

Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: April 9, 2015

TITLE: Authorization to Execute Grant Agreement for Mud Lake Subwatershed Assessment

RESOLUTION NUMBER: 15-034

PREPARED BY: Becky Christopher

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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): <u>APPROVAL AT APRIL 9 WORKSHOP</u>	

PURPOSE or ACTION REQUESTED:

Authorization to execute the grant agreement and approval of the \$10,000 grant match for the Mud Lake Subwatershed Assessment

PROJECT/PROGRAM LOCATION:

Northwest drainage area to Mud Lake (see attached map)

PROJECT TIMELINE:

January 2015 - BWSR grant awarded
April 2015 - Execution of grant agreement
May 2015 - Begin subwatershed assessment
November 2015 - Complete assessment and final report

PROJECT/PROGRAM COST:

Fund name and number: Turbid-Lundsten/Six Mile Creek, 3139
Current budget: \$423,886
Expenditures to date: \$44,739
Requested amount of funding: \$10,000

PAST BOARD ACTIONS:

Sept. 25, 2014 - Resolution 14-080, Authorization to apply for BWSR Clean Water Fund Competitive Grants

SUMMARY:

In September 2014, staff applied for an Accelerated Implementation Grant from the Board of Water and Soil Resources (BWSR) in the amount of \$39,968 for the Mud Lake Drainage Analysis. This is a subcategory of the Clean Water Fund Competitive Grant Program that is intended for upfront project identification, planning, and design. The grant was awarded in January 2015.

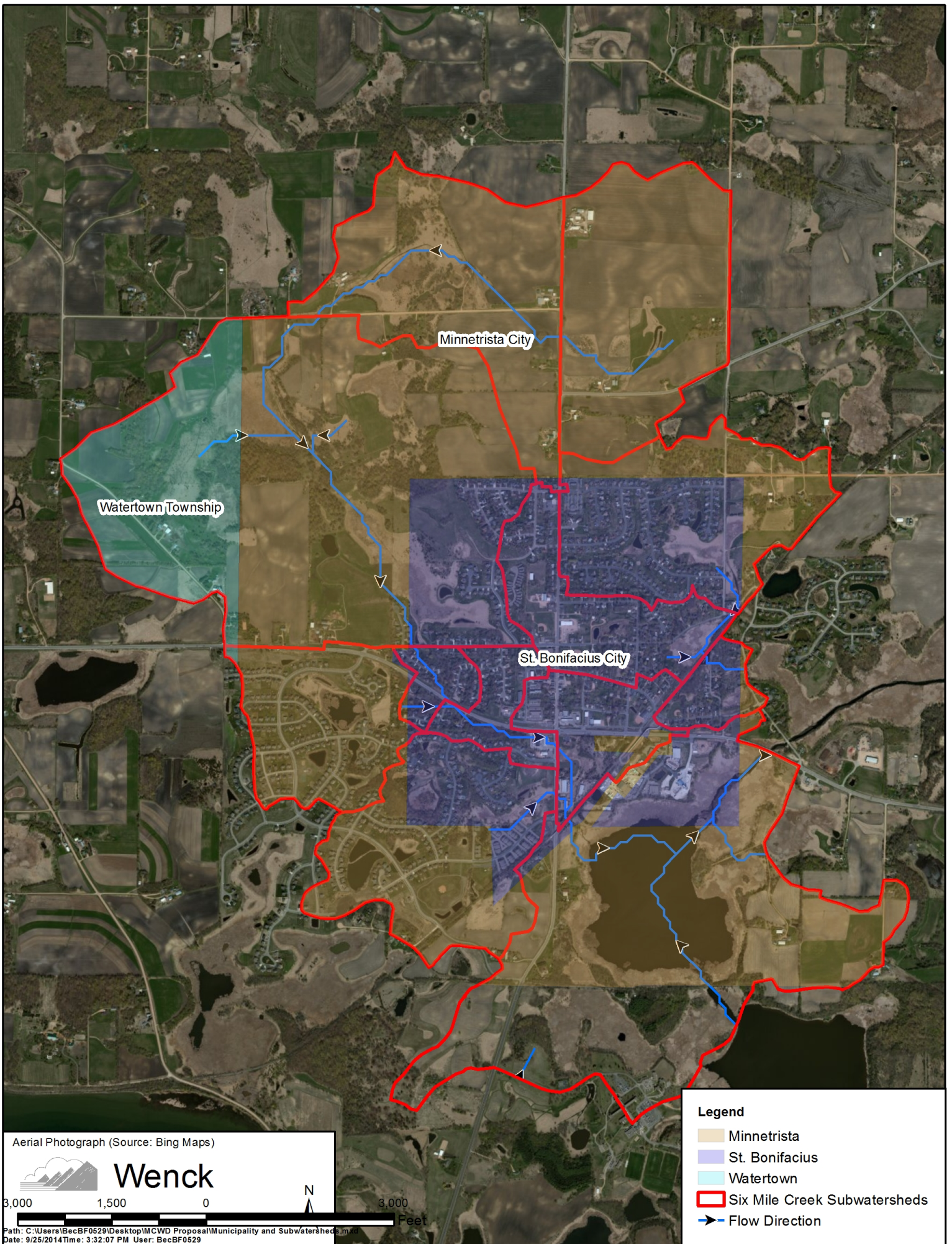
The subject of this assessment is the drainage area to the northwest of Mud Lake that includes much of the City of St. Bonifacius as well as surrounding wetlands that extend into Minnetrista and Watertown Township. Modeling conducted for the 2013 Six Mile Creek Diagnostic Study identified this drainage area as a likely source of high nutrient loading to Mud Lake and ultimately Halsted's Bay. Additional water quality data collected over the past two years has corroborated this finding.

