

**MEETING DATE:** March 28, 2019

**TITLE:** Authorization to execute grant agreement for the Long Lake Creek Subwatershed Assessment

**RESOLUTION NUMBER:** 19-038

**PREPARED BY:** Eric Fieldseth

**E-MAIL:** efieldseth@minnehahacreek.org

**TELEPHONE:** 952-471-7873

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name): Brian Beck  
 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 March 28, 2019 Board Meeting	

**PURPOSE or ACTION REQUESTED:**

Authorization to execute a Clean Water Funding grant agreement with the Board of Water and Soil Resources (BWSR) for the Long Lake Creek Subwatershed Assessment.

**PROJECT/PROGRAM LOCATION:**

Long Lake Creek Subwatershed

**PROJECT TIMELINE:**

April 2019 – July 2020

**PROJECT/PROGRAM COST:**

Authorized grant amounts:

- Long Lake Creek Subwatershed Assessment - \$112,000

## **PAST BOARD ACTION:**

March 9, 2017 – Res. 17-019: Authorization to partner with the Cities of Long Lake, Medina and Orono, and the Long Lake Waters Association, to pursue Hennepin County Natural Resource Opportunity Grant funds, and to provide an in-kind contribution to advance a Long Lake Creek Subwatershed Carp Assessment (*Note – Grant funds were not awarded*)

April 26, 2018 – Res. 18-043: Authorization to execute an agreement with the Cities of Long Lake, Medina and Orono, and the Long Lake Waters Association, to partner on a carp assessment in Long Lake. MCWD's participation is contingent upon all the partners contributing and partnering on the project.

July 12, 2018 – Res. 18-066: Resolution of Support for the Long Lake Creek Subwatershed Partnership. MCWD will act as a technical resource, synthesizing water quality data with carp data to more specifically diagnose issues and drivers within the subwatershed, and to regularly convene partners to identify, recommend and prioritize implementation efforts.

August 23, 2018 – Res. 18-084: Authorization to Apply for BWSR CWF Competitive Grant Funding for Long Lake Creek Subwatershed Assessment. MCWD staff to apply for FY 2019 BWSR CWF Competitive Grant Funding for Long Lake Creek Subwatershed Assessment.

February 28, 2019 – Res. 19-023: Authorization to execute contract with University of Wisconsin – Stout to measure phosphorus release from sediments in Long, Wolsfeld, Holy Name, and School Lake to inform lake management strategies.

## **SUMMARY:**

Five lakes within the Long Lake Creek Subwatershed are impaired for excess nutrients including Holy Name, School, Wolsfeld, Long, and Tanager. In 2014, the Upper Minnehaha Creek Watershed TMDL identified watershed phosphorus loading, internal phosphorus loading, and common carp as potential drivers for poor water quality and ecological integrity within these lakes. However, there has been little diagnostic work completed in this watershed, which makes it difficult to identify cost effective nutrient reduction projects.

In 2018, a system-wide partnership formed among the Cities of Medina, Long Lake, and Orono, the Long Lake Waters Association, and the MCWD to pursue water quality improvements in the Long Lake Creek Subwatershed. Work under this partnership was initiated earlier in 2018 by the Cities of Medina and Long Lake, and the Long Lake Waters Association to conduct a small scale carp assessment to begin understanding the impacts carp may be having on Long Lake. Additionally, over the last two years, MCWD has been focusing diagnostic monitoring in the Long Lake Creek Subwatershed to fill data gaps and begin identifying problem areas that may be driving nutrient impairments.

In August 2018, MCWD, in coordination with the Cities of Medina, Long Lake and Orono, and Long Lake Waters Association, applied for an accelerated implementation grant from the Board of Water and Soil Resources (BWSR) in the amount of \$112,000 for the Long Lake Creek Subwatershed Assessment. The application was successful, resulting in the District being awarded the full grant request.

The purpose of this grant is to accelerate the development of a comprehensive implementation plan by building a detailed watershed model, strengthening our understanding of carp, and identifying cost-effective best management practices (BMPs). The implementation plan developed using the BWSR grant funding will provide MCWD and its partners a detailed roadmap to improve ecological and water quality conditions in the Long Lake Creek Subwatershed.

Staff is requesting Board authorization to execute the attached grant agreement. It is anticipated that the grant agreement will be approved by BWSR by April 9th, at which point expenditures under the grant can begin. The grant period extends through December 31, 2021.

