

METROPOLITAN COUNCIL STORMWATER GRANT

GRANTEE:		GRANT NO.
PROJECT:		
GRANT PERIOD:		
COUNCIL ACTION:		
ESTIMATED PROJECT AMOUNT: \$		
MAXIMUM GRANT AMOUNT: \$	GRANTEE MATCH: \$	

GRANT AGREEMENT

THIS AGREEMENT is made and entered into by and between the Metropolitan Council (“the Council”) and Grantee named above.

RECITALS

1. The Council is authorized by Minnesota Statutes section 473.505 to enter into agreements with other government bodies and spend funds to implement total watershed management. This includes the authority to make grants to other government bodies to implement total watershed management.

2. The Metropolitan Council authorized its staff to enter into total watershed management grant agreements with various local units of government for installation of storm water best management practices that can be used as demonstrations of innovative storm water management practices for the region.

3. Grantee has expressed an interest in installing, maintaining and monitoring effectiveness of the storm water best management practices.

4. Grantee represents that it has the technical capability and is duly qualified to implement such best management practice and perform all services described in this grant agreement to the satisfaction of the Council.

NOW, THEREFORE, the Council and Grantee agree as follows:

Section 1. Definitions

1.01 “Project” means the entire work effort necessary to complete the Work Plan, including all obligations of Grantee under this agreement.

1.02 “Work Plan” means the means the items of work identified in Exhibit A to this Agreement.

Section 2. Grant Amount, Match, Grant Period and Reimbursement Procedures.

2.01 Estimated Project Amount. The total estimated cost of the Project is the sum of the Maximum Grant Amount and Grantee match on page 1 of this agreement.

2.02 Maximum Grant Amount. The Council agrees to make available to Grantee during the grant period a grant of up to Maximum Grant Amount identified on page 1. This amount is granted for the purpose of reimbursing Grantee for a portion of the eligible costs of performing the Project.

In no event will the Council's obligations exceed the lesser of the following:

- A. The Maximum Grant Amount; or
- B. 75% of the total Project expenditures.

The Council will bear no responsibility for cost overruns incurred by Grantee in performance of the Project.

2.03 Grantee Match. Grantee must provide at least a 25% local match against the Maximum Grant Amount. If the final expenses for the Project are less than the Estimated Project Amount, then the local match will be reduced to 25% of the final Project amount. If the final expenses for the Project exceed the Estimated Project Amount, Grantee is responsible for providing the funds to cover the final costs and expenses. The local match may be cash or an in-kind match.

2.04 Grant Period. The grant begins on the date that this Agreement is fully executed and expires on the earlier of [DATE] or until Grantee satisfactorily fulfills all of its obligations this agreement. After that date, all grant funds that Grantee has not spent revert to the Council.

Section 3. Performance of the Project

3.01 Use of Funds. Grantee must use the proceeds of this grant only for the eligible costs of the Project as described in this Agreement.

3.02 Eligible Costs. Only the costs specified in this section are eligible for reimbursement out of the grant proceeds. Exhibit B to this Agreement provides the budget for the Project. Grantee may only use the grant funds to pay eligible line item costs in Exhibit B or for costs incurred in preparing the Work Plan in Exhibit A. If the actual cost of a line item in Exhibit B exceeds the budgeted amount by more than 10%, Grantee must notify the Council and Grantee may not use grant funds to pay for the portion that exceeds the budgeted amount by more than 10%.

Grantee may use grant and matching funds for direct staff costs for Work Plan activities. Grantee may use Grant and matching funds to purchase or lease equipment, machinery, supplies, or other personal property necessary for the grant project. The Grantee will comply with the personal property management requirements in Section 3.04 of this agreement.

If Council determines that Grantee made an unauthorized or undocumented use of grant proceeds, the Council may make a demand for repayment and Grantee must promptly repay such amounts to the Council.

3.03 Administration, Supervision and Contractors. Grantee is responsible for the administration, supervision, management, and oversight of the Project. Grantee may employ any professional services and contractors it deems reasonable and necessary to complete the Project.

In employing professional services and contractors, the Council encourages Grantee to solicit and include businesses that participate in the Metropolitan Council Underutilized Business Program (“MCUB”). A list of these firms is available on the Council’s website.

3.04 Personal Property Management. Title to all personal property acquired with grant and matching funds remains with Grantee. Grantee must take reasonable measures to protect and defend its title interest and shall keep the personal property free and clear of any liens, encumbrances, or other claims. Grantee must maintain property records that include, at a minimum, a description of the property, a serial or other identification number, the acquisition date and cost, and the location, use, and condition of the property. In the final report required by section 5.02, Grantee must include a list of all personal property acquired with grant and matching funds that was not used in performance of the Project. At the end of the Grant Period, Grantee agrees to transfer title to all personal property that is not incorporated into the Project and was acquired in whole or in part with grant funds to the Council, at the Council's option, at no charge. The Council reserves the right to direct appropriate disposition of all personal property, acquired in whole or in part with grant funds, which has not been expended in performance of the grant project.

