



# LOWER MINNESOTA RIVER WATERSHED DISTRICT

## **Executive Summary for Action**

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, March 21, 2018

### **Agenda Item**

#### **Item 4. D. - Eagle Creek 2018-2019 WOMP Agreement**

#### **Prepared By**

Linda Loomis, Administrator

#### **Summary**

The LMRWD received the Eagle Creek 2018-2019 WOMP (Watershed Outlet Monitoring Program) Agreement. This is a two year agreement for \$10,000 or actual cost of monitoring, whichever is less. A portion is paid up front and then payments are made each year after submittal of actual expenses incurred for monitoring the WOMP station.

The agreement is attached and the Board should authorize execution.

#### **Attachments**

Eagle Creek 2018-2019 WOMP Agreement

#### **Recommended Action**

Motion to Authorize execution of Agreement

**GRANT AGREEMENT  
BETWEEN THE METROPOLITAN COUNCIL  
AND LOWER MINNESOTA RIVER WATERSHED DISTRICT  
FOR THE METROPOLITAN AREA  
WATERSHED OUTLET MONITORING PROGRAM (WOMPI)**

**THIS AGREEMENT** is made and entered into by and between the **METROPOLITAN COUNCIL** (the "Council") and the Lower Minnesota River Watershed District (the "Grantee"), each acting by and through its duly authorized officers.

**WHEREAS:**

1. The Metropolitan Council has been charged by the Minnesota Legislature (Minnesota Statutes, section 473.157, Water Resources Plan) with the development of target pollution loads for all Metropolitan Area watersheds.
2. A search of the available data yielded very little data adequate for use in the development of these loads.
3. The Metropolitan Council has authorized its staff to enter into grant agreements with various watershed management organizations for the collection of watershed outlet data.
4. The Grantee has expressed an interest in collecting water quality data at the watershed outlet.
5. The Grantee has exhibited the technical capability to conduct a watershed outlet monitoring program.
6. The Council has reviewed the Grantee's proposal and desires to assist it in the collection of data.

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

**I. GRANTEE PERFORMANCE OF GRANT PROJECT**

**1.01 Grant Project.** The Grantee agrees to perform and complete in a satisfactory and proper manner the grant project as described in the Grantee's application for grant assistance, incorporated in this agreement by reference, and in accordance with the terms and conditions of this agreement. Specifically, the Grantee agrees to perform the specific activities described in Exhibit A ("WOMP Monitoring Work Plan") and to undertake the financial responsibilities described in Exhibit B ("WOMP Monitoring Budget and Financial Responsibilities" document), both of which are attached to and incorporated in this agreement. These activities and financial responsibilities are referred to in this agreement as the "Grant Project".

**1.02 Use of Contractors.** With the approval of the Council's Grant and Project Managers, the Grantee may engage contractors to perform Grant Project activities. However, the Grantee retains primary responsibility to the Council for performance of the Grant Project and the

use of such contractors does not relieve the Grantee from any of its obligations under this agreement.

**1.03 Material Representations.** The Grantee agrees that all representations contained in its application for grant assistance are material representations of fact upon which the Council relied in awarding this grant and are incorporated in this agreement by reference.

## **II. AUTHORIZED USE OF GRANT FUNDS**

**2.01 Authorized Uses.** Grant funds may be used only for costs directly associated with Grant Project activities, as described in paragraph 1.01, and which: i) occur during the Project Activity Period specified in paragraph 6.01, and ii) are eligible expenses as listed in the Grantee Financial Responsibilities portion of the WOMP Monitoring Budget and Financial Responsibilities document (Exhibit B). Grant funds may also be used to prepare the data and financial reports required by paragraphs 5.02 and 5.03 of this grant agreement. No other use of grant funds is permitted.

**2.02 Unauthorized Uses of Grant Proceeds.** Grant funds cannot be used to purchase land, buildings, or other interests in real property, or to pay legal fees, or permit, license, or other authorization fees, unless specifically approved in advance by the Council's Grant Manager.

