



Minnesota Pollution Control Agency

520 Lafayette Road North
St. Paul, MN 55155-4194

Item 5C.
BCWMC 6-18-15

Clean Water Partnership (CWP) Grant and Loan Program
State Fiscal Year 2015

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY
CLEAN WATER PARTNERSHIP
PROJECT GRANT AGREEMENT**

Summary

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|--------------------------|---|
| PROJECT TITLE: | Northwood Lake Water Quality Improvement Project |
| GRANTEE/PROJECT SPONSOR: | Bassett Creek Watershed Management Commission |
| CONTACT: | Laura Jester, 16145 Hillcrest Lane, Eden Prairie MN 55346 952-270-1990 laura.jester@keystonewaters.com |
| PROJECT ID NUMBER: | PRJ07212-002 |
| STATE GRANT SHARE: | \$300,000.00 |
| GRANTEE SHARE: | \$1,052,000.00 |
| TOTAL PROJECT COST: | \$1,352,000.00 |

This GRANT AGREEMENT (hereinafter “Agreement” or “Grant”), and amendments and supplements thereto, shall be interpreted pursuant to the laws of the State of Minnesota and is between the State of Minnesota acting through its Commissioner of the **Minnesota Pollution Control Agency** (“State” or “MPCA”), 520 Lafayette Road North, St. Paul, MN 55155-4194 and **Bassett Creek Watershed Management Commission**, 16145 Hillcrest Lane, Eden Prairie MN 55346 (hereinafter “Grantee” or “Project Sponsor”).

Term of Agreement

Effective date: June 8, 2015, or the date the State obtains all required signatures under Minn. State. § 16C.05, subd. 2, whichever is later.

The Grantee must not begin work under this grant contract until this contract is fully executed and the Grantee has been notified by the State’s Authorized Representative to begin the work.

Expiration date: June 30, 2018, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

The following Clauses survive the expiration, cancellation or termination of this Agreement: Liability; Records Maintenance; Government Data Practice; Intellectual Property; and Governing Law, Jurisdiction, and Venue.

Recitals

1. Pursuant to Minn. Stat. §§ 103F.701 to 103F.761, the State is empowered to make grant agreements to provide financial assistance to local governmental units for projects for the protection and improvement of surface and groundwater from nonpoint sources of water pollution. Administration of the program is governed by Minn. R.

7076.0100 to 7076.0290.

2. The **Grantee** is a local governmental unit eligible to enter into a Clean Water Partnership (CWP) Grant Agreement with the State according to the conditions of Minn. Stat. §§ 103F.701 to 103F.761 and Minn. R. 7076.0100 to 7076.0290.
3. The **Grantee** represents that it is duly qualified and willing to perform the services set forth herein, fulfilling the obligations of Grantee in accordance with Minn. R. 7076.0110, subp. 20, and as further defined herein.

Grant Agreement

1. DEVELOPMENT AND INCORPORATION OF PROJECT WORK PLAN

- a) To continue this Project pursuant to Minn. R. 7076.0200, the Grantee must submit for review and approval by the State a Project Work Plan (hereinafter “Work Plan” or “Project Work Plan”), which shall be:
 - b) Applicable to the Project identified in the Sponsor’s grant proposal; and in a format approved by the State. At least 60 percent of the local contribution (30 percent of total eligible project costs) to the Work Plan activities provided for by this Agreement must come from non-state and non-federal sources. To be considered non-state or nonfederal, a cash or in-kind contribution must be financed by funds that are either:
 - 1) Derived exclusively from local sources (e.g., local property taxes, fees, private contributions).
 - 2) Derived from revenue which, while not necessarily local in its sources, has become subject to the exclusive control of the Grantee or a Contributing Sponsor (other than a state or federal agency or instrumentality) and is not subject to the specific terms, conditions, or purposes of state or federal projects or programs, or activities conducted by state or federal agencies or instrumentalities.
 - 3) Derived from loan assistance made available through the CWP.
 - 4) In order to be eligible for Project Grant funds, costs must be reasonable, necessary and allocable to the Project, and must include costs incurred only during the life of this Agreement.
 - c) The Project Work Plan must be submitted to the MPCA within sixty (60) days following the Agreement effective date or the MPCA may exercise the right to cancel or rescind this Agreement.
 - d) Upon written approval by the State, the Project Work Plan and any subsequent amendments or revisions which are approved by the State in writing shall be incorporated into this Agreement by reference.
 - e) The Grantee shall implement measures and activities identified in the approved Project Work Plan for the Project Waters of Concern and the Project Area.

