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**Title:** Approval of the Cooperative Agreement for the Church Lake Pond Enhancement Project

**Resolution number:** 20-086

**Prepared by:** Name: Anna Brown  
Phone: 952-641-4522  
abrown@minnehahacreek.org

**Reviewed by:** Name/Title: N/A

**Recommended action:** Authorize the District Administrator to execute the agreement with the City of Victoria in order to advance the project to construction

**Schedule:** December 2020: Construction contract award  
May 15, 2021: Construction completion deadline

**Budget considerations:** Fund name and code: Planning (East Auburn Stormwater Project Grant): 200-2002  
Fund budget: \$60,000 (Amount remaining in grant and City-provided match for expenditure in 2020 and 2021. No MCWD funds will be applied to this project.)  
Expenditures to date: \$0  
Requested amount of funding: N/A

**Past Board action:** Res # 16-078 Approval of Cooperative Agreement with the City of Victoria for the East Auburn Stormwater Enhancement Project  
Res # 17-016 Approval of Grant Agreement for the East Auburn Stormwater Enhancement Project  
Res #: 20-078 Approval of 90% Plans for Church Lake Pond Enhancement Project

**Summary:**

In July 2016, the Minnehaha Creek Watershed District (MCWD) submitted an application to, and subsequently was awarded a grant from, the Board of Water and Soil Resources (BWSR) Clean Water Fund to retrofit and enhance two stormwater ponds providing regional treatment to Downtown Victoria. The opportunity had been identified through coordination with the City of Victoria (City). At the time, the City was anticipating development and redevelopment in its downtown, and a regional approach to managing stormwater runoff from these sites would improve water quality draining into Auburn Lake, an impaired water body, beyond what would be achieved through regulatory compliance alone. Preliminary analysis found the project would result in an estimated reduction of 24.1 lbs/yr phosphorus and 4,750 lbs/yr of TSS from downtown Victoria and the Church Lake drainage area.

In February 2017, MCWD and the City entered into a Cooperative Agreement concerning the East Auburn Stormwater Enhancement Project. Under that agreement, the City is fully responsible for the design and construction of the project while MCWD is providing technical review and support. MCWD administers the grant, disbursing the funds to the City to complete construction, with the City indemnifying MCWD in the event that the City does not fulfill the grant requirements.

Project construction was complete in November 2018. During the summer of 2019, high water due to excessive rainfall prompted some further modifications to the outlet structure and area grading to improve project resilience, which was complete in fall 2019. Due to a favorable bid climate at the time of construction, MCWD and the City have approximately \$60,000 in grant and match funds remaining to implement additional BMPs in the drainage area.

In early 2020, MCWD and the City contracted with Wenck Associates to perform a supplemental analysis evaluating BMP opportunities in the Church Lake and Downtown Victoria drainage areas. Several BMPs were identified, but the opportunity that had the best potential for water quality treatment within the grant budget was the enhancement of an existing pond west of Church Lake. This project proposes to expand the live-storage treatment volume of the pond by raising the berm approximately 1 foot, to an elevation of 950, achieving an additional 1.2-3.0 lbs/yr above its treatment design. The project will also serve to enhance volume retention within the pond, which could facilitate enhanced performance of the East Auburn ponds in high water years.

This project has been approved by BWSR as an amendment to the existing grant work plan. On October 8, 2020, the MCWD Board approved the 90% design plans for this project, allowing it to proceed through contract award and construction under the leadership of City staff.

Because the Church Lake pond enhancement was not initially envisioned as part of this project, the cooperative agreement in place does not apply to the project. As such, a cooperative agreement was drafted which ensures that the important terms of the agreement on the East Auburn project apply to this supplementary opportunity. The cooperative agreement for the Church Lake pond enhancement establishes that the City will bear the cost of construction in excess of grant funds; that the City will lead contractor procurement and construction oversight; and that the subsidiary agreement detailing the rights and obligations of the City and MCWD respecting the application of grant funds to this project similarly apply to this project.

