



LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Wednesday, April 20, 2022

Agenda Item

Item 4. E. - Authorize execution of the Cooperative Agreement among the Lower Minnesota River Watershed District, Nine Mile Creek Watershed District, Richfield-Bloomington Watershed Management Organization and Riley-Purgatory-Bluff Creek Watershed District – Lower Minnesota River Chloride Cost-Share Program

Prepared By

Linda Loomis, Administrator

Summary.

The LMRWD and other watershed management organizations in Hennepin County that are within the Minnesota River Watershed partnered to use 2019 Watershed Based Implementation Funding to assist local governments and winter maintenance professionals in purchasing equipment to reduce the amount of salt they use.

Riley-Purgatory-Bluff Creek Watershed District signed the grant agreement with BWSR and is the fiscal agent for the program. Four applications have been received and approved. Applications were from the City of Chaska, to retrofit City snow plows with segmented bladed; Eden Prairie Schools, to upgrade equipment with the purchase of two granular salt spreaders; City of Edina, to purchase new equipment to remove snow at Braemar Ice Arena; and Edina Public Schools. Legal Counsel for Riley-Purgatory-Bluff Creek Watershed District and the Nine Mile Creek Watershed District, Michael Welch, drafted a cooperative agreement, which is attached. The agreement has been sent to LMRWD legal counsel for review. The Board should approve the agreement and authorize execution subject to approval of the agreement by LMRWD legal counsel.

Attachments

Cooperative Agreement among the Lower Minnesota River Watershed District, Nine Mile Creek Watershed District, Richfield-Bloomington Watershed Management Organization and Riley-Purgatory-Bluff Creek Watershed District – Lower Minnesota River Chloride Cost-Share Program

Recommended Action

Motion to approve agreement and authorize execution of the agreement by President Hartmann

COOPERATIVE AGREEMENT
Among Lower Minnesota River Watershed District, Nine Mile Creek Watershed District,
Richfield-Bloomington Watershed Management Organization and
Riley-Purgatory-Bluff Creek Watershed District

LOWER MINNESOTA RIVER CHLORIDE COST-SHARE PROGRAM

March XX, 2022

This cooperative agreement is made by and among Lower Minnesota River Watershed District, a watershed district created pursuant to Minnesota Statutes chapters 103B and 103D (LMRWD), Nine Mile Creek Watershed District, a watershed district created pursuant to Minnesota Statutes chapters 103B and 103D (NMCWD), Richfield-Bloomington Watershed Management Organization, a joint-powers organization pursuant to Minnesota Statutes chapter 103B (RBWMO), and Riley-Purgatory-Bluff Creek Watershed District, a watershed district created pursuant to Minnesota Statutes chapters 103B and 103D (RPBCWD), for the collaborative implementation and management of the Lower Minnesota River Chloride Cost-Share Program. LMRWD, NMCWD, RBWMO and RPBCWD are referred to collectively herein as “the Partners,” and each of LMRWD, NMCWD, RBWMO and RPBCWD individually is a “Partner” herein.

Recitals

WHEREAS the Minnesota Pollution Control Agency’s Twin Cities Metro Chloride Total Maximum Daily Load study (February 2016) identified several waterbodies within the Twin Cities metropolitan area’s portion of the lower Minnesota River watershed as impaired for chloride, and addressed generally the fact that chloride pollution cannot be efficaciously prevented or remediated through construction of stormwater-management or -treatment systems, but must be tackled at the source through reduction in use of salt;

WHEREAS each of the Partners has adopted a watershed management plan pursuant to Minnesota Statutes section 103B.351 that identifies chloride pollution in stormwater runoff as a critical water-resource challenge in each Partner’s watershed and the larger lower Minnesota River watershed;

WHEREAS in 2018 RPBCWD, on behalf of and in collaboration with the Partners, was awarded \$197,209 in state Clean Water Land & Legacy Watershed-Based Implementation funding (the Grant Funds) to implement the Lower Minnesota River Chloride Cost-Share Program, which calls for the provision of support to property owners in the lower Minnesota River watershed to retrofit equipment to use efficient technology to reduce salt use in maintaining sidewalks and roads (the Program), and RPBCWD executed the grant agreement attached hereto as Exhibit A (the Grant Agreement), which requires that the Grant Funds be matched at a rate of 25 percent by local funding;