2. CONSIDERATION AND TERMS OF PAYMENT

- a) The total obligation of the State for all compensation and reimbursements to the Grantee shall be consistent with the Work Plan Budget and shall be no more than **fifty percent (50%)** of the total eligible Project costs, and shall not exceed **\$300,000.00 (Three Hundred Thousand Dollars and Zero Cents)**.
- b) Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this Agreement is allowed. Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current “Commissioners Plan” promulgated by the Commissioner of Minnesota Management and Budget office, which can be accessed on the internet at: <http://www.mmd.admin.state.mn.us/commissionersplan.htm>. The Grantee will not be reimbursed for travel and subsistence expenses incurred outside the State of Minnesota unless the Grantee has received the MPCA’s prior written approval for out-of-state travel. Minnesota will be considered the home State for determining whether travel is out of state.

- c) Conditions of Payment. All services provided by the Grantee under this Agreement must be performed to the State's satisfaction, as determined at the sole discretion of its authorized agent, and in accordance with all applicable federal, state, and local laws, ordinances, rules and regulations. The Grantee shall not receive payment for work found by the State to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.
- 1) Initial Payment. Upon execution of this Agreement, the State will pay the Grantee **twenty-five percent (25%)** of the State Grant Share provided for in this Agreement in the amount of **\$75,000**.
 - 2) Reimbursement. Upon expenditure of the initial payment, the MPCA will promptly pay the Grantee, after the Grantee presents an itemized invoice for work actually performed and the State's Project Manager accepts the invoiced work. Invoices must be submitted at least quarterly with the updated workplan budget showing current expenditures and budget balances, and be received within 30 days from the end of each quarter. Invoices should reference the SWIFT Agreement number and purchase order number and must be submitted electronically to: mpca.ap@state.mn.us
 - 3) Final Payment. The MPCA will withhold a minimum of 10 percent (10%) of the grant award, until the MPCA is satisfied that the project has been completed according to the terms of this Agreement, including expenditure or performance of all required match. The Grantee must submit an invoice for the Final Payment upon submittal of the Final Report (including Financial Report). If the Final Report is not received by the MPCA within 30 (thirty) days of the original or amended end date of this Agreement, the MPCA will withhold invoice(s) for payment until the Final Report is received.
- d) Should the Project sponsor accrue any interest on grant funds deposited in any Project accounts during the life of this Agreement, such interest must be used as local cash match for Project activities outlined in the Project workplan and such interest must be indicated on the Project expenditure reports.

3. LIMITATIONS ON COST-SHARING

- a) In the event that the total expenditure necessary to accomplish the Project objectives described in this Agreement is less than the total Project cost provided for in this Agreement, actual costs incurred by the Grantee in accomplishing the Project objectives will be used to determine the amount of State financial participation.
- b) Cost overruns are the amount by which the actual cost expended to complete a particular objective, task, or subcontract exceeds approved Project budget costs or subcontract costs according to the conditions of this Agreement, as amended and are the sole responsibility of the Grantee.

4. TIME

In the performance of this Agreement, time is of the essence. The Grantee must comply with all the time requirements described in this Agreement.

5. CANCELLATION

The State may cancel this Agreement at any time, with or without cause, upon thirty (30) days' written notice to the Grantee. Upon termination, the Grantee shall be entitled to payment, determined on a pro rata basis, for work satisfactorily performed. The State may cancel this Agreement immediately if the State finds that there has been a failure to comply with the provisions of this Agreement, 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. **If the Grantee does not commence the Project within one year of the Execution Date of this Agreement**, as evidenced by the incurrence of documented expenses for eligible workplan costs, the State reserves the right to cancel this Agreement. If the Grantee is not expending the funds in a timely manner, as evidenced by the incurrence of documented expenses for eligible workplan costs, the State reserves the right to cancel this Agreement and reallocate the funds.