**2.03 Project Equipment and Supplies.** With approval of the Council's Project Manager, grant funds may be used to purchase or lease equipment, machinery, supplies, or other personal property directly necessary to conduct the Grant Project. The Grantee will comply with the personal property management requirements described in article VIII of this agreement, with regard to any property purchased pursuant to this paragraph.

## **III. GRANT AMOUNT AND DISTRIBUTION**

**3.01 Maximum Grant Amount.** The Council shall pay to the Grantee a Maximum Grant Amount of \$10,000. Provided, however, that in no event will the Council's obligation under this agreement exceed the lesser of:

- a. the Maximum Grant Amount of \$10,000; or,
- b. the actual amount expended by the grantee on eligible expenses as specified in paragraph 2.01.

The Council shall bear no responsibility for cost overruns which may be incurred by the Grantee in performance of the Grant Project.

**3.02 Distribution of Grant Funds.** Grant funds will be distributed by the Council according to the following schedule:

- a. Within ten working days of Council execution of this agreement, the Council will distribute to the Grantee forty-five (45%) of the Maximum Grant Amount.
- b. Upon Council approval of Grantee's January 2019 financial report required by paragraph 5.03, the Council will distribute to the Grantee forty-five (45%) percent of the Maximum Grant Amount.

- c. Upon approval of Grantee's January 2020 financial report required by paragraph 5.03, the Council will distribute to Grantee the final payment of the remainder of the Maximum Grant Amount. However, no payment will be made which would cause the distribution of grant funds to exceed the limits in paragraph 3.01. Further, if the amount already paid to Grantee by the Council pursuant to this paragraph exceeds the cumulative amount actually expended by the Grantee on eligible expenses as specified in paragraph 2.01, the Council shall notify Grantee of the amount of over-payment. Grantee shall repay to the Council the amount of such overpayment within 30 calendar days of receipt of such notice from the Council.

No payment will be made under this paragraph if the Grantee is not current in its reporting requirements under article V at the time the payment is due. Distribution of any funds or approval of any report is not to be construed as a Council waiver of any Grantee noncompliance with this agreement.

**3.03 Repayment of Unauthorized Use of Grant Proceeds.** Upon a finding by Council staff that the Grantee has made an unauthorized or undocumented use of grant proceeds, and upon a demand for repayment issued by the Council, the Grantee agrees to promptly repay such amounts to the Council.

**3.04 Reversion of Unexpended Funds.** All funds granted by the Council under this agreement that have not been expended for authorized Grant Project activities as described in paragraph 2.01 shall revert to the Council.

#### **IV. ACCOUNTING AND RECORDKEEPING REQUIREMENTS**

**4.01 Documentation of Grant Project Costs.** All costs charged to the Grant Project must be supported by proper documentation, including properly executed payroll and time records, invoices, contracts, receipts for expenses, or vouchers, evidencing in detail the nature and propriety of the charges.

**4.02 Establishment and Maintenance of Grant Project Information.** The Grantee agrees to establish and maintain accurate, detailed, and complete separate books, accounts, financial records, documentation, and other evidence relating to: i) Grantee's performance under this agreement, and ii) the receipt and expenditure of all grant funds under this agreement. The Grantee shall establish and maintain all such information in accordance with generally accepted accounting principles and practices and shall retain intact all Grant Project information until the latest of:

- a. complete performance of this agreement; or
- b. six (6) years following the term of this agreement; or
- c. if any litigation, claim, or audit is commenced during either such period, when all such litigation, claims or audits have been resolved.

If the Grantee engages any contractors to perform any part of the Grant Project activities, the Grantee agrees that the contract for such services shall include provisions requiring the contractor to establish and maintain Grant Project information in accordance with the provisions of this paragraph and to allow audit of such information in accordance with paragraph 4.03.