WHEREAS RPBCWD already has committed \$20,000 in Grant Funds to Eden Prairie Independent School District No. 272 and \$9,600 in Grant Funds to the City of Chanhassen for the purchase of equipment to reduce use of chloride de-icing material, and by their execution of this agreement the other Partners ratify and endorse the commitment of Grant Funds to Eden Prairie Independent School District No. 272 and the City of Chanhassen;

WHEREAS the Partners acknowledge that their ability to complete the Program depends on each party satisfactorily and promptly performing individual obligations and working cooperatively with the other Partners; and

WHEREAS Minnesota Statutes section 471.59 authorizes LMRWD, NMCWD, RBWMO and RPBCWD to enter into this agreement to exercise authority common among them.

AGREEMENT

NOW, THEREFORE LMRWD, NMCWD, RBWMO and RPBCWD enter into this agreement to document their understanding of the scope of the Program, and affirm their commitments as to the responsibilities and tasks to be undertaken by each Partner to implement the Program.

1 Program Design

1.1 For purposes of day-to-day management, oversight and implementation of the Program, the Partners will be represented by the following individuals, each of whom has been delegated by her or his respective governing board the authority to exercise its rights and fulfill its obligations under this agreement:

LMRWD

Administrator
112 Fifth Street East, Suite 102
Chaska, MN 55318
952-856-5880

NMCWD

Administrator
12800 Gerard Drive
Eden Prairie MN 55346
952-835-2078

RBWMO

Executive Director
1700 West 98th St.
Bloomington MN 55431
952-563-4557

RPBCWD

Administrator
18681 Lake Drive East
Chanhassen MN 55317
952-607-6512

The representatives are referred to collectively herein as “the Administrators,” and each individual is an “Administrator” herein.

1.2 The Program is further defined and specified for purposes of this agreement as consisting of the following:

- a. The solicitation and development by the Partners of specific property owners’ proposals for chloride-use reduction projects within the watersheds subject to the Partners’ jurisdiction;
- b. the review of submitted proposals by the Administrators for determination, by majority vote, of qualification for the Program, including but not limited to the commitment of matching funds as required by the Grant Agreement;
- c. on determination by the Administrators that a project qualifies for the Program, the RPBCWD Administrator will timely seek authorization from the RPBCWD Board of Managers to enter a cost-share reimbursement agreement for the project materially in the form of the template attached hereto as Exhibit B, committing to reimbursement of Grant Funds;

- d. the RPBCWD Administrator will administer individual project cost-share agreements in accordance with the terms thereof and applicable law, including but not limited to acknowledgement of the contribution of Clean Water Legacy funding in accordance with 2009 Minnesota Laws, chapter 172, Article 5, Section 10; and
- e. the Administrators will collaborate to support the RPBCWD Administrator's efforts to complete administration and reporting requirements for the Program under Exhibit B.

Grants Funds will be committed under the terms of this agreement on a first-come, first-served basis, without regard to location of a specific project in one or the other of the Partners' watersheds. The RPBCWD Board of Managers retains the discretion and authority to commit to the expenditure of Grant Funds to the extent of determining that any such expenditure is consistent with the Grant Agreement. The RPBCWD Board of Managers agrees to exercise its authority to approve project cost-share agreements reasonably and in accordance with and to ensure the fulfillment of the Program specifics herein and its rights and obligations under the Grant Agreement.

2 General Terms

2.1 COSTS. Except to the extent that Grant Funds are expended under the terms of this agreement and the Grant Agreement, each party will bear the costs of fulfilling its responsibilities and performing its obligations under this agreement, as well as its internal, administrative and incidental costs. No party will be responsible for or will reimburse costs incurred by the other.