6. AUTHORIZED REPRESENTATIVES

- a) The **MPCA's Authorized Representative** is **Teresa McDill**, 520 Lafayette Road North, St. Paul, MN 55155, 651-757-2819, or her successor and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this Agreement.
- b) The **MPCA's Project Manager** is **Rachel Olmanson**, 520 Lafayette Road, St. Paul, MN 55155, 651-757-2473, rachel.olmanson@state.mn.us, or his/her successor, and has the responsibility to monitor the Grantee's performance by evaluating and approving the satisfactory completion of objectives and tasks identified in this Agreement, ensuring compliance with all requirements of this Agreement and ensuring that invoiced totals are properly allocated to objectives and tasks in the workplan and do not exceed the budgeted objective/task amounts.

The MPCA's Project Manager has the authority to approve the services provided under this Agreement and authorize payment for those services. If the services are satisfactory, the MPCA's Project Manager will certify acceptance of each invoice submitted for payment.

- c) The **Grantee's Authorized Representative** is **Laura Jester**, 16145 Hillcrest Lane, Eden Prairie MN 55346, 952-270-1990, laura.jester@keystonewaters.com, or his/her successor. If the Grantee's Authorized Representative changes at any time during this Agreement, the Grantee must immediately notify the State.

7. ASSIGNMENT

Grantee may neither assign nor transfer any rights or obligations under this 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 Agreement, or their successors in office, or as provided by law.

8. AMENDMENTS AND CHANGE ORDERS

- a) Amendments: Any amendment to this Agreement must be in writing and shall not be effective until it has been executed and approved by the same parties who executed the original Agreement or their successors in office. The Project Sponsor may apply to the State to amend this Agreement for the following purposes:
 - 1) Increases or decreases in the State grant share
 - 2) Increases or decreases in the scope of the project
 - 3) Changes in the budget period of the project
 - 4) Extension of the term of this Agreement

Amendments to this Agreement that are mutually acceptable to the Project Sponsor and the State are effective upon the date that the last signature is obtained by the State, pursuant to Minn. Stat. § 16C.05, subd. 2, and shall remain in effect until the conclusion of the original budget period, or if amended, the conclusion of the amended budget period.

- b) Change Orders. If the State's Authorized Representative, or Project Manager, or the Grantee's Authorized Representative identifies a minor change needed in the Work Plan and budget, either party may initiate a Change Order using the Change Order Form provided by the MPCA. Minor changes are defined as reallocating less than ten percent (10%) or \$50,000, whichever is less, of the overall Grant, cumulatively, whether between or within tasks. Change Orders may not delay or jeopardize the success of the Project, alter the overall scope of the Project, increase or decrease the overall amount of the Grant, or cause an extension of the term of this Grant. Major changes or reallocations (over 10% or \$50,000) require an Amendment rather than a Change Order.

The MPCA's Authorized Representative, or Project Manager, and the Grantee's Authorized Representative shall sign the Change Order Form **in advance of doing the work**, which will then become an integral and enforceable part of the Grant.

9. REPORTS

- a) Semi-Annual Progress Report. The Grantee must submit for review and approval by the State a Semi-annual Progress Report for each six-month period beginning on January 1 and July 1 or for any part thereof during which this Agreement is in effect. The Semi-annual Progress Report must be submitted to the State by February 1 and August 1 and include at least the following information for the six month time period:
- 1) A brief discussion of the relationship of the reporting year's activities to the overall goals and objectives of the Project, and any proposed changes or modifications in the overall goals and objectives.
 - 2) A discussion of Project findings appropriate to the work conducted during the reporting year, including Work progress relative to the Project Work Plan milestone schedule, and difficulties encountered during the reporting year.
 - 3) A summary of the reporting year's best management practices (BMPs) identifying the type, number and location of BMPs, funding levels or sources and the outcome of nonpoint source pollution control activities. This data shall be reported in a format prescribed by the State.
 - 4) Monitoring Data Reporting (EQuIS). The water quality monitoring data collected during the Project shall, through a cooperative arrangement with the State, be verified and entered into the Minnesota Water Monitoring System (EQuIS). The data shall be submitted annually by **November 1**. Monitoring data shall be reported in an EQuIS compatible format acceptable to the State.
 - 5) Itemized Budget Expenditure Report. The Grantee must provide an update of Project spending according to the approved, Itemized Budget indicating by each budget line item the following:
 - i) Cumulative expenditures and in-kind contributions through previous reporting periods.
 - ii) Expenditures and in-kind contributions for the current reporting period.
 - iii) Total expenditures.