**4.03 Audit.** The accounts and records of the Grantee relating to the Grant Project shall be audited in the same manner as all other accounts and records of the Grantee are audited. During the time of maintenance of information under paragraph 4.02, authorized representatives of the Council, and the Legislative Auditor and/or State Auditor in accordance with Minnesota Statutes, section 16C.05, subdivision 5, will have access to all such books, records, documents, accounting practices and procedures, and other information for the purpose of inspection, audit, and copying during normal business hours. The Grantee will provide proper facilities for such access and inspection.

## V. REPORTING AND MONITORING REQUIREMENTS

**5.01 Monitoring Work Plan.** The WOMP Monitoring Work Plan (Exhibit A) includes the specific geographic area and watershed outlet affected by the Grant Project, the tasks to be undertaken together with schedules and the organization responsible for the tasks' costs. The Grantee Financial Responsibilities portion of the WOMP Monitoring Budget and Financial Responsibilities document (Exhibit B) lists the Grantee expenses eligible for reimbursement by the Council, subject to the limitations of paragraph 2.01. The Grantee agrees to abide by the Monitoring Work Plan, including the Quality Control Provisions listed in the Monitoring Work Plan.

**5.02 Grant Project Data Reports.** The Grantee will submit Grant Project data reports to the Council in accordance with the requirements in the WOMP Monitoring Work Plan (Exhibit A).

**5.03 Grant Project Financial Reports.** In January 2019 and January 2020, the Grantee will submit a financial report detailing expenses incurred by Grantee for the Grant Project in the preceding twelve calendar months which are eligible for reimbursement by the Council in accordance with paragraph 2.01.

**5.04 Changed Conditions.** The Grantee agrees to notify the Council immediately of any change in conditions, local law, or any other event that may affect the Grantee's ability to perform the Grant Project in accordance with the terms of this agreement.

## VI. GRANT PROJECT ACTIVITY PERIOD; TERM; TERMINATION

**6.01 Project Activity Period.** The Grantee agrees to complete the Grant Project activities specified in paragraph 1.01 during the period from January 1, 2018 through December 31, 2019 (the "Project Activity Period").

**6.02 Term.** The term of this agreement shall extend from the effective date of this agreement to a date 60 calendar days following the end of the Project Activity Period, to permit closeout of this agreement.

**6.03 Termination.** Either the Council or the Grantee may terminate this grant agreement at any time, with or without cause, by providing the other party written notice of such termination at least thirty (30) days prior to the effective date of such termination. Upon such termination Grantee shall be entitled to compensation for Grant Project activities in accordance with this grant agreement which were satisfactorily performed and incurred prior to the effective date of the termination. Any remaining grant funds which have been distributed to Grantee will be returned to the Council no later than the effective date of such termination. Upon such effective date of termination, a) all data collected by Grantee prior to the effective date of termination shall be turned over to the Council by Grantee; and b) all Council personal property in possession of Grantee wherever located and all property acquired with Grant funds shall be turned over to the Council by Grantee.

**6.04 Termination by Council for Noncompliance.** If the Council finds that there has been a failure to comply with the provisions of this agreement, the Council may terminate the agreement at any time following seven calendar days written notice to the Grantee and upon failure of the Grantee to cure the noncompliance within the seven-day period. Noncompliance includes failure to make reasonable progress toward completion of the Grant Project. If the Council finds that the Grantee's noncompliance is willful and unreasonable, the Council may terminate or rescind this agreement and require the Grantee to

repay the grant funds in full or in a portion determined by the Council. Nothing in this paragraph shall be construed so as to limit the Council's legal remedies to recover grant funds.

**6.05 Effect of Grant Project Closeout or Termination.** The Grantee agrees that Grant Project closeout or termination of this agreement does not invalidate continuing obligations imposed on the Grantee by this agreement. Grant Project closeout or termination of this agreement does not alter the Council's authority to disallow costs and recover funds on the basis of a later audit or other review, and does not alter the Grantee's obligation to return any funds due to the Council as a result of later refunds, corrections, or other transactions.

## **VII. COUNCIL'S GRANT MANAGER AND PROJECT MANAGER**

Financial aspects of this grant agreement will be handled by the Council's Grant Manager. The Council's Grant Manager for this grant agreement is Joe Mulcahy, or such other person as may hereafter be designated in writing by the Council.

