

MEETING DATE: February 23, 2017

TITLE: Authorization to Execute Grant Agreements for Minnehaha Creek Stormwater Management and Six Mile Creek - East Auburn Stormwater Enhancement Project

RESOLUTION NUMBER: 17-016

PREPARED BY: Tiffany Schaufler

E-MAIL: tschaufler@minnehahacreek.org

TELEPHONE: 952-641-4513

REVIEWED BY: Administrator Counsel Program Mgr. (Name):
 Board Committee Engineer Other: Anna Brown

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Not reviewed at Workshop. Requesting approval at February 23, 2017 Board Meeting.	

PURPOSE or ACTION REQUESTED:

Authorization to execute a grant agreement for the Minnehaha Creek Stormwater Management study and for the Six Mile Creek – East Auburn Stormwater Enhancement Project and approval of an \$8,988 grant match for the Minnehaha Creek Stormwater Management study.

PROJECT/PROGRAM LOCATION:

Minneapolis, Victoria

PROJECT TIMELINE:

January 2017 – BWSR grant awarded
February 2017 – Execution of grant agreement
March 2017 – Begin Minnehaha Creek Study; Begin Six Mile Creek project design
August 2017 – Minnehaha Creek final report, Six Mile Creek design complete

PROJECT/PROGRAM COST:

Fund name and number: Planning & Projects, 2002
Current budget: \$1,114,973
Expenditures to date: \$20,764
Requested amount of funding: \$8,988

PAST BOARD ACTIONS:

July 28, 2016 - Resolution 16-062, Authorization to apply for grant funding through BWSR Clean Water Fund and Hennepin County Natural Resources

October 27, 2016 – Resolution 16-078, Authorization to Execute a Cooperative Agreement between the City of Victoria and Minnehaha Creek Watershed District

SUMMARY:

In August 2016, staff applied for an Accelerated Implementation Grant from the Board of Water and Soil Resources (BWSR) in the amount of \$35,952 for Minnehaha Creek Stormwater Management. This is a subcategory of the Clean Water Fund Competitive Grant Program that is intended for upfront project identification. Staff also applied for Projects and Practices Grant from BWSR in the amount of \$262,520 for the Six Mile Creek - East Auburn Stormwater Enhancement Project. Both of these grants were awarded to the District in January 2017.

The subject of the Minnehaha Creek Stormwater Management assessment is to identify opportunities for stormwater management and stream improvements on Minneapolis Park and Recreation Board land along Minnehaha Creek. In 2014, the District experienced record flooding along Minnehaha Creek and received FEMA funding for bank repair. This BWSR grant will allow the District to explore opportunities to align the streambank repairs with stormwater management opportunities. The grant requires a 25 percent match in the amount of \$8,988. Staff is requesting that the Board approve the expenditure of up to \$8,988 for the purpose of satisfying the grant agreement.

The Six Mile Creek - East Auburn Stormwater Enhancement Project will enhance two existing ponds that receive stormwater from 22 acres of downtown Victoria and eventually drain to East Auburn Lake. The project will involve retrofitting two ponds, one with an addition of a filtration bench and one with an iron enhanced filtration bench. The proposed retrofits will reduce phosphorous export from Church Lake while simultaneously protecting East Auburn Lake from runoff from downtown Victoria by going beyond what would be required through regulation alone. The project will result in an estimated 24.1 lbs/yr reduction of phosphorus and 4,750 lbs/yr of TSS from downtown Victoria. The grant requires a 25 percent match in the amount of \$65,630. Under a cooperative agreement between the District and the City of Victoria that the Board approved on October 27, 2016, the City is responsible to design and construct the project using grant funds and such amount of its own funds as necessary to meet the local match under the grant agreement and to complete the project.

ATTACHMENT:

Grant Agreement

RESOLUTION

RESOLUTION NUMBER: 17-016

TITLE: **Authorization to Execute Grant Agreements for Minnehaha Creek Stormwater Management and Six Mile Creek - East Auburn Stormwater Enhancement Project**

WHEREAS, the Minnehaha Creek Watershed District (MCWD) Board of Managers has identified the Minnehaha Creek and Six Mile Creek subwatersheds as priority focal areas for project and program implementation; and

WHEREAS, the MCWD Board of Managers authorized the pursuit of Clean Water Legacy grant funding to identify stormwater opportunities along Minnehaha Creek and implement a water quality improvement project in the Six Mile Creek subwatershed; and