2.2 INDEPENDENT RELATIONSHIP; LIABILITY

- a. The Partners enter this agreement solely for the purposes of improving water quality in the lower Minnesota River and tributary watersheds. This agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes section 471.59, and no party agrees to be responsible for the acts or omissions of another or the results thereof pursuant to subdivision 1(a) of the statute. Only contractual remedies are available for the failure of a party to fulfill the terms of this agreement.
- b. Minnesota Statutes chapter 466 and other applicable law govern liability of each of the Partners. The limits of liability for the Partners may not be added together to determine the maximum amount of liability for either party. Notwithstanding the foregoing or any other provision of this agreement, each Partner's obligations under this paragraph will survive the termination of the agreement.
- c. This agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party.

2.3 DATA MANAGEMENT. All designs, written materials, technical data, research or any other work-in-progress will be shared among the Partners to this agreement on request, except as prohibited by law. As soon as is practicable, the Partner receiving or preparing plans, specifications, contractual documents, materials for public communication or education will provide them to the other Partners for recordkeeping and other necessary purposes.

2.4 DATA PRACTICES. All data created, collected, received, maintained or disseminated for any purpose in the course of this agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13, and any state rules adopted to implement the act, as well as federal regulations on data privacy.

2.5 ENTIRE AGREEMENT. This agreement, as it may be amended in writing, contains the complete and entire agreement between the Partners relating to the subject matter hereof, and supersedes all prior negotiations, agreements, representations and understandings, if any, among the Partners respecting such matters. The recitals stated at the outset are incorporated into and made a part of the agreement.

2.6 WAIVERS. The waiver by any Partner of any breach or failure to comply with any provision of this agreement by another Partner or Partners will not be construed as nor will it constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this agreement.

2.7 TERM; TERMINATION. This agreement is effective on execution by all Partners and will terminate two years from the date of execution of this agreement or on the written agreement of all Partners. Any right, responsibility or obligation that has come into being before expiration will survive expiration.

[signature page follows]

DRAFT

IN WITNESS WHEREOF, the parties have executed this agreement.

Lower Minnesota River Watershed District

By _____ Date: _____
[NAME],
President

Nine Mile Creek Watershed District

By _____ Date: _____
Robert Cutshall,
President

Approved as to form and execution

By _____
NMCWD counsel

Richfield-Bloomington Watershed Management Organization

By _____ Date: _____
[NAME],
TITLE

Riley-Purgatory-Bluff Creek Watershed District

By _____ Date: _____
David Ziegler,
President

Approved as to form and execution

By _____
RPBCWD counsel

Exhibit A
2019 – Watershed Based Funding Metro Grant Agreement

DRAFT

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

Vendor:	0000201936	VN#:	
PO#:	3000009681	Date Paid:	

This Grant Agreement is between the State of Minnesota, acting through its Board of Water and Soil Resources (Board) and Riley-Purgatory-Bluff Creek WD, 14500 Martin Drive Eden Prairie Minnesota 55344 (Grantee).

<i>This grant is for the following Grant Programs :</i>		
P19-3276	2019 - Watershed Based Funding Metro (Riley-Purgatory-Bluff Creek WD)	\$410,879

Total Grant Awarded: \$410,879

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:

TITLE Claire Bleser, District Administrator
ADDRESS 18681 Lake Drive East
CITY Chanhassen, MN 55317
TELEPHONE NUMBER 952-607-6512

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.

- 15. Prevailing Wage.** It is the responsibility of the Grantee or contractor to pay prevailing wages for projects that include construction work of \$25,000 or more, prevailing wage rules apply per Minn. Stat. §§177.41 through 177.44. All laborers and mechanics employed by grant recipients and subcontractors funded in whole or in part with these State funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality. Bid requests must state the project is subject to prevailing wage.
- 16. Municipal Contracting Law.** Per Minn. Stat. §471.345, grantees that are municipalities as defined in Subd. 1 of this statute must follow the Uniform Municipal Contracting Law. Supporting documentation of the bidding process utilized to contract services must be included in the Grantee's financial records, including support documentation justifying a single/sole source bid, if applicable.
- 17. Constitutional Compliance.** It is the responsibility of the Grantee to comply with requirements of the Minnesota Constitution regarding use of Clean Water Funds to supplement traditional sources of funding.
- 18. Signage.** It is the responsibility of the Grantee to comply with requirements for project signage as provided in Minnesota Laws 2010, Chapter 361, article 3, section 5 (b) for Clean Water Fund projects.
- 19. Intellectual Property Rights.** The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this grant*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant. 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 grant. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee upon completion or cancellation of this grant at the State's request. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be duly executed intending to be bound thereby.

