agreement;

E. Transfer or Sale of the Property or the Minimum Improvements or any part thereof by Buyer in violation of Section 11.1 of this Agreement and without the prior written permission by City;

F. If Buyer shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors or shall consent to the appointment of a receiver; or

G. Failure by any party to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

14.2 **Remedies on Default.** Whenever any Event of Default referred to in Section 14.1 of this Agreement occurs, the non-defaulting party may take any one or more of the following actions after providing thirty (30) days' written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30)

days, the defaulting party does not provide assurances to the non-defaulting party reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

A. Suspend its performance under this Agreement, including refusing to close on the Property, until it receives assurances from the defaulting party, deemed adequate by the non-defaulting party, that the defaulting party will cure its default and continue its performance under this Agreement;

B. Terminate or rescind this Agreement;

C. If the default occurs prior to completion of the Minimum Improvements and remains uncured following the cure period, City may withhold the Certificate of Completion;

D. If the Property is sold prior to the 10-year expiration in Section 11.1 without prior consent of City or the new owner fails to comply with the terms and conditions of this Agreement for the Minimum Improvements, Buyer shall pay City the Tax Assessed Value of the Property; or

E. Take whatever action, including legal or administrative action, which may appear necessary or desirable to the non-defaulting party to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the defaulting party under this Agreement.

14.3 **Revesting Title in City on Failure to Commence Construction Subsequent to Conveyance to Buyer.** If Buyer fails to commence construction pursuant to this Agreement within one (1) year from the Closing Date, City shall have the right to re-enter and take possession of the Property and to terminate the estate conveyed in the Deed to Buyer, it being the intent of this provision that the conveyance of the Property to Buyer shall be made upon and a deed containing a condition subsequent to the effect that in the event that Buyer fails to commence construction pursuant to this Agreement and fails to request and receive additional time for commencement, City at its option, may declare a termination in favor of City of the title and of all the rights and interests in and to the Property conveyed to Buyer. In such circumstances, all title, rights and interests of Buyer and any assigns or successors in interest to and in the Property, shall revert to City, and Buyer shall execute a Quit Claim Deed to City within 30 days of such notice of termination. If Buyer does commence construction pursuant to this Agreement within one year from the Closing Date, a Release of Right to Re-enter and Revest shall be filed with Office of the County Recorder in and for the County of Dakota and State of Minnesota memorializing the commencement of Minimum Improvements and releasing Buyer from City's right to re-enter and take possession of the parcel and to terminate the estate conveyed in the Deed to Buyer, although all additional covenants and provisions of this Agreement and the Deed shall remain in effect.

14.4 **No Remedy Exclusive.** No right or remedy herein conferred upon or reserved to the parties is intended to be exclusive of any other available right or remedy herein or provided by law, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle City or Buyer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in Section 14.2 of this Agreement.

14.5 **No Additional Waiver Implied by One Waiver.** In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Nothing in this Section 14 shall in any way affect or diminish Buyer's right to terminate this Agreement in accordance with Section 5.1.

15. **Other Obligations of Buyer.**

15.1 **Building Permit Fees.** Buyer acknowledges that building permit fees may be payable by Buyer or Successor Buyer for Minimum Improvements.

15.2 **Administrative Costs.** City has incurred and will continue to incur administrative costs in reviewing, analyzing, negotiating and studying the Minimum Improvements and this Agreement. In consideration of the time, effort and expenses to be incurred in pursuing the undertakings set forth herein, on or before execution of this Agreement, Buyer agrees to pay a \$2,000 deposit for the costs of certain consulting fees, including planning, financial, attorneys, engineering, testing and any special meetings. If the obligations of Buyer under this Agreement result in a complete depletion of the \$2,000 cash deposit, then the balance owed shall be due and payable at Closing. If, after completion of the tasks contemplated by this Agreement and if, after appropriate payment to City, there remains on deposit any sum, then such sum shall be paid over to Buyer by City within 30 days after such completion and payment. If Buyer terminates this Agreement because of City's default, Buyer shall be entitled to payment of any remaining balance. If City terminates this Agreement because of Buyer's default, the deposit shall be retained by City.

15.3 **Miscellaneous Requirements.** Any additional requirements as specified by City are incorporated herein.