In addition, the District was approached by the City of St. Bonifacius in the fall of 2014 with concerns about flooding and erosion problems occurring along the channel that flows through the city. This assessment will aim to identify solutions that address both the significant nutrient loads contributed by this drainage area and the flooding and erosion issues experienced by the City.

The grant requires a 25 percent match in the amount of \$10,000. The City of St. Bonifacius has agreed to support the efforts by offering their city engineer's time. This contribution can be counted toward the required match but has not been quantified at this time. Staff is requesting that the Board approve the expenditure of up to \$10,000 for the purpose of satisfying the grant agreement requirements. The City's contribution toward the grant match will be determined as the assessment moves forward. The 2015 work plan for the Six Mile Creek Fund (3139) included \$200,000 for feasibility and concept design work in the Six Mile Creek Subwatershed which can be used to cover the District's contribution to the grant match.

ATTACHMENTS:

Map of study area
Grant agreement



Minnetrista City

Watertown Township

St. Bonifacius City

Aerial Photograph (Source: Bing Maps)

Wenck

3,000 1,500 0 3,000 Feet

Path: C:\Users\BecBF0529\Desktop\MCWD Proposal\Municipality and Subwatersheds.mxd
 Date: 9/25/2014 Time: 3:32:07 PM User: BecBF0529

Legend

- Minnetrista
- St. Bonifacius
- Watertown
- Six Mile Creek Subwatersheds
- ▶ Flow Direction



**FY 2015 STATE OF MINNESOTA
BOARD OF WATER and SOIL RESOURCES
COMPETITIVE GRANTS PROGRAM
GRANT AGREEMENT**

Amount	Account Code	Fund Code	Financial Department ID	Appropriation Code	FY	Appropriation Description
\$39,968	441502	2302	R9P32LAW	R9PC043	2015	Accelerated Implementation

For BWSR Use Only

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, MN 55345.**

<i>This grant is for the following Grant Programs :</i>		
C15-0042	Mud Lake Subwatershed Assessment	\$39,968

Total Grant Awarded: \$39,968

Recitals

1. The Laws of Minnesota 2013, Chapter 137, Article 2, Section 7, appropriated Clean Water Fund (CWF) funds to the Board for the FY 2015 Competitive Grants Program.
2. Minnesota Statutes 103B.101, subd. 9 (1), and 103B.3369, authorize the Board to award this grant.
3. The Board has adopted the FY 2015 Clean Water Fund Competitive Grants Policy and authorized the FY 2015 Competitive Grants Program in Board Resolution 14-42.
4. The Board has adopted Board Resolution 15-12 to allocate funds for the FY 2015 Competitive Grants Programs.
5. The Grantee has submitted a BWSR approved work plan for this Program which is incorporated into this agreement by reference.
6. 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.
7. 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
Minnehaha Creek Watershed District
15320 Minnetonka Blvd
Minnetonka, MN 55345
952-641-4521**

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 Grantee must not begin work under this grant agreement until this Grant Agreement is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**
- 1.2 **Expiration date:** December 31, 2018, 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 the work plan, which is incorporated into this Agreement by reference, according to the FY 2015 Clean Water Fund Competitive Grants Policy.
- 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 The Grantee will submit a final progress report to the Board by February 1, 2019 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 2015 Clean Water Fund Competitive Grants Policy, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, State, or local law.

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.