This report must be provided in a format acceptable to the State.

The State may withhold payment until the Grantee submits and the State approves a Semi-Annual Report according to the conditions of this Agreement.

- b) Project Review and Budget Adjustment. Upon expenditure of fifty percent of total Project costs by the Grantee, the Grantee must, upon request of the State, make available to the State for review and approval:
- 1) A detailed summary of Project expenditures and in-kind contributions, and completed workplan activities, according to the approved Itemized Budget and including:
 - i) Invoices or payment vouchers indicating that the goods or services were received and paid for.
 - ii) Listing of applicable labor hours, hourly rates, and indirect rates and costs.
 - iii) Listing of material, supply, and equipment prices and costs.
 - iv) Sufficient additional information to verify the nature and eligibility of the work plan activity.
 - v) A specific description of the work product associated with each expenditure.
 - vi) A revised, Itemized Budget which, indicates all previous Project expenditures and in-kind contributions and the total eligible Project costs necessary to complete the Project in accordance with the terms of this Agreement and Minn. R. 7076.0100 through 7076.0290.
 - 2) The State will:
 - i) Review expenditures to verify cost eligibility and acceptable completion of Project Work Plan activities.
 - ii) Review the revised Itemized Budget which indicates the total eligible Project costs necessary to complete the Project in accordance with the terms of this Agreement and Minn. R. 7076.0100 through 7076.0290.
 - iii) Review eligibility and methods of determining match.

- iv) Adjust the revised Itemized Budget to account for adjustments resulting from this Project review and notify the Grantee of the adjusted Itemized Budget.

If the corresponding State Grant Share of the adjusted Itemized Budget is less than the State Grant Share provided for in this Agreement, the State Grant Share available to the Grantee will be subject to Limitations on Cost Sharing of this Agreement. If the corresponding State Grant Share of the adjusted Itemized Budget is greater than the State Grant Share provided for in this Agreement, the Grantee may request an amendment to this Agreement in accordance with the conditions of this Agreement.

When the total State Grant Share authorized to complete the Project in accordance with the terms of this Agreement is increased by means of an amendment of this Agreement, upon execution of said amendment the State will make payment to the Grantee of the additional State Grant Share the Grantee is entitled to receive in accordance with this Agreement, as amended.

- c) Final Report. Upon completing the requirements of the approved Project Work Plan, the Grantee shall develop and provide to the State a Final Report. The Final Report shall address at least the information required for the Semi-Annual Progress Report and shall summarize and evaluate such information for the entire duration of the Project. Upon Project completion, the Grantee shall also submit a Final Financial Report showing the source and disposition of all grant and match funds, and in-kind contributions.

All final report documents must be received at the MPCA within thirty (30) days following the end of this grant Agreement. Failure to submit the Final Report within 30 days shall result in withholding of invoice(s) for payment until the Final Report is received.