Approved:

Riley-Purgatory-Bluff Creek WD

Board of Water and Soil Resources

By: _____
 (print)

By: _____

(signature)

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit B
Cost-Share Agreement Template

DRAFT

Riley-Purgatory-Bluff Creek Watershed District
Cost-Share Funding Agreement

[PROJECT]

The parties to this cost-share agreement are the Riley-Purgatory-Bluff Creek Watershed District, a public body with purposes and powers set forth at Minnesota Statutes Chapters 103B and 103D (RPBCWD), and [PROJECT PARTNER]. The purpose of this agreement is to provide cost-share assistance for a project demonstrating protection of water resources in [watershed].

RPBCWD has determined that it will contribute cost-share funding for the [PROJECT], which will allow [PROJECT PARTNER] to reduce chloride entering the local water bodies. RPBCWD has determined the amount of funding that it will contribute to the purchase of the equipment on the basis of the water-quality improvement, public education and demonstration benefits that will be realized.

RPBCWD commits to reimburse [PROJECT PARTNER] in accordance with the terms and on satisfaction of the conditions of this agreement.

1. Scope of Work

[PROJECT PARTNER] will provide for [PROJECT DOCUMENTATION] attached to and incorporated into this agreement as Exhibit A (the Equipment), as well as the integration of the Equipment into [PROJECT PARTNER]' winter-maintenance program.

[PROJECT PARTNER] will submit to RPBCWD annually for five years following purchase of the Equipment a written report that describes the maintenance, use and operation of the Equipment, including but not limited to: [specifics] (Annual Report).

[PROJECT PARTNER] will maintain a copy of all records related to the purchase of the Equipment for six years from the date [PROJECT PARTNER] receives or completes purchase of the Equipment. RPBCWD may examine, audit or copy any such records on reasonable notice to [PROJECT PARTNER].

2. Reimbursement

[PROJECT PARTNER] will purchase the Equipment as described in Exhibit A. On receipt and approval of documentation (including receipts) of the purchase of the Equipment, RPBCWD will reimburse [PROJECT PARTNER] seventy-five (75) percent

of the cost of the Equipment. Reimbursement under this agreement will not exceed a total of \$XXXXXXX.

RPBCWD has determined that partial performance of obligations under section 1 of this agreement may confer no or limited benefit on RPBCWD. As a result if purchase and integration of the Equipment into [PROJECT PARTNER]' maintenance program are not substantially completed in material conformance with the terms of this agreement within two (2) years of the date this agreement is fully executed, subject to delays outside of [PROJECT PARTNER]' control, RPBCWD will not be obligated to provide reimbursement to [PROJECT PARTNER] under this agreement and may declare this agreement rescinded and no longer of effect. Notwithstanding, the parties will consult before RPBCWD denies reimbursement or rescind the agreement.

3. Right of Access

[PROJECT PARTNER] will permit RPBCWD representatives to inspect at reasonable times the Equipment, ensure compliance with this agreement and monitor or take samples for the purposes of assessing the performance of the Equipment and compliance with the terms of this agreement. If RPBCWD finds that an obligation under this agreement is not being met, it will provide 30 days' written notice and opportunity to cure, and thereafter may declare this agreement void. [PROJECT PARTNER] will reimburse RPBCWD for all costs incurred in the exercise of this authority, including reasonable engineering, legal and other contract costs.

4. Maintenance

[PROJECT PARTNER] will maintain and utilize the Equipment for a minimum of five (5) years from the date of purchase in accordance with the specifications and maintenance requirements provided by manufacturer and/or provider of the Equipment. If [PROJECT PARTNER] fails to maintain and utilize the Equipment, RPBCWD will have a right to reimbursement of all amounts paid to [PROJECT PARTNER], unless RPBCWD determines that the failure to maintain and utilize the Equipment was caused by reasons beyond [PROJECT PARTNER]'s control.