Technical aspects of the Grant Project, including supervision of the Grantee under the Monitoring Work Plan, will be handled by the Council's Project Manager. The Council's Project Manager for this grant agreement is Casandra Champion, or such other person as may hereafter be designated in writing by the Council.

However, nothing in this agreement will be deemed to authorize such Grant Manager or Project Manager to execute amendments to this Grant Agreement on behalf of the Council.

## **VIII. GRANT PROPERTY AND DATA**

**8.01 Title.** Title to all personal property at the monitoring station site as described in Exhibit A and all property acquired with grant funds will remain with the Council. The Council authorizes the Grantee to utilize the personal property at the site in carrying out the Grant Project activities during the Project Activity Period.

**8.02 Maintenance.** The Grantee agrees to maintain any such personal property in good operating order. If, during the Project Activity Period, any personal property is no longer available for use in performing the Grant Project, whether by planned withdrawal, misuse, or casualty loss, the Grantee shall immediately notify the Council's Project Manager.

**8.03 Utility Services.** The Council shall make arrangements with local utilities to provide both telephone and electrical hookups as needed at the monitoring station specified in Exhibit A. All utility accounts serving the monitoring station shall be in the name of the Council. All telephone and electric utility costs for the monitoring station shall be paid by the Council.

**8.04 Grant Project Closeout or Termination.** No later than a) the effective date of termination as provided in Sections 6.03 and 6.04 of this Grant Agreement or b) no later than sixty (60) calendar days following the end of the Project Activity Period ("Project Closeout Date"), whichever is applicable:

- i) all data defined in Section 9.04 of this Agreement collected by Grantee prior to the Project Closeout Date or the effective date of termination shall be turned over to the Council by Grantee; and
- ii) all Council personal property in possession of Grantee wherever located and all property acquired with Grant funds shall be turned over to the Council by the Grantee.

Provided, however, that if the Grant Agreement has not been terminated by either party and Grantee continues to participate in the Watershed Outlet Monitoring Program (WOMP1) through a subsequent Grant Agreement with the Council, Grantee shall not be required to comply with Section 8.04 subparagraph (ii) until such time as Grantee's participation in the WOMP1 program ceases.

## **IX. GENERAL CONDITIONS**

**9.01 Amendments.** The terms of this agreement may be changed only by mutual agreement of the parties. Such changes shall be effective only upon the execution of written amendments signed by duly authorized officers of the parties to this agreement.

**9.02 Assignment Prohibited.** Except as provided in paragraph 1.02, the Grantee shall not assign, contract out, sublet, subgrant, or transfer any Grant Project activities without receiving the express written consent of the Council. The Council may condition such consent on compliance by the Grantee with terms and conditions specified by the Council.

**9.03 Indemnification.** The Grantee assumes liability for and agrees to defend, indemnify and hold harmless the Council, its members, officers, employees and agents, from and against all losses, damages, expenses, liability, claims, suits, or demands, including without limitation attorney's fees, arising out of, resulting from, or relating to the performance of the Grant Project by Grantee or Grantee's employees, agents, or subcontractors.

**9.04 Grant Project Data.** The Grantee agrees that the results of the Grant Project, the reports submitted, and any new information or technology that is developed with the assistance of this grant may not be copyrighted or patented by Grantee. The Grantee shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, in administering data under this agreement.

**9.05 Nondiscrimination.** The Grantee agrees to comply with all applicable laws relating to nondiscrimination and affirmative action. In particular, the Grantee agrees not to discriminate against any employee, applicant for employment, or participant in this Grant Project because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local civil rights commission, disability, sexual orientation, or age; and further agrees to take action to ensure that applicants and employees are treated equally with respect to all aspects of employment, including rates of pay, selection for training, and other forms of compensation.

**9.06 Promotional Material: Acknowledgment.** The Grantee agrees to submit to the Council a copy of any promotional information regarding the Grant Project disseminated by the Grantee. The Grantee shall appropriately acknowledge the grant assistance made by the Council in any promotional materials, reports, and publications relating to the Grant Project.