WHEREAS, on October 27, 2016 the Board authorized the execution of a Cooperative Agreement between the City of Victoria and the District for the enhancement of two stormwater ponds in Downtown Victoria, under which Victoria, at its cost as defrayed by grant funds, will be responsible for design and construction and for meeting any required matching local share; and

WHEREAS, under the Cooperative Agreement, the District and Victoria will enter a subsidiary agreement for the following purposes:

- Determination of which grant agreement obligations the City may assume directly;
- the City assumption of responsibility to ensure that all grant agreement obligations are met, except for obligations regarding the management and disbursement of funds that will remain with the District;
- the City indemnification of the District regarding any loss of grant funds or other costs or damages incurred; and

WHEREAS, in January 2017, the MCWD was awarded an Accelerated Implementation Grant from the Board of Water and Soil Resources (BWSR) in the amount of \$35,952 for Minnehaha Creek Stormwater Management, and a Projects and Practices Grant from BWSR in the amount of \$262,520 for the Six Mile Creek - East Auburn Stormwater Enhancement Project; and

WHEREAS, the grant requires a 25 percent match in the amount of \$8,988 for the Minnehaha Creek Stormwater Management Grant and a 25 percent match in the amount of \$65,630 for the Six Mile Creek - East Auburn Stormwater Enhancement Project, the latter of which is the responsibility of the City of Victoria, and the 2017 work plan for Planning & Projects (2002) includes funds for planning in the Minnehaha Creek Subwatershed that may be used to cover the District's contribution to the grant match;

NOW, THEREFORE, BE IT RESOLVED that the MCWD Board of Managers hereby approves the Grant Agreement between the State of Minnesota, acting through its Board of Water and Soils Resources for appropriated Clean Water Funds in the amount of \$298,472 for work related to Minnehaha Creek Stormwater Management and the Six Mile Creek - East Auburn Stormwater Enhancement Project, and authorizes the District Administrator to execute the Grant Agreement; and

BE IT FURTHER RESOLVED that the MCWD Board of Managers approves the expenditure of up to \$8,988 for the required Minnehaha Creek Stormwater Management grant match; and

**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

BE IT FINALLY RESOLVED that the MCWD Board of Managers delegates the authority to sign the Six Mile Creek-East Auburn subsidiary agreement to the President, on advice of counsel.

Resolution Number 17-016 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____



**FY 2017 STATE OF MINNESOTA
BOARD OF WATER and SOIL RESOURCES
COMPETITIVE GRANTS PROGRAM
GRANT AGREEMENT**

Vendor:	0000225729	VN#:	
PO#:	3000007768	Date Paid:	

This Grant Agreement is between the State of Minnesota, acting through its Board of Water and Soil Resources (Board) and **Minnehaha Creek WD, 15320 Minnetonka Blvd Minnetonka Minnesota 55345** (Grantee).

<i>This grant is for the following Grant Programs :</i>		
C17-2231	Minnehaha Creek Stormwater Management	\$35,952
C17-3907	Six Mile Creek - East Auburn Stormwater Enhancement Project	\$262,520

Total Grant Awarded: \$298,472

Recitals

1. Minnesota Statutes 103B.101, subd. 9 (1), and 103B.3369, authorize the Board to award this grant.
2. The Laws of Minnesota 2015, 1st Special Session, Chapter 2, Article 2, Section 7(b – Projects and Practices) (c – Accelerated Implementation) (h – Community Partners) and (k – multi-purpose drainage), appropriated Clean Water Fund (CWF) funds to the Board for the FY 2017 Competitive Grants Program.
3. The Minnesota Department of Health transferred funds to the Board for the Well Sealing Grant Program.
4. The Board adopted the FY 2017 Clean Water Fund Competitive Grants Policy and authorized the FY 2017 Competitive Grants Program in Board Resolution 16-52.
5. The Board adopted Board Resolution 16-98 to allocate funds for the FY 2017 Competitive Grants Programs.
6. The Grantee has submitted a BWSR approved work plan for this Program which is incorporated into this agreement by reference.
7. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant agreement to the satisfaction of the State.
8. As a condition of the grant, Grantee agrees to minimize administration costs.

Authorized Representative

The State's Authorized Representative is Marcey Westrick, Clean Water Coordinator, BWSR, 520 Lafayette Road North, Saint Paul, MN 55155, 651-284-4153, or her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services and performance provided under this Grant Agreement.