The cooperative agreement was approved by Victoria City Council on November 9, 2020. Following consideration by the Board, quotes will be solicited by the City for construction of this project, with construction projected to begin in mid-December.

**Supporting documents (list attachments):**

Draft Project Agreement – Church Lake Pond Enhancement Project



**RESOLUTION**

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**Resolution number:** 20-086

**Title:** Approval of the Cooperative Agreement for the Church Lake Pond Enhancement Project

- WHEREAS the Six Mile Creek-Halsted Bay Subwatershed has been adopted as a priority focal geography by the Minnehaha Creek Watershed District (MCWD) Board of Managers;
- WHEREAS in 2015, MCWD and City of Victoria (City) executed a memorandum of understanding (MOU) outlining each agencies desire for increased coordination in the areas of planning, assessing specific water management issues, and regulatory coordination and support;
- WHEREAS East Auburn Lake is impaired for excess nutrients and has an approved Total Maximum Daily Load (TMDL) delineating required load reductions;
- WHEREAS in February 2017, MCWD and the City entered into a cooperative agreement memorializing the shared goal of retrofitting existing stormwater facilities to meet MCWD stormwater rules while providing natural resource benefit beyond that which could be achieved through regulation alone;
- WHEREAS February 2017, MCWD was awarded a grant from the Board of Water and Soil Resources (BWSR) for the East Auburn Stormwater Enhancement Project;
- WHEREAS under the cooperative agreement, the City assumed all design and construction responsibilities, with oversight and technical support from the District, and the District has acted as the fiscal agent, disbursing grant funding to the City for project construction;
- WHEREAS in November 2018, construction was completed for the East Auburn Stormwater Enhancement Project, with grant funding available to evaluate implementation of additional management practices;
- WHEREAS Wenck Associates performed a supplemental analysis and identified the opportunity to enhance a stormwater pond east of Church Lake using the remaining grant funds, and that project has been approved by BWSR as an amendment to the grant work plan;
- WHEREAS on October 8, 2020, the MCWD Board of Managers approved 90% design plans for the Church Lake Pond Enhancement Project.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator, on advice of counsel, to execute the project agreement for the Church Lake Pond Enhancement Project.

Resolution Number 20-086 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 11/19/2020

\_\_\_\_\_  
 Secretary Date: \_\_\_\_\_

**PROJECT AGREEMENT**  
**City of Victoria and Minnehaha Creek Watershed District**  
**CHURCH LAKE POND ENHANCEMENT PROJECT**

This Agreement is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (“District”), and the City of Victoria, a statutory city and political subdivision of the State of Minnesota (“City”).

**Recitals**

A. In July 2016, the District was awarded a State of Minnesota Clean Water Fund grant, administered by the Board of Water and Soil Resources (BWSR), to retrofit and enhance two stormwater ponds providing regional treatment for the City’s downtown area. In February 2017, the MCWD and the City entered into a Cooperative Agreement for the City to construct that project, titled the East Auburn Stormwater Enhancement Project. Under that agreement, the City was responsible to design, construct and maintain the project, while the MCWD administered the grant, disbursing funds to the City for construction.

B. Project construction was complete in November 2018. During Summer 2019, high water from excessive rainfall prompted modification of the outlet structure and area grading to improve project resilience, which was completed in Fall 2019. A favorable bid climate allowed the MCWD and the City to retain about \$60,000 in grant and City match funds to implement additional BMPs in the drainage area.

C. In early 2020, the MCWD and the City contracted with Wenck Associates to evaluate other stormwater management opportunities in the Church Lake and Downtown Victoria drainage areas. The assessment concluded that the most favorable opportunity within the grant budget is enhancement of an existing pond that outlets into Church Lake by raising its berm. The increase in pond volume will enhance water quality treatment, and will improve performance of the East Auburn ponds in high water years. The project is titled the Church Lake Pond Enhancement Project (“Project”).

D. The Project has been approved by BWSR as an amendment to the existing grant work plan. The estimated Project cost is \$31,695.00. Wenck is examining an outlet control structure modification, which will be incorporated into the final design if found to further improve water quality treatment.