**9.07 Compliance with Law; Obtaining Permits, Licenses and Authorizations.** The Grantee agrees to conduct the Grant Project in compliance with all applicable provisions of federal, state, and local laws, ordinances or regulations. The Grantee is responsible for obtaining all federal, state, and local permits, licenses, and authorizations necessary for performing the Grant Project.

**9.08 Workers Compensation; Tax Withholding.** The Grantee represents that it is compliance with the workers compensation coverage requirements of Minnesota Statutes, section 176.181, subdivision 2, and that it, and any of its contractors or material suppliers, if any, under this contract, are in compliance with the tax withholding on wages requirements of Minnesota Statutes, section 290.92.

**9.09 Jurisdiction, Venue, and Applicable Law.** Venue for all legal proceedings arising out of this agreement, or breach of this agreement, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota. All matters relating to the performance of this agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed by their duly authorized officers on the dates set forth below. This agreement is effective upon final execution by, and delivery to, both parties.

**GRANTEE** \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**METROPOLITAN COUNCIL**

Date \_\_\_\_\_

By \_\_\_\_\_

Sam Paske  
Assistant General Manager,  
Environmental Quality Assurance Department



## EXHIBIT A

### WOMP MONITORING WORK PLAN

The Grantee, **Lower Minnesota River Watershed District**, will operate and maintain the water quality monitoring site at **Eagle Creek 8451 West 126<sup>th</sup> St Savage, MN**. The Grantee, or designated agent, will conduct monitoring work from January 1, 2018 through December 31, 2019. The Grantor, Metropolitan Council Environmental Services (MCES) will provide training, supplies and technical support to the Grantee and/or its designated agent through the WOMP Coordinator, Casandra Champion.

#### **CONTACT INFORMATION**

Casandra Champion, WOMP Coordinator  
651-602-8745 (office)  
[Casandra.champion@metc.state.mn.us](mailto:Casandra.champion@metc.state.mn.us)

Daniel Henely, Assistant Manager Water Resources  
651-602-8085 (office)  
[Daniel.henely@metc.state.mn.us](mailto:Daniel.henely@metc.state.mn.us)

MCES Lab Services Logging Bench  
651-692-8293

#### **WORKPLAN**

##### **Site Visits**

At each site visit, the Grantee will record stage, stream control conditions and obtain instantaneous temperature, conductivity, pH, dissolved oxygen, and turbidity measurements. The Grantee will record measurements and observations on an MCES Sample Submission Sheet and Field Notes form and submit the form to the WOMP Coordinator.

##### **Rating Curve Measurements**

The WOMP Coordinator will coordinate with the Grantee to ensure that flow measurements are being made approximately every six weeks, with additional targeted high-flow measurements as conditions allow. Flow measurement data collected by the Grantee will be submitted to the WOMP Coordinator. This submission should include the electronic file and a completed MCES Sample Submission Sheet and Field Notes form.

##### **Water Quality Samples**

The Grantee will routinely sample stream water quality by submitting bi-weekly grab samples, 26 samples per year. If ice conditions preclude taking a sample, the Grantee will attempt to collect the next sample after four weeks. The Grantee will measure and record temperature, conductivity, pH, dissolved oxygen, and turbidity.

The first sample collected in March, June, September, and December will include additional quarterly analyses as determined by the WOMP Coordinator.

If the site has an autosampler, the Grantee will collect discrete auto-grabs or flow-weighted composite samples to characterize storm events. If sufficient water volume is available, an aliquot should be poured into a separate container for temperature, conductivity, pH, dissolved oxygen, and turbidity measurements.

Datalogger programming and sample collection timing will be coordinated by the WOMP Coordinator.

If the site does not have an autosampler, event grabs will be collected to characterize storm event. Event grab timing will be coordinated by the WOMP Coordinator and MPCA WPLMN staff. The WOMP Cooperator will use a Secchi Tube to measure transparency with every event grab.