10. BEST MANAGEMENT PRACTICES CONTINUING OPERATION AND MAINTENANCE PLAN

When applicable, within one (1) year of the execution of this Agreement, the Grantee must prepare and submit to the State for review, a draft BMPs Continuing Operation and Maintenance Plan, that addresses at least the following:

- a) Designation of responsibilities for the continuing operation and maintenance, as defined herein, of BMPs, including but not limited to:
 - 1) Proposing minimum useful lives to be assigned to each particular type of BMP, where the minimum useful life is the minimum time period over which operation and maintenance, as defined herein, shall be undertaken.
 - 2) Designation of responsibilities for the continuing operation and maintenance of BMPs, including:
 - i) Identifying each step or task necessary to ensure the continuing efficient operation of each BMP and then designating who shall be responsible for each.
 - ii) Describing the administrative, legal, financial or other commitments and responsibilities necessary to ensure the continuing efficient operation of each BMP.
- b) Where individual land managers, local governmental units, agencies, or organizations other than the Grantee shall be delegated complete or partial responsibility for the continuing operation and maintenance of BMPs as defined herein, the Grantee must describe the administrative, legal and fiscal arrangements, including remedial action, which shall be available to the Grantee, to ensure continuing operation and maintenance, as defined herein, of BMPs.
- c) A procedure for monitoring and reporting the continuing operation of BMPs for at least the minimum useful life assigned to each BMP.
- d) The State may withhold any payment until such time as the Grantee submits a draft BMPs Continuing Operation and Maintenance Plan, the State approves the Grantee's BMPs Continuing Operation and Maintenance Plan, and the Grantee, or the appropriate delegated local governmental unit, implements and enacts the provisions

(including administrative, legal and fiscal arrangements), of a “Best Management Practices Continuing Operation and Maintenance Plan” that has been approved by the State.

11. 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 Agreement by the Grantee or the Grantee’s agents or employees. This Clause may not be construed to bar any legal remedies Grantee may have for the State’s failure to fulfill its obligations under this Agreement.

12. USE OF SUBCONTRACTORS

If the Grantee decides to fulfill any of its obligations and duties under this Agreement through a subcontractor to be paid for by funds received under this Grant, the Grantee may not execute a contract with the subcontractor or otherwise enter into a binding Agreement until it has first received written approval from the State’s Authorized Representative, unless such subcontract is a specific part of an approved Project Work Plan included in this Agreement. The State’s Authorized Representative will respond to requests from the Grantee for authorization to subcontract within ten (10) working days of receiving the request. All subcontracts must reference this Agreement and require the subcontractor to comply with all of the terms and conditions of this Agreement. The Grantee must be responsible for the satisfactory and timely completion of all work required under any subcontract and the Grantee must be responsible for payment of such subcontracts. The Grantee must pay all Subcontractors, less any retainage, within ten (10) calendar days of receipt of payment to the Grantee by the State for undisputed services provided by the Subcontractor and must pay interest at the rate of one and one-half percent per month or any part of a month to the Subcontractor on any undisputed amount not paid on time to the Subcontractor.

13. RECORDS MAINTENANCE AND AUDITING

The Grantee, subcontractors, and contributing sponsors with whom the Grantee enters into Agreements to perform any or all of the work required under the terms of this Agreement, shall maintain complete and accurate books, records, documents, and accounting procedures. Such books, records, documents, and accounting procedures shall fully disclose the amount and disposition of all State Grant funds disbursed under this Agreement, as well as funds and in-kind contributions used for match. Such records shall also account for: disposition of project expenditures, property purchased, program income, and documentation of compliance with applicable federal, state, or local laws, ordinances, rules or regulations, and the conditions of this Agreement. Under Minn. Stat § 16C.05, subd. 5, such records shall be available to Authorized Representatives of the State, including the State contracting department, the State Auditor and/or the Legislative Auditor, as appropriate, for examination and audit and shall be maintained for a minimum of six (6) years after termination of this Agreement. If during the period when this Agreement, as amended, is effective or within six (6) years thereafter, the Grantee has an independent audit conducted that includes or addresses the activities of this Agreement, a copy of the audit shall be provided to the State.

14. NONDISCRIMINATION IN EMPLOYMENT

During the performance of this Agreement, neither the Grantee, nor those with whom the Grantee subcontracts for all or part of the work to be performed under this Agreement shall, because of age, sexual preference, political affiliation, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, discriminate against any person with respect to hire, tenure, compensation, terms of employment, upgrading of employment, facilities, privileges or conditions of employment; refuse to hire persons seeking employment; or, discharge an employee.