E. The MCWD and the City wish to cooperate in the City’s construction of the Project in the same manner as for the East Auburn Enhancement Project.

**THEREFORE** the City and the District agree as follows:

**ARTICLE 1 - DESIGN**

1.01 On October 8, 2020, the MCWD Board of Managers accepted the 90 percent design plans for the Project. The City will prepare final design plans consistent with the 90 percent plans, with the inclusion of the outlet control structure modification on the parties’ concurrence.

1.02 During construction, the City will notify the District of any change from the final plans before it is approved by the City, except for field changes, of which the District may be notified promptly after approval.

1.03 It is not expected that any additional easement or other land rights will be needed to construct and maintain the Project. However, to the extent any such rights must be acquired in order for the City to

proceed with construction, the City will be responsible to do so at its cost should it determine to proceed with construction.

## **ARTICLE 2 - FUNDING**

2.01 The District formally serves as grantee under the CWF grant. The subsidiary agreement into which the District and City entered for the East Auburn Enhancement Project is attached hereto as Exhibit A, and will govern the rights and obligations of the District and City with respect to the Project in the same manner as it did for the East Auburn Enhancement Project.

2.02 The City and District will establish a schedule for the City to document expenses and be disbursed grant funds by the District. The schedule will account for the requirements of the City's construction contract and the terms of grant fund availability under the grant agreement.

2.03 The City will bear the cost of Project construction in excess of grant funds. The City may use stormwater charges or any other means within its authority, as it chooses, to finance and fund the Project.

2.04 The City will bear the cost of Project monitoring and maintenance as may be required by the grant agreement or by any permit for the Project, including any District permit.

2.05 Each party will bear its own internal and administrative costs to perform under this Agreement.

## **ARTICLE 3 - CONSTRUCTION**

3.01 The City will retain one or more contractors to construct the Project. Construction will be under the oversight of the City and of a registered professional engineer on behalf of the City. The City will conduct the procurement process and select the contractor(s) in accordance with its own prerogative.

3.02 In awarding and administering the construction contract and performing construction, the City will comply and cause its contractor to comply with all federal, state and local laws, and all applicable ordinances and regulations.

3.03 The City will notify the District when its engineer has certified Project completion. The District has the right to confirm completion within 15 days of receiving the City's notice. During and following construction, the District has the right to observe construction and inspect the Project.

## **ARTICLE 4 - GENERAL**

4.01 Each party is responsible for its own employees for any claims arising under the Workers Compensation Act. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of the other party or the results thereof. Minnesota Statutes chapter 466 and other applicable law govern liability of the City and the District. This Agreement creates no rights in, and waives no immunity, defense or liability limit with respect to, any third party or the other party to this Agreement. Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement.

4.02 The District's role under this Agreement is solely to support the City's improvement of its stormwater management facilities by assisting in the availability of state funding. The District has no authority to select, or role in selecting, the design, means, method or manner of performing any part of the Project or the person or firm who will perform the work. Any District approval or concurrence in

plans and specifications or any other aspect of Project construction is solely for the District's own accounting of the City's use of grant funds.

4.03 Each notification required by this Agreement must be made to the project representative. Contact information will be kept current. Either contact may be changed by a party by written notification to the other party. The project representatives of the parties are:

Anna Brown, Planner - Project Manager  
Minnehaha Creek Watershed District  
15320 Minnehaha Boulevard  
Minnetonka, MN 55345  
(952) 471-0590

Cara Geheren, City Engineer  
City of Victoria  
1670 Stieger Lake Lane  
PO Box 36  
Victoria, MN 55386  
(651) 300-4261

4.04 An amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the parties. A party to this Agreement may not assign or transfer any right or obligation hereunder without an assignment agreement executed by the parties and the assignee.

4.05 A party's failure to enforce a provision of this Agreement does not waive the provision or that party's right to enforce it subsequently.

4.06 The above Recitals are incorporated into this Agreement.

4.07 This Agreement is effective when executed by both parties and expires five years thereafter. Paragraphs 2.01, 2.05, 4.01 and 4.02 will survive expiration.

