

MEETING DATE: November 7, 2019

TITLE: Authorization to Transfer Operating Funds from the Surety Account

RESOLUTION NUMBER: 19-095

PREPARED BY: Cathy Reynolds

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REVIEWED BY: Administrator Counsel Program Mgr. (Name): Tom Dietrich
 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): Final action on November 7, 2019	

PURPOSE or ACTION REQUESTED:

Staff requests the MCWD Board of Managers authorization to transfer \$40,581.68 from the surety account to the general operating account (Management Planning Fund) – permitting fund.

PROJECT/PROGRAM COST:

Fund name and number: Permit Administration

PAST BOARD ACTION:

None on this item.

SUMMARY:

The Minnehaha Creek Watershed District (MCWD) first incorporated financial assurance requirements into its Rules in 1996. Initially, financial assurance requirements we're only associated with the Erosion Control, Dredging, and Shoreline & Streambank Stabilization Improvement rules. Since the genesis of the initial rule, the requirements have expanded to cover additional District regulations including, Wetland Protection and Stormwater Management. Financial assurances can take the form of a Letter of Credit, Performance Bond or cash escrow. The purpose of these financial instruments is to assure compliance with the District's rules through verification that activities and facilities are built in conformance with the plan and performance specifications outlined in an approved permit.

Letters of Credit and Performance Bonds are maintained by Smith Partners, PLLP while the District maintains a checking and savings account to hold the cash escrows. Currently, the District is holding approximately \$1.9M in cash escrows.

Financial assurances are collected prior to the issuance of a permit. To release a financial assurance, staff must receive written notification of construction completion by the applicant, which prompts a final project inspection by District staff. The final inspection serves as verification that facilities and activities have been constructed, and function per the approved plan. Once this determination is made, the financial assurance is released.

Should the final inspection reveal discrepancies between the finished site and the approved plan, the financial assurance is held until the issues have been addressed by the applicant. Should a site be continually out of compliance with District rules, the District is able draw upon the financial assurance to conduct or coordinate the work necessary to bring the site into compliance, at the expense of the applicant. Additionally, funds may be withheld from the financial assurance to cover any outstanding or delinquent permit reimbursement fees including postage, engineering and legal review.

Staff has recently completed a comprehensive audit of the cash financial assurances held in the surety accounts at Alerus Bank. Through this audit we have identified \$40,581.68 that should have been transferred to the general operating account since 2000 that has not been transferred. These funds include:

1. Amounts that have been withheld from returned financial assurances to reimburse unpaid permit reimbursement fees.
2. Money that was originally deposited into the surety accounts that should have been transferred to the general fund. These are funds for permit fee reimbursements that come in on one check with the financial assurance and are deposited into the surety account. Standard practice is to deposit the funds into the surety account and then transfer the reimbursement funds to the general account. Staff has identified through the audit numerous times where the transfer did not occur and the money has remained in the surety account.

Based on the results of the audit conducted of the surety account, staff is requesting the Board's authorization to transfer the \$40,581.68 to the general operating account.

