



City Council Memorandum

To: Mayor Fasbender & City Council Members
From: Ryan Stempski – Public Works Director/City Engineer
Date: March 18, 2024
Item: Authorize Signature of the Metropolitan Council 2024 Private Property Inflow and Infiltration (I/I) Grant Agreement

COUNCIL ACTION REQUESTED

Enclosed for City Council consideration is the MCES 2024 Private Property I/I Grant Agreement.

BACKGROUND INFORMATION

At the December 4, 2023, City Council Meeting, the application for the MCES 2024 Private Property I/I Grant was authorized. After MCES review of the Hastings application, \$70,000 was awarded to fund eligible private property sanitary sewer service lining improvements. The City's 2024 Sanitary Sewer Rehabilitation Project includes sanitary sewer main lining along a portion of Louis Lane to prevent observed root intrusion. The private property grant would be used to offer funding to property owners that qualify to have their private sewer services lined in addition to the City work already planned. Ownership and maintenance of the sewer service from the main to the home is the responsibility of the property owner.

The City Attorney has reviewed the Grant Agreement and supports its execution.

FINANCIAL IMPACTS

The funding is available for benefit and use by qualifying property owners and is not applicable to the City's finances. As a requirement of the Grant, residents will qualify for either 50% reimbursement or full reimbursement based on a review of financial equity factors.

STAFF RECOMMENDATION

Staff recommends the City Council approve the MCES 2024 Private Property I/I Grant Agreement.

METROPOLITAN COUNCIL
2024 PRIVATE PROPERTY INFLOW AND INFILTRATION (I/I)
GRANT AGREEMENT NO. SG-20604

This Council (MCES) Funded Grant Agreement ("Grant Agreement") is entered into this [date of signature by both parties] between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Met Council") and the City of Hastings, a municipal corporation ("Grantee").

RECITALS

1. In 2022, Minnesota Statutes 2020, section 471.342 was amended to authorize towns and political subdivisions to establish inflow and infiltration prevention programs and make loans or grants to property owners.
2. The Metropolitan Council Environmental Services (MCES, Council) calculates the peak hourly flow discharge limit (I/I Goal) for each community connected to the metropolitan sanitary sewer disposal system. Wastewater flow that exceeds the respective I/I Goal is considered excessive flow. Communities that have a measured wastewater flow rate greater than 80 percent of the I/I Goal are eligible to apply for the Grant.
3. The Council authorizes its staff to enter into a private property inflow and infiltration grant agreement with local municipalities that are eligible for this grant program.

GRANT AGREEMENT

1. Term of Grant Agreement.

- 1.1. **Effective Date.** The effective date of this Grant Agreement is the date on which the Grant Agreement has been duly executed by both parties.
- 1.2. **Grant Activity Period.** The first day of the month following the Effective Date through and including the expiration date.
- 1.3. **Expiration Date.** The latter of (i) 2 years after final distribution of funds to Grantee; or (ii) until all obligations have been satisfactorily fulfilled, whichever occurs first.
- 1.4. **Survival of Terms.** The following clauses survive the expiration, termination, or cancellation of this Grant Agreement; 9. Liability and Insurance; 10. Audits; 11. Government Data Practices; 13. Data Availability; 14. Governing Law, Jurisdiction and Venues; 16. Data Disclosure; 18. Future Eligibility.

2. Duties, Representations and Warranties of Grantee and Use of Grant Funds.

- 2.1. The Grantee agrees to conduct, administer, and complete in a satisfactory manner the program ("Grantee Program") which is described in Grantee's application to Met Council for assistance under the Met Council's Private Inflow and Infiltration grant program, which application is incorporated into this Grant Agreement as **Exhibit A (Grant Application)**, and in accordance with the terms and conditions of this Grant Agreement. Specifically, the Grantee agrees to perform the "Grant Program" in accordance

with a specific timeline, all as described in **Exhibit A (Grant Application)** and to undertake the financial responsibilities described in **Exhibit A (Grant Application)** to this Grant Agreement. The Grantee has the responsibility for and obligation to complete the “Grant Program” as described in **Exhibit A (Grant Application)**. The Met Council makes no representation or warranties with respect to the success and effectiveness of the “Grant Program”. The Met Council acknowledges that “Grant Program” work may be limited to soliciting participation by building owners in the “Grant Program” and requires additional work by the Grantee only to the extent that building owners choose to participate in the “Grant Program”, all as described in the Grantee's application attached as **Exhibit A (Grant Application)**.

The Grant Funds cannot be used for:

- Normal municipal operating or overhead costs, including such related to the Grant Program;
- Grantee's own public sewer infrastructure costs;
- The cost of studies;
- Engineering costs;
- Planning costs; and
- For equipment, machinery, supplies or other property to conduct the Grant Program, except for equipment, supplies or other property which is used primarily for the Grant Program and is specifically listed in **Exhibit A (Grant Application)**.