The Grantee's Authorized Representative is: **Lars Erdahl, District Administrator
15320 Minnetonka Blvd
Minnetonka, MN 55345
952-641-4505**

If the Grantee's Authorized Representative changes at any time during this Grant Agreement, the Grantee must immediately notify the Board.

Grant Agreement

1. Term of Grant Agreement

- 1.1. **Effective date:** The date the Board obtains all required signatures under Minn. Stat. § 16B.98, Subd.5. **The State's Authorized Representative will notify the Grantee when this grant agreement has been executed. The Grantee must not begin work under this grant agreement until it is executed.**

- 1.2. **Expiration date:** December 31, 2019, or until all obligations have been satisfactorily fulfilled, whichever comes first.
- 1.3. **Survival of Terms:** The following clauses survive the expiration or cancellation of this Agreement: 7. Liability; 8. State Audits; 9. Government Data Practices; 11. Publicity and Endorsement; 12. Governing Law, Jurisdiction, and Venue; 14. Data Disclosure; and 18. Intellectual Property Rights.

2. Grantee's Duties

The Grantee will comply with required grants management policies and procedures set forth through Minn. Stat. § 16B.97, Subd. 4(a)(1). The Grantee is responsible for the specific duties for the Program as follows:

- 2.1. **Implementation:** The Grantee will implement their work plan, which is incorporated into this Agreement by reference.
- 2.2. **Reporting:** All data and information provided in a Grantee's report shall be considered public.
 - 2.2.1. The Grantee will submit an annual progress report to the Board by February 1 of each year on the status of program implementation by the Grantee. Information provided must conform to the requirements and formats set by the Board.
 - 2.2.2. The Grantee will display on its website the previous calendar year's detailed information on the expenditure of these State grant funds and measurable outcomes as a result of the expenditure of these State grant funds according to the format specified by the BWSR, by March 15 of each year.
 - 2.2.3. Final Progress Report: The Grantee will submit a final progress report to the Board by February 1, 2020 or within 30 days of completion of the project, whichever occurs sooner. Information provided must conform to the requirements and formats set by the Board.
- 2.3. **Match:** The Grantee will ensure any local match requirement will be provided as stated in Grantee's approved work plan.

3. Time

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

4. Terms of Payment

- 4.1. Grant funds will be distributed in three installments: 1) The first payment of 50% will be distributed after the execution of the Grant Agreement. 2) The second payment of 40% will be distributed after the first payment of 50% has been expended and reporting requirements have been met. An eLINK Interim Financial Report that summarizes expenditures of the first 50% must be signed by the Grantee and approved by BWSR. Selected grantees may be required at this point to submit documentation of the expenditures reported on the Interim Financial Report for verification. 3) The third payment of 10% will be distributed after the grant has been fully expended and reporting requirements are met. The final, 10% payment must be requested within 30 days of the expiration date of the Grant Agreement. An eLINK Final Financial Report that summarizes final expenditures for the grant must be signed by the grantee and approved by BWSR.
- 4.2. All costs must be incurred within the grant period.
- 4.3. All incurred costs must be paid before the amount of unspent grant funds is determined. Unspent grant funds must be returned within 30 days of the expiration date of the Grant Agreement.
- 4.4. The obligation of the State under this Grant Agreement will not exceed the amount stated above.
- 4.5. This grant includes an advance payment of 50 percent of the grant's total amount. Advance payments allow the grantee to have adequate operating capital for start-up costs, ensure their financial commitment to landowners and contractors, and to better schedule work into the future.
- 4.6. Contracting and Bidding Requirements per Minn. Stat. §471.345, Grantees that are municipalities as defined in Subd. 1 must do the following if contracting funds from this grant contract agreement for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.
 - 4.6.1. If the amount of the contract is estimated to exceed \$100,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
 - 4.6.2. If the amount of the contract is estimated to exceed \$25,000 but not \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the

vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).

- 4.6.3. If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation, it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
- 4.6.4. Support documentation of the bidding process utilized to contract services must be included in the Grantee's financial records, including support documentation justifying a single/sole source bid, if applicable.
- 4.6.5. For projects that include construction work of \$25,000 or more, prevailing wage rules apply per Minn. Stat. §§177.41 through 177.44. Consequently, the bid request must state the project is subject to prevailing wage. These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole. A prevailing wage form should accompany these bid submittals.