15.4 **Business Subsidy.**

A. **Business Subsidy.** City and Buyer agree that the value of the Property in its current improved state is at least \$208,000.00. However, the Buyer has stated that it is unable to pay the market value for the purchase of the Property. The Business Subsidy comprises of a forgivable loan in an amount of \$207,997.00. Buyer will construct the Minimum Improvements pursuant to all approvals or licenses required by the City. The public purposes of the reduction are to promote the economic and commercial development of the City, promote the health, safety and welfare of the residents of the City, improve the general economy and vitality of the City, attract, retain, rehabilitate and preserve commercial and industrial facilities and increase of the tax base of the City and the State. Wage and job goals are not among the public purposes included. The Buyer must submit a report to City containing information that allows City to submit the reports required by Minn. Stat. §116J.994(8)(b) and (c). If, the Buyer fails to provide a report, the Buyer must pay City a penalty of \$100 for each subsequent calendar day until the report is filed. The maximum aggregate penalty payable is \$1,000.

15.5 **Buyer Fees.** On or before issuance by the City of a building permit to Buyer, Buyer shall pay all development fees, administrative costs and provide a landscaping letter of credit in the amount of 150% of the value of the landscaping improvements. Upon completion of the landscaping improvements and approval by the City, the letter of credit shall be reduced to 50% of the initial value and retained for a one-year warranty period. Upon completion of the one-year warranty period the City will reinspect the landscaping improvements, at which time the letter of credit shall be released upon final approval by the City.

This Section 15 shall survive Closing.

16. **Cumulative Rights.** No right or remedy conferred or reserved to City or Buyer is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative in and in addition to every other right or remedy existing at law, in equity or by statute, now or hereafter.

17. **Assignment.** Buyer may assign this Agreement with the prior written consent of City. No assignment shall relieve Buyer from its obligations under this Agreement.

18. **Entire Agreement; Modification.** This written Agreement constitutes the complete agreement between the parties with respect to this transaction and supersedes any prior oral or written agreements between the parties regarding this transaction. There are no verbal agreements that change this Agreement and no waiver of any of its terms will be effective unless in writing executed by the parties.

19. **Binding Effect; Survival.** This Agreement binds and benefits the parties and their respective successors and assigns. All representations and warranties, and indemnification obligations of the parties hereto shall survive the Closing.

20. **Governing Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

21. **Rules of Interpretation.** The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than any particular section or subdivision hereof. References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

22. **Titles of Sections.** Any titles of the sections, or any subsections, of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

23. **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, and all of the signatures to this Agreement taken together shall constitute one and the same agreement, and any of the parties hereto may execute such agreement by signing any such counterpart. Facsimile or “PDF” signatures on this Agreement shall be treated as originals until the actual original signatures are obtained.

24. **Represented by Counsel.** Each party has been represented and advised by counsel in the transaction contemplated hereby.

25. **Time of the Essence.** Time is of the essence of this Agreement.

[remainder of page intentionally blank]

IN AGREEMENT, the parties hereto have hereunto set their hands as of the Effective Date.

**CITY:
CITY OF HASTINGS**

By _____
Mary Fasbender
Its Mayor

By _____
Kelly Murtaugh
Its City Clerk

BUYER:
INTEK PLASTICS, LLC

By: _____
Printed Name: _____
Its: _____

EXHIBIT A

Real property located in the County of Dakota, State of Minnesota, legally described as follows:

Lot 2, Block 1, Hastings Industrial Park No. 3, except the South 520 feet of Lot 2, Block 1, Hastings Industrial Park No. 3, according to the recorded plat thereof, Dakota County, Minnesota.

Abstract Property

PID: 19-32002-01-021

[Commitment legal description to govern]

BUSINESS SUBSIDY AGREEMENT

THIS BUSINESS SUBSIDY AGREEMENT (“Agreement”) is made this _____ day of _____, 2022 (the “Effective Date”), by and between the City of Hastings, a Minnesota municipal corporation (“City”), and Intek Plastics, LLC, a Minnesota limited liability company, f/k/a Intek Weatherseal Products, Inc. (“Developer”).

RECITALS

WHEREAS, the City has long desired to improve the function and appearance of its community through economic development, and has invested substantial resources toward that goal; and

WHEREAS, the City adopted criteria for awarding business subsidies, pursuant to the Business Subsidies Act, Minn. Stat., Sections 116J.993 to 116J.995 (“Business Subsidy Act”); and

WHEREAS, City owns the property located in Hastings legally described as:

Lot 2, Block 1, Hastings Industrial Park No. 3, except the South 520 feet of Lot 2, Block 1, Hastings Industrial Park No. 3, according to the recorded plat thereof, Dakota County, Minnesota.