15. NONDISCRIMINATION IN AVAILABILITY AND USE OF FACILITIES

Neither the Grantee, nor those with whom the Grantee subcontracts for all or a portion of the work to be performed under this Agreement shall exclude any person from participating in, deny them the benefits of, or discriminate against them on the basis of race, color, creed, religion, national origin, sex, marital status, age, sexual preference, political affiliation, or status with regard to public assistance or disability.

16. ANTITRUST

Grantee hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations that arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

17. GOVERNMENT DATA PRACTICES ACT

The Grantee and the 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 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. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State shall give the Grantee instructions concerning the release of the data to the requesting party before the data is released.

18. INTELLECTUAL PROPERTY RIGHTS

- a) **Obligations.** 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 Agreement. 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 Agreement. 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 Agreement. The Documents shall be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee, at the Grantee's expense, upon the written request of the State, or upon completion, termination, or cancellation of this Agreement. To the extent possible, those Works eligible for copyright protection under the United State's 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.
- b) **Notification.** Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee, including its employees and subcontractors, in the performance of this Agreement, the Grantee shall immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.
- c) **Representation.** The Grantee must perform all acts, and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause XIII Liability, the Grantee shall indemnify, defend, to the extent permitted by the Attorney General, and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including, but not limited to, attorney fees. If such a claim or action arises or in Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

- d) License. The State hereby grants a limited, no-fee, noncommercial license to the Grantee to enable the Grantee's employees engaged in research and scholarly pursuits to make, have made, reproduce, modify, distribute, perform, and otherwise use the Works, including Documents, for research activities or to publish in scholarly or professional journals, provided that any existing or future intellectual property rights in the Works or Documents (including patents, licenses, trade or service marks, trade secrets, or copyrights) are not prejudiced or infringed upon, that the Minnesota Data Practices Act is complied with, and that individual rights to privacy are not violated. The Grantee shall indemnify and hold harmless the State for any claim or action based on the Grantee's use of the Works or Documents under the provisions of Clause XVI.B.2. Said license is subject to the State's publicity and acknowledgement requirements set forth in this Agreement. The Grantee may reproduce and retain a copy of the Documents for research and academic use. The Grantee is responsible for security of the Grantee's copy of the Documents. A copy of any articles, materials or documents produced by the Grantee's employees, in any form, using or derived from the subject matter of this license, shall be promptly delivered without cost to the State.
- e) Acknowledgement. The Grantee shall acknowledge the State's funding of any resulting publications, data, or other material, whether subject to copyright or not, with the following language: Funding for this publication (or document, paper, data, etc.) was provided by the Minnesota Pollution Control Agency through a Grant from the State's Clean Water Partnership Grant Fund.
- f) Publicity. Any publicity regarding the subject matter of this Agreement must identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved Project Workplan included in this Agreement, prior to written approval by the State's Authorized Representative. For the purposes of this Clause, 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 Project, publications, or work funded by this Agreement.

The Grantee must not claim that the State endorses its products or services.

19. WORKERS COMPENSATION AND LABOR

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 shall 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. The Grantee shall comply with the provisions of Minn. Stat. § 181.59, Discrimination on account of race, creed, or color prohibited in contract, as applicable. The Grantee shall ensure that all personnel involved in the performance of this Agreement are properly qualified, trained, and competent, and shall be, where applicable, appropriately medically monitored during the Project.

20. PREVAILING WAGE

Pursuant to Minn. Stat. §§ 177.41 to 177.44 and corresponding Minn. R. 5200.1000 to 5200.1120, this Contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry in effect on May 1, 2014. These prevailing wages can be found on the MPCA website at <http://www.pca.state.mn.us/index.php/water/water-types-and-programs/water-nonpoint-source-issues/clean-water-partnership/financial-assistance-for-nonpoint-source-water-pollution-projects-clean-water-partnership-and-section-319-programs.html>. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the Contract. Failure to comply with the aforementioned may result in civil or criminal penalties.