During the Grant Period, Grantee bears the risk of loss of, damage to, or destruction of any personal property acquired with grant or matching funds. No such loss, damage, or destruction will relieve Grantee of its obligations under this agreement. Grantee will maintain personal property acquired with grant or matching funds in good operating order. If, during the Grant Period, any project personal property is not used in performing the project, whether by planned withdrawal, misuse, or casualty loss, Grantee must immediately notify the Council’s Authorized Representative. Unless otherwise approved by the Council's Authorized Representative, Grantee must remit to the Council a proportional amount of the fair market value of any items that are not used, calculated on the basis of the proportion of Council grant funds used to acquire the items.

Section 4. Accounting, Record, and Audit Requirements

4.01 Accounting and Record-keeping. Grantee will establish and maintain a separate account for the Project and maintain accurate and complete books, records, documents, and other evidence of the costs and expenses of implementing this agreement to the extent and in such detail that will accurately reflect the total cost of the Project and all net costs, direct and indirect, of labor, materials, equipment, supplies, services, and other costs and expenses. Grantee must use generally accepted accounting principles. Grantee must retain these records for at least 6 years after the end of the Grant Period.

4.02 Audit. The accounts and records of Grantee related to this agreement may be audited in the same manner as other accounts and records of Grantee and may be audited and inspected on Grantee's premises or otherwise by individuals designated or authorized by the Council at any time following reasonable notification during the Grant Period and for a period of six years thereafter. Under Minnesota Statutes section 16C.05, subdivision 5, Grantee's books, records, documents, and accounting procedures and practices relevant to this agreement are subject to examination by the State, its representatives, the State Auditor, and the Legislative Auditor for a minimum of 6 years from the end of this agreement. Grantee will make available at all reasonable times and before and during the period of records retention proper facilities for examination and audit.

Section 5. Reimbursement, Reporting and Monitoring.

5.01 Reimbursement Request/Quarterly Progress Reports. To receive Reimbursement under this agreement, Grantee must submit a Reimbursement Request/Quarterly Report. The Council must receive from Grantee Reimbursement Request/Quarterly Report within 30 days after the end of each calendar quarter. In the Reimbursement Request/Quarterly Report, Grantee must provide a detailed summary of completed work activities and project expenditures, including a comparison of actual activities and expenditures against planned activities and projected expenditures, and any MCUB inclusion efforts under Section 3.03. Grantee must provide sufficient documentation of grant eligible expenditures and any other information the Council's staff reasonably requests. Grantee must submit a Quarterly Report as outlined in this section even if Grantee is not submitting a Reimbursement Request.

The Council will make the final determination whether the expenditures are eligible for reimbursement under this agreement and verify the total amount requested from the Council. Reimbursement of any cost is not a waiver by the Council of any Grantee noncompliance with this agreement.

The Council will reimburse all eligible grant expenditures not in excess of the total amount of grant amount under this agreement within 60 days after receiving satisfactory documentation from Grantee. Grantee's documentation is subject to review and acceptance or rejection by the Council. The Council will be deemed to have accepted Grantee's documentation if the Council does not reject it in writing within 21 days of receipt.

The Council will not award any reimbursements for work done outside of the Grant Period.

5.02 Final Report. Within 60 days after the expiration of the Grant Period, the Council must receive from Grantee for Council review and approval a final report in a format determined by the Council, detailing total Project receipts and expenditures, summarizing all Project activity, describing any MCUB inclusion efforts under Section 3.03, and containing a certification by Grantee's chief financial officer that all grant funds were expended in accordance with this agreement. The final report must include a list of project personal property as required by paragraph 3.04. The final report must also describe how the Project furthers Total Watershed Management as that term is defined under Minnesota Statutes Section 473.505. This Agreement remains in effect until the Council approves the Final Report.

5.03 Other Monitoring Activities. To assist the Council in monitoring compliance with the grant agreement, Grantee agrees to attend meetings as requested by Council staff and to permit site visits by Council staff, during business hours, upon reasonable notice.

Section 6. General Conditions

6.01 Compliance with Law. Grantee will comply with all applicable state and federal laws. Further, Grantee agrees that it is Grantee's obligation and responsibility, and not the Council's, to comply with all other laws, regulations, and rules relating to activities undertaken in performing the Project.

6.02 Maximum Use of Other Funds. If Grantee at any time receives funding or reimbursement from another source for amounts charged by Grantee against this grant, such funds charged against this grant shall be immediately refunded to the Council upon discovery of the duplicate funding or reimbursement.