Abstract Property

PID: 19-32002-01-021

(“City Property”); and

WHEREAS, Developer owns 1000 Spiral Boulevard, Hastings, MN 55033 (PID: 19-32002-01-010), which is legally described as:

Lot 1, Block 1, Hastings Industrial Park No. 3, according to the recorded plat thereof, Dakota County, Minnesota.

Abstract Property

PID: 19-32002-01-010

("Developer Property"), which is immediately adjacent to City Property and Developer intends to expand its current facility by constructing a 60,200 square foot addition on to the existing building located on Developer Property ("Project"), which will require the construction of a pond and other stormwater improvements ("Improvements"); and

WHEREAS, Developer Property cannot support the required Improvements needed for the Project on Developer Property; and

WHEREAS, the City has entered into a Purchase Agreement with Developer to sell the City Property to the Developer for purposes of constructing the Improvements that are needed for the Project; and

WHEREAS, the City Property has an estimated market value of \$208,000.00; and

WHEREAS, since the City Property will be used for the Improvements, the City has agreed to sell the City Property to the Developer for \$3.00, contingent on the Developer agreeing to the terms and conditions herein; and

WHEREAS, the difference in the assessed value and the sale price is more than \$25,000, therefore it is considered a Business Subsidy pursuant to Minnesota Statutes §116J.994; and

WHEREAS, the City believes the proposed Project and the sale of City Property for the Improvements would be desirable for the City; and

WHEREAS, the value of the Improvements and the Project meet all criteria for awarding a Business Subsidy established by the Policy on Business Subsidies and due to the estimated cost of the Improvements and the Project, it is not financially feasible without public assistance.

NOW THEREFORE, for good and valuable consideration, the receipt of which is acknowledged, and in consideration of the covenants and agreements made herein, Developer and the City hereby agree as follows:

AGREEMENT

1. The Business Subsidy comprises of a forgivable loan in an amount of two hundred seven thousand, nine hundred ninety-seven dollars (\$207,997.00).
2. The public purposes of the Business Subsidy are as follows:
 - a. Promote the economic and commercial development of the City;

- b. Preserve the local tax base and improve the general economy and vitality of the City;
 - c. Promote the health, safety and welfare of the residents of the City; and
 - d. Attract, retain, rehabilitate and preserve commercial and industrial facilities.
3. The goals for the Business Subsidy are to secure timely development and maintain the City Property as an industrial business for at least ten (10) years.
4. Developer will construct the Improvements pursuant to all approvals or licenses required by the City, with a completion date of December 31, 2023 or the date with which a Certificate of Occupancy is issued for the Improvements; whichever occurs first (“Completion Date”).
5. Upon completion of the Improvements, Developer, its tenants, permitted successors or assigns, will continuously occupy the City Property for at least ten (10) years, except in the event of unforeseeable casualty, in which event, Developer shall rebuild and reopen as soon as commercially reasonable.
6. If Developer complies with the terms and conditions of this Agreement, the Business Subsidy will be forgiven ten (10) years after the Completion Date. If Developer does not comply with the terms and conditions of this Agreement, Developer shall quit claim the City Property back to the City.
7. Developer must submit to City a written report regarding Business Subsidy goals and results by no later than March 1st of each year, commencing March 1st of the year following completion of the Improvements and continuing until the later of the date that the goals are met; or thirty (30) days after expiration of the ten-year period; or if the goals are not met, then the date the City Property is quit claimed back to the City. The report must comply with Minnesota Statutes Section 116J.994 subd. 7 of the Business Subsidy Act. City will provide information to Developer regarding the required forms. If Developer fails to timely file any report required under this section, City will send Developer a warning within one week after the required filing date. If, after 14 days of the postmarked date of the warning, Developer fails to provide a report, Developer must pay City a penalty of \$100 for each subsequent calendar day until the report is filed. The maximum aggregate penalty payable under this section is \$1,000.
8. The parties agree that this Agreement shall be construed pursuant to Minnesota law and any disputes shall be venued in Dakota County, Minnesota.

9. Notices to the parties shall be sent as follows:

If to City: City of Hastings
 Attn: John Hinzman
 101 4th Street East
 Hastings, MN 55033

If to Developer: Intek Plastics, LLC
 Attn: _____
 1700 Gervais Avenue
 Maplewood, MN 55109

10. This Agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

11. This Agreement shall only be amended by written agreement approved by both parties.

[remainder of page intentionally blank]