**IN TESTIMONY WHEREOF** the parties have executed this Agreement by their authorized officers.

**CITY OF VICTORIA**

By \_\_\_\_\_ Date:  
Its Mayor

By \_\_\_\_\_ Date:  
Its City Manager

*Approved for form and execution:*

\_\_\_\_\_  
MCWD Counsel

**MINNEHAHA CREEK WATERSHED DISTRICT**

By \_\_\_\_\_ Date:  
James Wisker, Administrator

**MEMORANDUM of AGREEMENT  
CITY of VICTORIA and MINNEHAHA CREEK WATERSHED DISTRICT**

**SIX MILE CREEK - EAST AUBURN STORMWATER ENHANCEMENT PROJECT**

This Memorandum of Agreement (MOA) is entered into between the City of Victoria, a statutory city and political subdivision of the State of Minnesota ("City"), and the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota with powers and purposes set forth at Minnesota Statutes Chapters 103B and 103D ("District") (together, the "Parties").

**Recitals**

A. At the request of the City, the District applied to the Minnesota Board of Water and Soil Resources (BWSR) for a Clean Water Fund/Competitive Grants Program (CWF/CGP) grant to provide partial funding for a City project to expand and enhance two stormwater basins and associated appurtenances (the "Project"). The Project will provide water quality treatment for a defined area of developed, downtown Victoria and for discharge from Church Lake before these waters flow into East Auburn Lake, a waterbody presently designated as "impaired" due to excessive phosphorus levels.

B. The District and City have entered a Project Agreement dated February 23, 2017 ("Project Agreement"), which establishes terms and conditions under which the City and District will complete and maintain the Project. The Project Agreement contemplates that the parties will enter this MOA as a condition of the District executing the grant agreement, defined below.

C. The District has been awarded a CWF/CGP grant in the amount of \$262,520 for the Project, identified as Grant Program C17-3907. As grantee, the District will be the grant agreement signatory and assume obligations to BWSR under that agreement.

D. The City will design, construct, maintain and bear all non-grant funded costs of the Project. The District has agreed to serve as grantee to facilitate the City's access to the grant funds and on the condition that the City will be responsible to the District for all grant requirements other than basic administrative and reporting obligations.

**Terms**

1. Attachment A to this MOA, and incorporated herein, is the Project grant agreement including work plan and project budget (together, "Grant Agreement"). On full execution of this MOA, the District will sign the Grant Agreement.

2. The District, on signing the Grant Agreement, will assume obligations to BWSR as set forth in the Grant Agreement. The City recognizes that as the party benefitting from the grant funds, it is responsible to facilitate the District's compliance with all Grant Agreement obligations.

3. The City is responsible to conform to the Grant Agreement as to those obligations within its control. The City will cooperate in a timely way with the District with respect to any City communications, documentation or other support that the District requires in order to meet its obligations as grantee. Specifically, but not exclusively, the City will do the following in accordance with the Grant Agreement:

a. Design, construct, provide signage for, own and maintain the Project in accordance with the Grant Agreement and any applicable deadlines therein. The City represents that it owns or has access rights to all elements of the Project to which access is required for maintenance.

b. Provide all matching funds.

c. Comply with all contracting and bidding requirements, including prevailing wage requirements.

d. Maintain and retain all books, records, documents and accounting procedures and practices for the period specified, make available for inspection, and perform required audits.

e. Conform to publicity and intellectual property requirements.

4. The Parties will communicate promptly with each other to facilitate timely compliance with Grant Agreement requirements. The District will promptly disburse grant funds to the City on recognition of receipt from BWSR in the District's depository account.