5. Acknowledgment and Publicity

Any publicly distributed or displayed printed or electronic documents or other text display regarding the Equipment will properly acknowledge the funding provided by RPBCWD and will acknowledge the contribution of Clean Water Legacy funding in accordance with 2009 Minnesota Laws, chapter 172, Article 5, Section 10. [PROJECT

PARTNER] will cooperate with RPBCWD to seek publicity and media coverage regarding the purchase and implementation of the Equipment.

6. Independent Relationship; Indemnification

RPBCWD's role under this agreement is solely to provide funds to support the performance of voluntary work by [PROJECT PARTNER] that furthers the purposes of RPBCWD. This agreement is not a joint powers agreement under Minnesota Statutes section 471.59. [PROJECT PARTNER] acts independently and selects the means, method and manner of purchasing and using the Equipment. No employee, representative, contractor or consultant of any party to this agreement has acted or may act in any respect as the agent or representative of the other party. Any right to review or approve a design, work in progress provided by the agreement to RPBCWD is solely for RPBCWD's purpose of accounting for RPBCWD funds expended. [PROJECT PARTNER] is not the agent, representative, employee or contractor of RPBCWD. [PROJECT PARTNER] will hold RPBCWD, its officers, board members, employees and agents harmless, and will defend and indemnify RPBCWD, with respect to all actions, costs, damages and liabilities of any nature arising from: (a) [PROJECT PARTNER]'s negligent or otherwise wrongful act or omission, or breach of a specific contractual duty; or (b) a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by [PROJECT PARTNER] to RPBCWD. No action or inaction of or the [PROJECT PARTNER] under this agreement creates a duty of care on the part of RPBCWD or the [PROJECT PARTNER] for the benefit of any third party.

7. Remedies; Immunities

Only contractual remedies are available for a party's failure to fulfill the terms of this agreement. Notwithstanding any other term of this agreement, the District and the Partner waive no immunities in tort. No action or inaction of a party under this agreement creates a duty of care for the benefit of any third party. This agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party.

8. Effective Date; Termination; Survival of Obligations

This agreement is effective when fully executed by all parties and expires three years thereafter. RPBCWD retains the right to void this agreement if purchase of and integration into [PROJECT PARTNER]'s winter maintenance program is not complete by [date]. RPBCWD may grant a request to extend the completion period based on satisfactory explanation and documentation of the need for an extension. Upon issuance by RPBCWD of notice of RPBCWD's determination to void this agreement, [PROJECT

PARTNER] will not receive any further reimbursement for work subject to this agreement, unless RPBCWD extends the completion period.

All obligations that have come into being before termination, specifically including obligations under paragraphs 3, 4, 5 and 6, will survive expiration.

9. Compliance With Laws

[PROJECT PARTNER] is responsible to secure all permits and comply with all other legal requirements applicable to the purchase and use of the Equipment.

10. Notices

Any written communication required under this agreement shall be addressed to the other party as follows:

To RPBCWD:

Administrator
Riley-Purgatory-Bluff Creek Watershed District
18681 Lake Drive East
Chanhassen, MN 55317

To [PROJECT PARTNER]:

11. Waiver

RPBCWD's failure to insist on the performance of any obligation under this agreement does not waive its right in the future to insist on strict performance of that or any other obligation. Notwithstanding any other term of this agreement, RPBCWD waives no immunities in tort. This agreement creates no rights in and waives no immunities with respect to any third party or a party to this agreement.

12. Venue and Jurisdiction

The agreement will be construed under and governed by the laws of the State of Minnesota. The appropriate venue and jurisdiction for any legal action hereunder will be Hennepin County, Minnesota.

Intending to be bound, the parties hereto execute and deliver this agreement.