2.2. Grantee Representations and Warranties. The Grantee further covenants with and represents and warrants to Met Council, as follows:

A. It has the legal authority to enter into, execute and deliver this Grant Agreement and all documents referred to herein, has taken all actions necessary to its execution and delivery of such documents and has provided to Met Council a copy of the resolution by its governing body which authorizes Grantee to enter into this Agreement, to undertake the Private Property I/I Grant Program, including the Grantee financial responsibilities as shown in **Exhibit A (Grant Application)** and which also designates an authorized representative for the Grant Program who is authorized to provide certifications required in this Grant Agreement and submit pay claims for reimbursement of Grantee Program costs.

B. It has legal authority to conduct and administer the Grant Program and use the Grant Funds for the purpose or purposes described in this Agreement.

C. This Grant Agreement 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.

D. It will comply with all the terms, conditions, provisions, covenants, requirements, and warranties in this Agreement, and all other documents referred to herein.

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

F. 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 and 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 Grant Agreement or any document referred to herein, or to perform any of the acts required of it in such documents.

G. Neither the execution and delivery of this Grant Agreement 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.

H. The Grantee will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

J. The Grant Program will be conducted in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or other political subdivisions having jurisdiction over the Grant Program.

K. It has complied with the financial responsibility requirements contained in **Exhibit A (Grant Application)**.

L. The Grant Program will be conducted substantially in accordance with **Exhibit A (Grant Application)** by the Completion Date as stated in **Exhibit A (Grant Application)**.

M. It shall furnish such satisfactory evidence regarding the representations described herein as may be required and requested by the Met Council.

3. Time.

Grantee must comply with all time requirements described in this Grant Agreement.

4. Eligible Costs.

Eligible costs are those costs incurred by parties within the jurisdiction of the Grantee generally only for sewer service lateral repairs or replacements and foundation drain disconnections as described in **Exhibit A (Grant Application)**. The Grantee shall not be reimbursed for non-eligible costs. Any cost not defined as an eligible cost or not included in the Grant Program or approved in writing by the Council is a non-eligible cost.

5. Consideration and Payment.

5.1 The Met Council will reimburse Grantee for eligible costs performed by the Grantee during the Grant Period in an amount of up to the prequalified work's grant amount ("Grant Amount"). The Met Council shall bear no responsibility for any cost overruns that may be incurred by the Grantee or subrecipients of any tier in the performance of the Grantee Program. The initial Grant amount to Grantee under this Grant Agreement is **\$70,000**.

5.2. **Advance.** The Met Council will make no advance of the Grant Amount to Grantee. The disbursement of the Grant Amount shall be in the form of reimbursement for eligible costs as provided ahead in this Section 5.

5.3. **Payment.** To obtain payment under this Grant Agreement, the Grantee shall submit a Reimbursement Request/Progress Report on forms provided by or acceptable to the Met Council. Reimbursement Request/Progress Reports may be submitted once per quarter after this grant agreement has been executed. The Grantee shall describe its compliance with its the financial requirements and construction work completed and specific addresses where work was undertaken in connection with the grant and shall provide sufficient documentation of grant eligible expenditures and such other information as the Met Council's staff reasonably requests. The Met Council will promptly pay the Grantee after the Grantee presents to the Met Council a Reimbursement Request/Progress Report and an itemized invoice for all eligible services actually performed and the Met Council's Authorized Representative accepts the invoiced services.

6. **Conditions of Payment.**

6.1. The Grantee must certify to the Council that work at each site for which payment is requested is done, that Grantee has received receipts for such work, that the work was not performed in violation of federal, Met Council, or local law or regulation and that Grantee has issued the appropriate permits for the work completed in the Grant Program.

6.2. **Conditions Precedent to Any Reimbursement Request.** The obligation of the Met Council to make reimbursement payments hereunder shall be subject to the following conditions precedent:

A. The Met Council shall have received a Reimbursement Request/Progress Report for such amount of funds being requested for which the amounts for each individual site have been pre-qualified by Met Council.

B. The Met Council shall have received evidence upon request, and in form and substance acceptable to the Met Council, that (i) the Grantee has legal authority to and has taken all actions necessary to enter into this Agreement and (ii) this Agreement is binding on and enforceable against the Grantee.

C. No Event of Default under this Grant 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.

D. The Grantee has supplied to the Met Council all other items that the Met Council may reasonably require to assure good fiscal oversight of this grant program.

7. **Authorized Representative.**

The Met Council's Authorized Representative is:

Name: Ward Brown or successor
 Title: Financial Analyst, MCES Pretreatment & Finance
 Mailing Address: 390 North Robert Street
 St. Paul, MN 55101
 Phone: (651) 602-1263
 E-Mail Address: ward.brown@metc.state.mn.us

or his successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the Met Council's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is:

Name: Dan Wietecha
 Mailing Address: 101 4th Street East, Hastings, MN 55033
 Phone: (651) 480-2326
 E-Mail Address: dwietecha@hastingsmn.gov

If the Grantee's Authorized Representative changes at any time during this Grant Agreement, the Grantee must immediately notify the Met Council and within 30 days provide a new City resolution (if such resolution is necessary) specifying the new Representative.