5. The following terms apply and reflect the District's limited role as formal grantee:

a. The Parties will cooperate to ensure that: (a) the terms of the Grant Agreement are met; and (b) the administrative costs and resource burdens incurred by the District as grantee are minimized.

b. As between the City and the District, the City will fully bear: (i) Project cost increases; (ii) the risk that, for any reason, BWSR does not provide the full grant amount; and (iii) the obligation to return or repay any grant amount, as either may arise under the Grant Agreement.

c. The City will hold the District harmless with respect to any claim, proceeding, cost, liability or damage the City incurs arising out of the Grant Agreement or the District's role as grantee thereunder. The City will indemnify the District with respect to any claim, proceeding, cost, damage or District liability (including reasonable attorney fees) arising out of the Grant Agreement or the District's role as grantee thereunder, including but not limited to any District cost or liability arising out of its obligation to defend, hold harmless and indemnify the State, its agents and employees.

d. Notwithstanding subsection 5.c, the City's obligations to hold the District harmless and indemnify it do not apply to that portion of any loss, cost or damages resulting from the District's negligent or willful act with regard to its obligations regarding its management or disbursement of grant funds.

e. In any proceeding arising under the Grant Agreement, the Parties will cooperate to substitute or add the City as party in interest, both to minimize District cost and to allow the City to fully protect its interests.

f. Notwithstanding any other term of this MOA, nothing herein creates a right in any third party or waives an immunity, defense or liability limit of a party hereto with respect to any third party.



As between the Parties, only contractual remedies are available for a party's failure to fulfill the terms of this MOA.

g. This MOA is not a joint powers agreement under Minnesota Statutes §471.59 and nothing herein constitutes either party's agreement to be responsible for the acts or omissions of the other party pursuant to subdivision 1(a) of that statute.

6. As between the Parties, the results of the Project, the reports submitted under the Grant Agreement, and any new information or technology developed with the assistance of the grant are in the public domain and may not be copyrighted, patented, trademarked or designated as trade secret by either party. The intellectual property rights of the Parties are subject to the Grant Agreement.

7. Each communication under this MOA will be made to the following representatives:

District:

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Re: Six Mile Creek - East Auburn Stormwater Enhancement Project

City:

City Engineer  
City of Victoria  
1670 Stieger Lake Lane  
Victoria MN 55386

Contact information will be kept current. A party may change its contact by written notice to the other.

8. Miscellaneous terms:

a. This MOA is effective on execution by the Parties and will remain in effect until the Grant Agreement terminates. An obligation of a party under this MOA that by its nature continues beyond Grant Agreement termination will survive the expiration of this MOA.

b. This MOA may not be amended, assigned or transferred except in a writing executed by the duly authorized representatives of the Parties.

c. A party's failure to enforce a term of this MOA does not waive that party's right to enforce it subsequently.

d. The above Recitals are incorporated into this MOA.

e. To the extent any term or condition in this MOA is inconsistent with, or differs from, any term or condition in the Project Agreement, this MOA amends and supersedes such provision in the Project Agreement.

IN WITNESS WHEREOF, the Parties execute this MOA by their authorized officers, intending it to be legally binding.

**CITY OF VICTORIA**

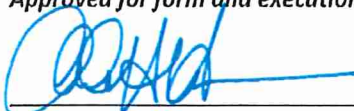
By   
Its Mayor

Date: 4/14/2017

By Laurie Hokkanen  
Its City Manager

Date: 4/14/2017

*Approved for form and execution:*

  
MCWD Counsel

**MINNEHAHA CREEK WATERSHED DISTRICT**

By Sherry David White  
Its President

Date: 7/6/2017

**ATTACHMENT A:**

**Board of Water and Soil Resources Competitive Grants Program Grant Agreement**



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).

| This grant is for the following Grant Programs : |   |           |
|--|---|-----------|
| 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**

- Minnesota Statutes 103B.101, subd. 9 (1), and 103B.3369, authorize the Board to award this grant.
- 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.
- The Minnesota Department of Health transferred funds to the Board for the Well Sealing Grant Program.
- 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.
- The Board adopted Board Resolution 16-98 to allocate funds for the FY 2017 Competitive Grants Programs.
- The Grantee has submitted a BWSR approved work plan for this Program which is incorporated into this agreement by reference.
- 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.
- 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:

**TITLE**  
**ADDRESS**  
**CITY**  
**TELEPHONE NUMBER**

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

**Grant Agreement**

- Term of Grant Agreement**
  - 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: \_\_\_\_\_