6.03 Liability. Each party is responsible for its own acts and the results thereof to the extent authorized by law and a party is not responsible for the acts of the other party and the results thereof. Council and grantee's liability are governed by the Minnesota Municipal Tort Claims Act, Minnesota Statutes chapter 466, and other applicable law. Notwithstanding this provision, to the fullest extent permitted by law, Grantee will defend, hold harmless, and indemnify the Council and its members, employees, and agents from and against all claims, damages, losses, and expenses, including but not limited to attorney fees, arising out of or resulting from clean-up, removal, and disposal of contaminants related to the Project. This includes, without limitation, any claims asserted under the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. sections 6901 *et seq.* This obligation will not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and Grantee. Grantee's obligation to indemnify the Council as stated in this paragraph shall not be construed as a waiver on the part of either Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466, or other applicable state or federal law.

6.04 Changes in the Project. If Grantee, for any reason, determines that the Project or any portion of it should not be undertaken, or that there should be a change in the scope or costs of an portion of the Project, Grantee must immediately submit to the Council a statement describing the situation and giving the reasons for Grantee's determination. Grantee may, simultaneously with the submission of the statement or within a reasonable time thereafter, recommend alternative projects, activities, uses, expenditures, or allocations of grant funds.

If the Council determines that Grantee's recommendations may be immediately approved, Grantee and the Council may execute a written amendment to this agreement as provided in section 6.05.

If the Council determines that Grantee's recommendations may not be immediately approved, Grantee and the Council may execute a written amendment to this agreement as provided in section only after appropriate authorizations by the Council and Grantee.

6.05 Amendments. The terms of this agreement may be changed by mutual agreement of the parties. Changes will be effective only upon execution of a written amendment signed by authorized representatives of the Council and Grantee.

6.06 Equal Opportunity; Affirmative Action. Grantee will comply with all applicable laws, rules, and regulations relating to nondiscrimination and affirmative action in public purchase, involvement, and use. In particular, Grantee agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, national origin, marital status, disability, status with regard to public assistance, membership or activity in a local civil rights commission, or age, and to take affirmative action to insure that applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training. In addition, Grantee must include affirmative action and equal employment provisions in any written contract entered into after the date of execution of this agreement which involves the provision of work or services which will be paid for in whole or in part out of the grant proceeds.

6.07 Permits, Bonds, and Approvals. Grantee is responsible for obtaining and complying with all applicable local, state, and federal licenses, permits, bonds, approvals, inspections, and authorizations necessary for the Project.

6.08 Termination for Cause. This agreement may be terminated by the Council for cause at any time with 7 days' written notice to Grantee. Cause means a material breach of this agreement and any supplemental agreements or amendments to this agreement. If the Council terminates the agreement for cause, it may require Grantee to repay the grant funds in full or in a portion determined by the Council. Nothing in this section limits the Council's legal remedies to recover grant funds.

6.09 Termination for Convenience. Either party may terminate this grant agreement at any time by giving the other party written notice of termination at least 30 days before the effective date of the termination. On termination, the Council will compensate Grantee on a pro

rata basis for work plan activities that were satisfactorily performed in accordance with this agreement.

6.10 Intellectual Property. Grantee agrees that the results of the grant project, the reports submitted, and any new information or technology that are developed with the assistance of this grant are in the public domain and may not be copyrighted, patented, trademarked or designated as trade secret.

6.11 Government Data Practices. Grantee and Council must comply with the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, as it applies to all data provided by the Council under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by Grantee under this grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either Grantee or the Council. If Grantee receives a request to release the data referred to in this section, Grantee must promptly notify the Council.

6.12 Promotional Materials. Grantee will submit to the Council a copy of any promotional information regarding the grant project disseminated by Grantee during the Grant Period. Grantee will acknowledge the grant assistance made by the Council in any promotional materials, reports, and publications relating to the grant project.

6.13 Jurisdiction and Venue. Venue for all legal proceedings arising out of this grant agreement, or breach of this grant agreement, will in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

6.14 Authorized Representatives.

The Council's Authorized Representative is:

[NAME]

[TITLE]

GRANTEE'S Authorized Representative is:

[NAME]

[TITLE]

All written communication under this agreement must be sent electronically or by United States Mail to the Authorized Representative. Either party may change its Authorized Representative by notifying the other party in writing. To the extent possible, communications between the parties concerning this agreement will be directed through the authorized representatives.

6.15 Survival. Sections 4.01, 4.02, 6.03, 6.10, 6.12, and 6.13 of this Agreement, and the rights, duties and obligations of the Council and Grantee created in those Sections, survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on or as of the date first above written.

METROPOLITAN COUNCIL

By: _____

Weston Kooistra
Regional Administrator

Date: _____

GRANTEE

The Grantee certifies that the appropriate persons have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions and ordinances.

By: _____

Date: _____

By: _____

Date: _____

EXHIBIT A

Work Plan

EXHIBIT B
Project Budget