**RESOLUTION**

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**RESOLUTION NUMBER: 19-038**

**TITLE: Authorization to execute grant agreement for the Long Lake Creek Subwatershed Assessment**

WHEREAS, Long Lake Creek Subwatershed has several waterbodies that are impaired for excess nutrients, and the Upper Minnehaha Creek TMDL lists watershed phosphorus loading, sediment P release, and carp as drivers of poor water quality in Long Lake Creek waterbodies; and

WHEREAS, a regional partnership was formed in 2016 among the Cities of Medina, Long Lake and Orono, and the Long Lake Waters Association, to pursue water quality improvements in the Long Lake Creek Subwatershed; and

WHEREAS, the District's watershed management plan acknowledges this regional partnership, with the partnership leveraging the skills and resources of each entity, by collaborating and identifying shared priorities for the implementation of projects and programs to improve water quality in the Long Lake Creek Subwatershed; and

WHEREAS, the District has been collecting additional water quality data on lakes and streams within the Long Lake Creek Subwatershed to better identify issues and drivers in the subwatershed to inform implementation; and

WHEREAS, carp assessment and management was identified as an initial target of the group, with the Cities of Medina and Long Lake, and Long Lake Waters Association completing a small scale carp assessment that identified carp abundance in Long Lake to be over five times the ecologically damaging threshold; and

WHEREAS, MCWD has committed to serving as a convener and technical resource for the partnership, synthesizing data to identify issues and drivers within the subwatershed to inform implementation; and

WHEREAS, in August 2018, the MCWD Board of Managers authorized staff to apply for funding to the BWSR Accelerated Implementation Grant to identify best management practices and develop a comprehensive implementation plan for the Long Lake Creek Subwatershed; and

WHEREAS, MCWD was awarded an accelerated implementation grant from the Board of Water and Soil Resources in the amount of \$112,000 for the Long Lake Creek Subwatershed Assessment; and

WHEREAS, MCWD will have sole control over performance of the work supported by the grant, but will consult with the partners in performing the work and will share the work to advance the work of the partners within the Long Lake Creek Subwatershed;

**NOW, THEREFORE, BE IT RESOLVED** that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the District Administrator to execute a grant agreement with the State of Minnesota, acting through its Board of Water and Soil Resources, for appropriated Clean Water Funds in the amount of \$112,000 to complete a subwatershed assessment in the Long Lake Creek Subwatershed.

Resolution Number 19-038 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

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

\_\_\_\_\_  
Secretary

**FY 2019 STATE OF MINNESOTA  
 BOARD OF WATER and SOIL RESOURCES  
 CLEAN WATER FUND COMPETITIVE GRANTS PROGRAM  
 GRANT AGREEMENT**

<b>Vendor:</b>	0000225729	<b>VN#:</b>	
<b>PO#:</b>	3000010203	<b>Date Paid:</b>	

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

<i>This grant is for the following Grant Programs :</i>		
C19-2861	Long Lake Creek Subwatershed Assessment	\$112,000

**Total Grant Awarded: \$112,000**

**Recitals**

1. The Minnesota Laws of 2017, Chapter 91, Article 2, Section 7, appropriated Clean Water Funds (CWF) to the Board for the FY 2019 Clean Water Fund Competitive Grants Program.
2. The Board adopted the FY19 Clean Water Fund Implementation Program Policy and authorized the policy through Board Order #18-33.
3. The Board adopted Board Order #18-72 to allocate funds for the FY 2019 Clean Water Fund Competitive Grants Program.
4. The Grantee has submitted a BWSR approved work plan for this Program which is incorporated into this agreement by reference.
5. 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.
6. 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 his/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 Grantees must immediately notify the Board.

**Grant Agreement**

1. **Terms of the Grant Agreement.**
  - 1.1. **Effective date:** The date the Board obtains all required signatures under Minn. Stat. § 16B.98, Subd. 5. **The State 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, 2021, or until all obligations have been satisfactorily fulfilled, whichever comes first.

1.3. **Survival of Terms:** The following clauses survive the expiration date 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 19. 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 expenditure 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 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, 2022 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 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 listed 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.

5. **Conditions of Payment.**

5.1. 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 will all applicable federal, State, and local laws, policies, ordinances, rules, *FY19 Clean Water Fund Implementation Program 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.

5.2. Minnesota Statutes §103C.401 (2018) 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 withhold payment on grants from other programs.

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 amendments to this Grant Agreement must be in writing and will not be effective until it has been approved and executed by the same parties who approved and executed 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.

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 of 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.

13.3. The State may immediately terminate this grant contract in the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of

Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

**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 wage for projects that include construction work of \$25,000 or more, prevailing wage rules apply per Minn. Stat. §§177.41 through 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 a rate not less than those prevailing on projects of a character similar in the locality. Bid requests must state the project is subject to prevailing wage.

**16. Municipal Contracting Law.**

Per Minn. Stat. §471.345, grantees that are municipalities as defined in Subd. 1 of this statute must follow the Uniform Municipal Contracting Law. Supporting 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.

**17. Constitutional Compliance.**

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

**18. 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.

**19. 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. Work 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 State 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:** \_\_\_\_\_