

**MEETING DATE:** September 27, 2018

**TITLE:** Authorization to execute grant agreement with the Board of Water and Soil Resources

**RESOLUTION NUMBER:** 18-100

**PREPARED BY:** Becky Christopher

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

**TELEPHONE:** 952-641-4512

**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 type="checkbox"/> Other (specify): <u>Requesting approval at September 27, 2018 Board Meeting</u>	

**PURPOSE or ACTION REQUESTED:**

Authorization to execute a grant agreement with the Board of Water and Soil Resources (BWSR) for funding through the Watershed-based Funding Pilot Program for the following projects:

- 325 Blake Road Regional Stormwater Project
- Arden Park Stream Restoration Project
- Wassermann West Restoration Project

**PROJECT/PROGRAM LOCATION:**

325 Blake Road Regional Stormwater Project, Hopkins  
Arden Park Stream Restoration Project, Edina  
Wassermann West Restoration Project, Laketown Township

**PROJECT TIMELINE:**

July 2, 2018 – deadline for submitting county collaborative work plans to BWSR  
October 3, 2018 – deadline for completing individual project work plans  
Mid-late October – anticipated execution of grant agreement

**PROJECT/PROGRAM COST:**

Authorized grant amounts:

- 325 Blake Road Regional Stormwater Project - \$125,000
- Arden Park Stream Restoration Project - \$124,151
- Wassermann West Restoration Project - \$93,879

**PAST BOARD ACTION:**

February 8, 2018 – Res. 18-010: Authorization to Submit Letter to BWSR Regarding Watershed Based Funding Pilot Program

June 28, 2018 – Res. 18-064: Authorization to Apply for Grant Funding Through the Watershed-Based Funding Pilot Program

**SUMMARY:**

Background:

In December 2017, the BWSR Board adopted a Watershed-Based Funding Pilot Program for state fiscal years 2018-19. The pilot program allocated \$5.59 million across the seven-county metro based on county boundaries and included a base amount of \$250,000 for each county with the remainder distributed based on land area of each county. The resulting allocations were \$1,018,000 for Hennepin County and \$749,200 for Carver County.

The eligible local government units (LGUs) within each county (county, SWCD, WMOs, WDs, and cities) were given a deadline of July 2, 2018 to develop a collaborative work plan identifying priority activities that would be implemented with the funds. Both the Hennepin and Carver County groups opted to use a formula-based approach to allocate the funds with 50 percent of the allocation based on land area and 50 percent based on tax base. The resulting allocations for MCWD were \$249,151 in Hennepin County and \$93,879 in Carver County.

In June 2018, the MCWD Board authorized staff to apply for grant funding as part of the county-wide collaboratives and to allocate the funding toward the following projects:

- 325 Blake Road Regional Stormwater Project - \$125,000
- Arden Park Stream Restoration Project - \$124,151
- Wassermann West Restoration Project - \$93,879

These grant amounts were accounted for in the District's approved 2019 budget.

Requested Action and Next Steps:

BWSR has approved the collaborative work plans for both Hennepin and Carver Counties. The next step is for each LGU to complete individual project work plans and execute grant agreements.

Staff is requesting Board authorization to execute the attached grant agreement for the three projects. It is anticipated that the work plans and grant agreement will be approved by BWSR by mid-late October, at which point expenditures under the grant can begin. The grant period extends through December 31, 2021.

Ongoing Program Development:

On February 8, 2018, the Board authorized the submittal of a letter to BWSR expressing the District's concerns and recommendations for the Watershed-based Funding Pilot Program. Staff have continued to be vocal throughout the process regarding the District's concerns with the pilot and future direction of the program.

BWSR recently conducted anonymous surveys and hosted a series of focus group meetings with each local government type to receive input about the program. Staff participated in the watershed district focus group on September 11, 2018. At that meeting, MCWD was selected as one of two watershed districts to represent the larger group at subsequent forum meetings. Staff will continue to keep the Board informed as this process moves forward.