This section does not apply to a contract or agreement, under which:

- (1) The estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete it.
- (2) The estimated total costs of completing the project is less than \$25,000 and more than one trade or occupation is required to complete it

21. PROJECT SIGNS

The State shall provide the Grantee with guidance regarding official Project Signs. The Grantee shall construct one or more Project Signs consistent with the most recent applicable guidance provided by the State. The Grantee must erect such Signs as appropriate sites adjacent to the Waters of Concern or at appropriate locations along major roadways within the Project area.

22. ACQUISITION OF PERMITS

The Grantee is responsible for acquisition of all permits necessary to undertake Project activities and shall acquire such permits from appropriate federal, state, and local agencies and jurisdictions. This provision applies to permits issued by the MPCA.

23. EQUIPMENT

Equipment purchased with grant funds must be used for Project purposes for the duration of the Project or the equipment's useful life, whichever comes first. If the Grantee no longer needs a piece of equipment for Project purposes, the Grantee shall so notify the MPCA in writing. The MPCA will determine the disposition of such equipment. The MPCA may direct that the equipment be used on another project, be sold and the proceeds used for Project purposes, or that it be used for some other water quality purpose.

24. EQUIPMENT INSURANCE

The Grantee shall be responsible to procure and maintain adequate insurance coverage for any equipment used on the Project, whether purchased with Project or any other funds, lent or given by any agency, organization or person, or procured in any other manner.

25. PRECEDENCE OF MINN. R. 7076.0100 TO 7076.0290

In the event that any provision of this Agreement is not consistent with the provisions of Minn. R. 7076.0100 to 7076.0290, the Rule supersedes the inconsistent provision.

26. WAIVER

If the State fails to enforce any provision of this Agreement, that failure does not waive the provision or its right to enforce it.

27. GOVERNING LAW, JURISDICTION AND VENUE

Minnesota Law, without regard to its choice-of-law provisions, governs this 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.

28. RIGHT OF SETOFF

Under Minn. Stat. § 270C.65, and other applicable laws, the Grantee consents to disclosure of its social security number, federal 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, or pay other State liabilities.

29. LEGACY LOGO

Minnesota Laws 2010, chapter 361, article 3, section 5, (b) states: "A recipient of the funds from the outdoor heritage fund, parks and trails fund, clean water fund or arts and cultural heritage fund shall display, where practicable, a sign with the logo developed under this section on construction projects and at access points to any land or water resources acquired in fee or an interest in less than fee title, or that were restored, protected, or enhanced, and incorporate the logo, where practicable, into printed and other materials funded with money from one or more of the funds."

Minn. Stat. §114D.50, subd.4, (f) states: “When practicable, a direct recipient of an appropriation from the clean water fund shall prominently display on the recipient's Web site home page the legacy logo required under Laws 2009, chapter 172, article 5, section 10, as amended by Laws 2010, chapter 361, article 3, section 5, accompanied by the phrase ‘Click here for more information.’ When a person clicks on the legacy logo image, the Web site must direct the person to a Web page that includes both the contact information that a person may use to obtain additional information, as well as a link to the Legislative Coordinating Commission Web site required under section 3.303, subdivision 10.”

Clean Water Land and Legacy Amendment Logo Usage

Guidelines: http://www.legacy.leg.mn/sites/default/files/resources/Legacy_Logo_Guidelines.pdf

Download the Legacy Logo: <http://www.legacy.leg.mn/legacy-logo/legacy-logo-download>

30. DEFINITIONS

The terms used in this Agreement have the meanings defined in Minn. Stat. §§ 103F.701 to 103F.761 and Minn. R. 7076.0110.

Signatures

Document Signature Details -- External User

| Order | Ext. User | Status | Actual Signer | Name | Title | Date/Time | Comments |
|-------|----------------|---------|---------------|--------------|-------|-----------|----------|
| 1 | VN0000265343_2 | Pending | | LAURA JESTER | | | |

Document Signature Details -- Internal Users

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| 1 | Role | M_FS_WF_SC_DOC_SIGNER_01 | Waiting | | | | | |
| 2 | User ID | 01024689 | Waiting | | | | | |