[PROJECT PARTNER]

_____ Date _____

Name: _____

Its _____

Approved as to form and execution

RPBCWD legal counsel

RILEY-PURGATORY-BLUFF CREEK WATERSHED DISTRICT

By _____ Date _____

Administrator

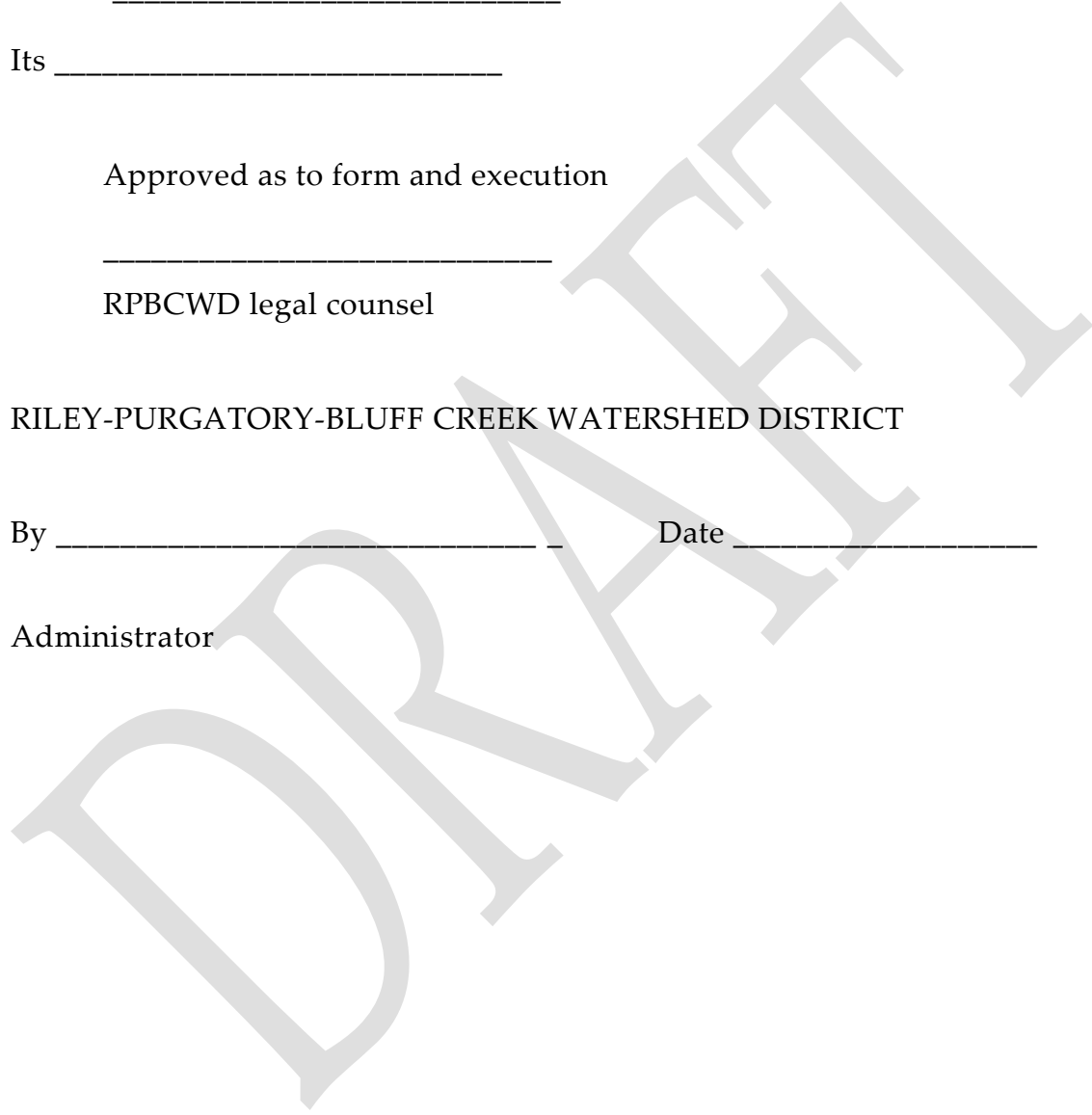


Exhibit A
[project documentation]

DRAFT