8. Assignment, Amendments, Waiver, and Grant contract Complete.

8.1 Assignment. The Grantee may neither assign nor transfer any rights or obligations under this Grant Agreement without the prior consent of the Met Council and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Grant Agreement, or their successors in office.

8.2 Amendments. Any amendment to this Grant Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Grant Agreement, or their successors, or their delegatee in office.

8.3 Waiver. If the Met Council fails to enforce any provision of this Grant Agreement, that failure does not waive the provision or its right to enforce it.

8.4 Grant Contract Complete. This Grant Agreement contains all negotiations and agreements between the Met Council and the Grantee. No other understanding regarding this Grant Agreement, whether written or oral, may be used to bind either party.

9. Liability and Insurance.

9.1 The Grantee and the Met 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 Met Council is governed by the provisions contained in Minn. Stat. Chapter 466 as it may be amended, modified or replaced from time to time. The liability of the Grantee, including but not limited to the indemnification provided under Section 9.2 is governed by the provisions contained in such Chapter 466.

9.2 Indemnification by the Grantee. The Grantee shall bear all losses, expenses (including attorneys' fees) and damages in connection with the Grant Program and agrees to indemnify and hold harmless the Met Council, its agents, servants and employees from all claims, demands and judgments made or recovered against the Met Council, its agents, servants and employees, because of bodily injuries, including death at any time resulting therefrom, or because of damages to property, or others (including loss of use) from any cause whatsoever, arising out of, incidental to, or in connection with the Grant Program 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 Met Council, its employees, servants or agents.

Grantee further agrees to indemnify, save and hold the Met Council, its 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, or any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce the provisions contained in Section 11.

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.

The Grantee shall maintain or require to be maintained adequate insurance coverage for the Grant Program in such amounts with such limits as it determines in good faith to be reasonable or in such amounts and with such limits as may be reasonably required for participating cities by the Met Council from time to time.

9.3 Relationship of the Parties. Nothing contained in this Grant 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 and the Met Council, nor shall the Grantee be considered or deemed to be an agent, representative, or employee of the Met Council in the performance of this Grant Agreement, or the Grant Program.

The Grantee represents that it has already or will secure or cause to be secured all personnel required for the performance of this Grant Agreement and the Grant Program. All personnel of the Grantee or other persons while engaging in the performance of this Grant Agreement the Grant Program shall not have any contractual relationship with the Met Council related to the work of the Grant Program and shall not be considered employees of the Met Council. 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 Met Council. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the Met Council, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

10. Audits.

Under Minn. Stat. § 16C.05, subd. 5, the Grantee's books, records, documents, and accounting procedures and practices relevant to this grant contract are subject to examination by the Met Council and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the termination date of this Grant Agreement.

11. Government Data Practices.

The Grantee and Met Council must comply with the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13, as it applies to all data provided by the Met Council under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this Grant Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the Met Council. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the Met Council.

12. Workers' Compensation.

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

14. Governing Law, Jurisdiction, and Venue.

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

15. Termination.

The Met Council may cancel this Grant Agreement at any time, with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment for services prequalified and satisfactorily performed before the termination notice.

16. Data Disclosure.

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Grantee consents to disclosure of its federal employer tax identification number, and/or Minnesota tax identification number, already provided to the Met Council, to federal and state tax agencies and Met Council personnel involved in the payment of Met Council obligations. Grantee will require compliance with this Section 16 by Grantee's subrecipient of Grant funds and shall submit evidence of such compliance to Met Council as requested.

17. 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 Grantee at:

City of Hastings
101 4th Street East
Hastings, MN 55033
Attention: Dan Wietecha

To the Met Council at:

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

With copy to:

MCES General Manager
Metropolitan Council Environmental Services
390 Robert Street North
St. Paul, MN 55101

MCES Finance Director
Metropolitan Council Environmental Services
390 Robert Street North
St. Paul, MN 55101

18. Prevailing Wages

The Grantee agrees to comply with all 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 Grantee Program. By agreeing to this provision, the Grantee is not acknowledging or agreeing that the cited provisions apply to the Grantee Program.

19. Default and Remedies.

19.1 Defaults. The Grantee's failure to fully comply with all of the provisions contained in this Grant Agreement shall be an event of default hereunder ("Event of Default").

19.2 Remedies. Upon an event of default, the Met Council may exercise any one or more of the following remedies:

- a. Refrain from disbursing the Grant;
- b. Demand that all or any portion of the Grant already disbursed be repaid to it, and upon such demand the Grantee shall repay such amount to the Met Council.
- c. Enforce any additional remedies the Met Council may have at law or in equity.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on or as of the date first above written.

By: _____
Regional Administrator, successor, or delegate

Date: _____

GRANTEE:

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: _____
_____, Mayor

Date: _____

By: _____
_____, Clerk

Date: _____