5. Conditions of Payment

All services provided by the Grantee under this Grant Agreement must be performed to the State's satisfaction, as set forth in this Agreement and in the BWSR approved work plan for this program. Compliance will be determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, State, and local laws, policies, ordinances, rules, FY 2017 Clean Water Fund Competitive Grants Policy, and regulations. All Grantees must follow the Grants Administration manual policy. Minnesota Statutes §103C.401 (2014) establishes BWSR's obligation to assure program compliance. If the noncompliance is severe, or if work under the grant agreement is found by BWSR to be unsatisfactory or performed in violation of federal, state, or local law, BWSR has the authority to require the repayment of grant funds, or an additional penalty. Penalties can be assessed at a rate up to 150% of the grant agreement.

The Minnesota Department of Administration's Office of Grants Management Policy on Grant Closeout Evaluation (Policy 08 – 13) requires the Board to consider a grant applicant's past performance before awarding subsequent grants to them. The Board must consider a grant applicant's performance on prior grants before making a new grant award of over \$5,000. The Board may withhold payment on this and grants from other programs if the Grantee is not in compliance with all Board reporting requirements.

6. Assignment, Amendments, and Waiver

- 6.1. **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this Grant Agreement without the prior consent of the State 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.
- 6.2. **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 in office. Amendments must be executed prior to the expiration of the original agreement or any amendments thereto.
- 6.3. **Waiver.** If the State fails to enforce any provision of this Grant Agreement, that failure does not waive the provision or its right to enforce it.

7. Liability

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

8. State Audits

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

- 8.1. The books, records, documents, accounting procedures and practices of the Grantee and its designated local units of government and contractors relevant to this grant, may be examined at any time by the Board or Board's designee and

are subject to verification. The Grantee or delegated local unit of government will maintain records relating to the receipt and expenditure of grant funds.

8.2. The Grantee or designated local unit of government implementing this Agreement will provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board if requested.

9. Government Data Practices

The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, 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 State.

10. Workers' Compensation

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

11. Publicity and Endorsement

11.1. **Publicity.** Any publicity regarding the subject matter of this Grant Agreement must identify the Board as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Grant Agreement.

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

12. 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 Agreement, or its breach, must be in the appropriate State or federal court with competent jurisdiction in Ramsey County, Minnesota.

13. Termination

13.1. The State 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, determined on a pro rata basis, for services satisfactorily performed.

13.2. In the event of a lawsuit, an appropriation from a Clean Water Fund is canceled to the extent that a court determines that the appropriation unconstitutionally substitutes for a traditional source of funding.

14. Data Disclosure

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

15. Prevailing Wage

It is the responsibility of the Grantee or contractor to pay prevailing wages on construction projects to which State prevailing wage laws apply (Minn. Stat. 177.42 – 177.44). All laborers and mechanics employed by grant recipients and subcontractors funded in whole or in part with these State funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality.

16. Constitutional Compliance

It is the responsibility of the Grantee to comply with requirements of the Minnesota Constitution regarding use of Clean Water Funds to supplement traditional sources of funding.

17. Signage

It is the responsibility of the Grantee to comply with requirements for project signage as provided in Minnesota Laws 2010, Chapter 361, article 3, section 5 (b) for Clean Water Fund projects.

18. Intellectual Property Rights

The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this grant*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this grant. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee upon completion or cancellation of this grant at the State's request. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be duly executed intending to be bound thereby.

Approved:

Minnehaha Creek WD

Board of Water and Soil Resources

By: _____
(print)

By: _____

(signature)

Title: _____

Title: _____

Date: _____

Date: _____



**FY 2017 STATE OF MINNESOTA
BOARD OF WATER and SOIL RESOURCES
COMPETITIVE GRANTS PROGRAM
GRANT AGREEMENT**

Vendor:	0000225729	VN#:	
PO#:	3000007768	Date Paid:	

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Minnetonka, MN 55345
952-641-4505**

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 - 2.2.3. Final Progress Report: The Grantee will submit a final progress report to the Board by February 1, 2020 or within 30 days of completion of the project, whichever occurs sooner. Information provided must conform to the requirements and formats set by the Board.
- 2.3. **Match:** The Grantee will ensure any local match requirement will be provided as stated in Grantee's approved work plan.