#### **E. coli Samples**

The Grantee will collect an E. coli grab sample with every water quality grab or autosampler sample. E. coli samples must be delivered within 24 hours of collection; every effort should be made to deliver the sample within 4-5 hours.

#### **Quality Assurance/Quality Control Samples**

The Grantee will collect three QA/QC samples per year; one equipment blank, one routine grab field duplicate and one quarterly grab field duplicate.

#### **Forms and Labels**

The Grantee will complete an MCES Sample Submission Sheet and Field Notes form for every grab, autosampler, or QA/QC sample. The Grantee will clearly label all sample bottles and Whirl-Pacs with project number, location, date and time.

#### **Sample Submission**

The Grantee will submit all water quality samples to MCES Laboratory Services at the Metropolitan Wastewater Treatment Plant, 2400 Childs Road, St. Paul, Minnesota. The Grantee will notify Logging Bench staff before sample delivery. Deliveries should be prior to 2:00 PM, coordinate with Logging Bench staff if delivery will be late.

The Grantee will submit one copy of the MCES Sample Submission Sheet and Field Notes form to MCES Lab Services, one copy to the WOMP Coordinator, and keep one copy for Grantee records.

#### **Site Maintenance**

The Grantee will maintain the basic integrity of the site and notify the WOMP Coordinator of any unusual maintenance needs.

#### **Cost Accounting**

The Grantee will provide MCES with an annual invoice of costs incurred for WOMP monitoring including labor, mileage, and equipment expenses.

## EXHIBIT B

### WOMP MONITORING BUDGET AND FINANCIAL RESPONSIBILITIES

#### Grantee Financial Responsibilities

The Grantee, **Lower Minnesota River Watershed District** shall assume the following financial responsibilities for operating and maintaining a water quality monitoring and sampling station at **Eagle Creek** during the Project Activity Period (January 1, 2018 through December 31, 2019).

On an annual basis (January 1, 2018 through December 31, 2019), the Grantee shall:

- Assume all Grantee labor costs associated with operating and maintaining the stream monitoring station according to the WOMP Monitoring Work Plan (Exhibit A);
- Assume all Grantee vehicle and mileage costs associated with operating and maintaining the stream monitoring station according to the WOMP Monitoring Work Plan;
- Assume all miscellaneous materials, supplies, and sample delivery costs associated with operating and maintaining the stream monitoring station according to the WOMP Monitoring Work Plan.

The Council will assist in the payment of such costs as provided for in this grant agreement.

#### Metropolitan Council Financial Responsibilities

Subject to the availability of funds, the Metropolitan Council shall assume the following financial responsibilities for operating and maintaining a water quality monitoring and sampling station at **Eagle Creek** during the Project Activity Period (January 1, 2018 through December 31, 2019).

On an annual basis (January 1, 2018 through December 31, 2019), the Council shall:

- Assume all MCES Laboratory costs associated with analysis of the water samples submitted by the Grantee, in conformance with the WOMP Monitoring Work Plan (estimated cost: \$2,850);
- Assume all telephone service costs (if applicable) associated with operating and maintaining the stream monitoring station according to the WOMP Monitoring Work Plan (estimated cost: \$625);
- Assume all electrical service costs (if applicable) associated with operating and maintaining the stream monitoring station according to the WOMP Monitoring Work Plan (estimated cost: \$325);
- Assume all costs for the repair and/or replacement of all monitoring equipment necessary for operating the stream monitoring station according to the WOMP Monitoring Work Plan (estimated cost: \$850);
- Assume all materials and supplies costs associated with operating and maintaining the stream monitoring station according to the WOMP Monitoring Work Plan (estimated cost: \$1,100), beyond the cost contributed by the Grantee (\$250);
- Assume all MCES trades labor costs associated with maintaining the stream monitoring station in proper working order (estimated cost: \$625);

Assume all labor costs for the Council's Project Manager (WOMP Coordinator), who will provide technical support, guidance, and assistance for operating and maintaining the stream monitoring station and managing and assessing the data and information generated by the monitoring work.