Attachments:

Grant Agreement

**RESOLUTION**

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**RESOLUTION NUMBER:** 18-100

**TITLE:** Authorization to execute grant agreement with the Board of Water and Soil Resources

WHEREAS, the legislature appropriated \$9,750,000 from the Clean Water Fund to the Board of Water and Soil Resources (BWSR) for the FY2018-19 biennium for a pilot program to provide performance-based grants to local government units (LGUs) to implement projects identified in comprehensive watershed plans; and

WHEREAS, on December 20, 2017, the BWSR Board adopted the FY18 Watershed-Based Funding Pilot Program guiding principles, policy, and allocations; and

WHEREAS, within the Seven County Metropolitan Area, the program allocates funding based on county boundaries and allows for the LGUs within each county to either develop a collaborative work plan of activities or opt into a competitive grant process; and

WHEREAS, both the Hennepin and Carver County groups developed collaborative work plans under which the allocations for the Minnehaha Creek Watershed District (MCWD) were \$249,151 in Hennepin County and \$93,879 in Carver County; and

WHEREAS, in June 2018, the MCWD Board authorized staff to apply for grant funding as part of the county-wide collaboratives and to allocate the funding toward the following projects:

- 325 Blake Road Regional Stormwater Project (Hennepin) - \$125,000
- Arden Park Stream Restoration Project (Hennepin) - \$124,151
- Wassermann West Restoration Project (Carver) - \$93,879; and

WHEREAS, BWSR has approved the collaborative work plans for both Hennepin and Carver Counties and now requires that each LGU complete individual project work plans and execute a grant agreement;

NOW, THEREFORE, BE IT RESOLVED that the MCWD Board of Managers hereby approves the Grant Agreement between the State of Minnesota, acting through its Board of Water and Soil Resources for appropriated Clean Water Funds in the amount of \$343,030 for the above projects, and authorizes the District Administrator to execute the Grant Agreement.

Resolution Number 18-100 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

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

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**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.  
Resolutions are not final until approved by the Board and signed by the Board Secretary.**

**FY 2019 STATE OF MINNESOTA  
BOARD OF WATER and SOIL RESOURCES  
WATERSHED BASED FUNDING GRANTS PROGRAM  
GRANT AGREEMENT**

<b>Vendor:</b>	0000225729	<b>VN#:</b>	
<b>PO#:</b>	3000009665	<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).

*This grant is for the following Grant Programs :*

P19-3267	2019 - Watershed Based Funding Metro (Minnehaha Creek WD)	\$343,030
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**Total Grant Awarded: \$343,030**

**Recitals**

1. The Laws of Minnesota 2017, Chapter 91, Article 2, Section 7 (a), appropriated Clean Water Funds (CWF) to the Board for the FY 2019 Watershed-based Funding Pilot Program.
2. The Board adopted the Clean Water Fund Watershed-based Funding Pilot Program Policy and authorized the Watershed-based Funding Pilot Program Grants through Board Resolution 17-96.
3. The Board adopted Board Resolution 17-96 to allocate funds for the FY 2019 Watershed-based Funding Pilot 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 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: **James Wisker, MCWD Administrator  
15320 Minnetonka Blvd  
Minnetonka, MN 55345  
952-471-0590**

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

5. **Conditions of Payment.** All services provided by the Grantee under this Grant Agreement must be performed to the State's satisfaction, as set forth in this Agreement and in the BWSR approved work plan for this program. Compliance will be determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, State, and local laws, policies, ordinances, rules, FY 2018 Clean Water Fund Competitive Grants Policy, and regulations. All Grantees must follow the Grants Administration Manual policy. Minnesota Statutes §103C.401 (2014) establishes BWSR's obligation to assure program compliance. If the noncompliance is severe, or if work under the grant agreement is found by BWSR to be unsatisfactory or performed in violation of federal, state, or local law, BWSR has the authority to require the repayment of grant funds, or an additional penalty. Penalties can be assessed at a rate up to 150% of the grant agreement.

## 6. Assignment, Amendments, and Waiver.

- 6.1. **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this Grant Agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this Grant Agreement, or their successors in office.
- 6.2. **Amendments.** Any amendment to this Grant Agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original Grant Agreement, or their successors in office. Amendments must be executed prior to the expiration of the original agreement or any amendments thereto.

- 6.3. **Waiver.** If the State fails to enforce any provision of this Grant Agreement, that failure does not waive the provision or its right to enforce it.
7. **Liability.** The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this Grant Agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this Grant Agreement.
8. **State Audits.** Under Minn. Stat. § 16B.98, subd. 8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this Grant Agreement or transaction are subject to examination by the Board and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Grant Agreement, receipt and approval of all final reports, or the required period of time to satisfy all State and program retention requirements, whichever is later.
- 8.1. The books, records, documents, accounting procedures and practices of the Grantee and its designated local units of government and contractors relevant to this grant, may be examined at any time by the Board or Board's designee and are subject to verification. The Grantee or delegated local unit of government will maintain records relating to the receipt and expenditure of grant funds.
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.
- 13.3. The State may immediately terminate this grant contract if 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.

