

MEETING DATE: February 22, 2018

TITLE: Authorization to execute grant agreements for the Minnehaha Greenway – 325 Blake Road Stormwater Management Project

RESOLUTION NUMBER: 18-014

PREPARED BY: Michael Hayman

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

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): Requesting approval at February 22, 2018 Board Meeting	

PURPOSE or ACTION REQUESTED:

Authorization to execute a Clean Water Funding (CWF) grant agreement with the Board of Water and Soil Resources (BWSR) for the Minnehaha Greenway – 325 Blake Road Stormwater Management Project.

PROJECT/PROGRAM LOCATION:

325 Blake Road, Hopkins

PROJECT TIMELINE:

January 2018 – BWSR grant awarded
February 2018 – Execution of grant agreement
April 2018 – Select Master Developer
June 2018-May 2019 – Redevelopment design, stormwater and greenway design
June 2019 – Initiate construction

PROJECT/PROGRAM COST:

Fund name and number: 325 Blake Road Stormwater Management, 3145
Current fund balance: \$1,494,404.78
Requested amount of funding: \$0
Is a budget amendment requested? No
Is additional staff requested? No

PAST BOARD ACTIONS:

September 22, 2011	RBA 11-085	Authorization to Purchase 325 Blake Road
August 23, 2012	RBA 12-080	Authorization to initiate feasibility
June 13, 2013	Draft Feasibility	No Action Required
June 27, 2013	Public Hearing	No Action Required
July 25, 2013	RBA 13-078	Ordering of 325 Blake Road Stormwater Management
January 23, 2014	RBA 14-005	Authorization to initiate demolition planning
April 24, 2014	RBA 14-029	Authorization to award design contract for Powell Road
July 31, 2014	RBA 14-060	Authorization to submit PFA application
October 23, 2014	RBA 14-086	Approval of Powell Road final design, bid and permit
March 26, 2015	RBA 15-028	Award construction contract for Powell Road
February 25, 2016	RBA 16-015	Authorization to conduct stormwater monitoring
April 28, 2016	RBA 16-044	Authorization to execute Letter of Intent for Lake Street
February 9, 2017	RBA 17-009	Authorization to enter into agreement for Lake Street

SUMMARY:

In August 2017, staff applied for a Projects and Practices Grant from the Board of Water and Soil Resources (BWSR) in the amount of \$370,00 for the Minnehaha Greenway – 325 Blake Road Stormwater Management Project. The application was successful, resulting in the District being awarded the full grant request funding in January 2018.

In July 2013, the Board of Managers ordered the 325 Blake Road Stormwater Management Project (“Project”), taking advantage of the opportunity to manage approximately 270 acres of area wide stormwater runoff at 325 Blake Road. The project requires the diversion of surrounding urban watersheds into the property, and construction of on site management facilities to receive the runoff. The project includes two primary stormwater diversions – Powell Road and Lake Street – and construction of the on-site infiltration/filtration facilities.

Phase 1 of the Project, the Powell Road diversion, was constructed in 2015 and will remain in standby until the future facilities have been constructed. This phase of the Project was constructed with partial funding (50%) from the Public Facilities Authority (PFA), a source the District continues to target as the remaining phases of the project advance.

The Lake Street diversion, like the Powell Road diversion, consists primarily of an extension of municipal storm sewer and will become a part of the City of Hopkins storm sewer system on completion. The District, Metropolitan Council Environmental Services (MCES) and the City are endeavoring to partner on construction of the Lake Street diversion as part of MCES’s Hopkins Lift Station L27 project. At the same time as MCES was developing its design for the lift station and sanitary project, it also agreed to lead design development of the District’s desired stormwater conveyance diversion along Lake Street. Constructing this diversion will result in approximately 30.3 acres of presently untreated stormwater being routed to the regional stormwater management facility. Similar to the Powell Road diversion, the extended conveyance will be bulkheaded until the District’s management facility is constructed and operational. This diversion will be constructed in spring/summer 2018.

Regarding remaining project funding, the District received formal decision from the MPCA that the 325 Blake Road Stormwater Management Project scored competitively within the 2015 Project Priority List (PPL), and was granted preliminary approval of the District’s Stormwater Project Plan (SWPP). These funds were utilized in the construction of the Powell Road Diversion, but were not available for the Lake Street portion of the work due to the PFA having more projects scoring higher, resulting in more funding requests than available dollars during the 2017-2018 cycle. The District intends to seek funding again for the main stormwater facility at 325

Blake Road and hopes to remain competitive as the grant cycle nears. The PFA funds have new requirements that may move the District's application timeline into the summer of 2019 and will prove to be a more competitive process with more waste water projects – which tend to score higher and are more expensive than stormwater projects – now utilizing the fund.

The focus of the BWSR grant request was partial funding for the main stormwater treatment facility to supplement the District's portion of costs. The application was submitted with the assumption that the District will rank competitively in forthcoming PFA funding cycles, receiving at least 50% of the project costs for construction.

Regarding design, in order to effectively incorporate the future infrastructure and greenway enhancements on the 325 Blake Road site, the main stormwater facility will be planned and designed as an integrated component of the overall site redevelopment once a master developer is selected. This effort falls in line with the allowed grant schedule of three years for implementation.

ATTACHMENT:

1. Grant Agreement

RESOLUTION

RESOLUTION NUMBER: 18-014

TITLE: Authorization to execute grant agreement for the Minnehaha Greenway – 325 Blake Road Stormwater Management Project

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

WHEREAS, the MCWD Board of Managers authorized the pursuit of Clean Water Legacy grant funding to assist in implementation of the 325 Blake Road Stormwater Management water quality improvement project; and

WHEREAS, in January 2018, the MCWD was awarded a Projects and Practices Grant from the Board of Water and Soil Resources in the amount of \$370,000 for the Minnehaha Greenway – 325 Blake Road Stormwater Management Project; and

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 Soil Resources for appropriated Clean Water Funds in the amount of \$370,000 for work related to the Minnehaha Greenway – 325 Blake Road Stormwater Management Project, and authorizes the District Administrator to execute the Grant Agreement.

Resolution Number 18-014 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

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. All individual grants over \$500,000 will also require a reporting of expenditures by June 30 of each year.
 - 2.2.2. The Grantee will prominently display on its website the Clean Water Legacy Logo and a link to the Legislative Coordinating Commission website.
 - 2.2.3. Final Progress Report: The Grantee will submit a final progress report to the Board by February 1, 2021 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 2018 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.

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: _____