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- 4.2. All costs must be incurred within the grant period.
- 4.3. All incurred costs must be paid before the amount of unspent grant funds is determined. Unspent grant funds must be returned within 30 days of the expiration date of the Grant Agreement.
- 4.4. The obligation of the State under this Grant Agreement will not exceed the amount stated above.
- 4.5. This grant includes an advance payment of 50 percent of the grant's total amount. Advance payments allow the grantee to have adequate operating capital for start-up costs, ensure their financial commitment to landowners and contractors, and to better schedule work into the future.
- 4.6. Contracting and Bidding Requirements per Minn. Stat. §471.345, Grantees that are municipalities as defined in Subd. 1 must do the following if contracting funds from this grant contract agreement for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.
 - 4.6.1. If the amount of the contract is estimated to exceed \$100,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
 - 4.6.2. If the amount of the contract is estimated to exceed \$25,000 but not \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the

vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).

- 4.6.3. If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation, it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
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- 4.6.5. For projects that include construction work of \$25,000 or more, prevailing wage rules apply per Minn. Stat. §§177.41 through 177.44. Consequently, the bid request must state the project is subject to prevailing wage. These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole. A prevailing wage form should accompany these bid submittals.

5. Conditions of Payment

All services provided by the Grantee under this Grant Agreement must be performed to the State's satisfaction, as set forth in this Agreement and in the BWSR approved work plan for this program. Compliance will be determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, State, and local laws, policies, ordinances, rules, FY 2017 Clean Water Fund Competitive Grants Policy, and regulations. All Grantees must follow the Grants Administration manual policy. Minnesota Statutes §103C.401 (2014) establishes BWSR's obligation to assure program compliance. If the noncompliance is severe, or if work under the grant agreement is found by BWSR to be unsatisfactory or performed in violation of federal, state, or local law, BWSR has the authority to require the repayment of grant funds, or an additional penalty. Penalties can be assessed at a rate up to 150% of the grant agreement.

The Minnesota Department of Administration's Office of Grants Management Policy on Grant Closeout Evaluation (Policy 08 – 13) requires the Board to consider a grant applicant's past performance before awarding subsequent grants to them. The Board must consider a grant applicant's performance on prior grants before making a new grant award of over \$5,000. The Board may withhold payment on this and grants from other programs if the Grantee is not in compliance with all Board reporting requirements.

6. Assignment, Amendments, and Waiver

- 6.1. **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this Grant Agreement without the prior consent of the State 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.
- 6.2. **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 in office. Amendments must be executed prior to the expiration of the original agreement or any amendments thereto.
- 6.3. **Waiver.** If the State fails to enforce any provision of this Grant Agreement, that failure does not waive the provision or its right to enforce it.

7. Liability

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

8. State Audits

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

- 8.1. The books, records, documents, accounting procedures and practices of the Grantee and its designated local units of government and contractors relevant to this grant, may be examined at any time by the Board or Board's designee and

are subject to verification. The Grantee or delegated local unit of government will maintain records relating to the receipt and expenditure of grant funds.

8.2. The Grantee or designated local unit of government implementing this Agreement will provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board if requested.

9. Government Data Practices

The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, 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 State.

10. Workers' Compensation

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

11. Publicity and Endorsement

11.1. **Publicity.** Any publicity regarding the subject matter of this Grant Agreement must identify the Board as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Grant Agreement.

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

12. 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 Agreement, or its breach, must be in the appropriate State or federal court with competent jurisdiction in Ramsey County, Minnesota.

13. Termination

13.1. The State 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, determined on a pro rata basis, for services satisfactorily performed.

13.2. In the event of a lawsuit, an appropriation from a Clean Water Fund is canceled to the extent that a court determines that the appropriation unconstitutionally substitutes for a traditional source of funding.

14. Data Disclosure

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

15. Prevailing Wage

It is the responsibility of the Grantee or contractor to pay prevailing wages on construction projects to which State prevailing wage laws apply (Minn. Stat. 177.42 – 177.44). All laborers and mechanics employed by grant recipients and subcontractors funded in whole or in part with these State funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality.

16. Constitutional Compliance

It is the responsibility of the Grantee to comply with requirements of the Minnesota Constitution regarding use of Clean Water Funds to supplement traditional sources of funding.

17. Signage

It is the responsibility of the Grantee to comply with requirements for project signage as provided in Minnesota Laws 2010, Chapter 361, article 3, section 5 (b) for Clean Water Fund projects.

18. Intellectual Property Rights

The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this grant*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this grant. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee upon completion or cancellation of this grant at the State's request. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be duly executed intending to be bound thereby.

Approved:

Minnehaha Creek WD

Board of Water and Soil Resources

By: _____
(print)

By: _____

(signature)

Title: _____

Title: _____

Date: _____

Date: _____