



STAFF REPORT

DATE: February 19, 2019

CONSENT

AGENDA ITEM: Grant for Well 1 Feasibility Study and Improvements
SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Since the City was notified in March 2018 that the health index for PFAS was exceeded for Well 1 for the previous four quarters, the well has been shutdown and the city has been working with the state (MPCA, DNR, MDH) on next steps. The next steps had included a generator at well 2 and a hydrant and valves on well 1. Council previously approved these expenditures in 2018 with the understanding that the City would be reimbursed by the state. The City was also informed in August 2018 that the state would require a feasibility study before moving forward. It was understood that the state would reimburse the city for the cost of the feasibility study as well.

ISSUE BEFORE COUNCIL:

Who should the Council approve the Grant Agreement with MPCA?

PROPOSAL:

Included in your packet is a copy of the grant agreement that was provided to the City earlier this month. Eligible reimbursement costs may include an emergency backup generator, isolation valves, and engineering investigation and reporting for the evaluation of water supply alternatives. Since discussions last summer, both projects have been combined into this one grant agreement. The grant agreement is necessary in order for the city to submit for reimbursement.

FISCAL IMPACT:

The grant shall not exceed \$95,000. To date, the city has expended \$81,160 We are anticipating a few more bills related to wrapping up the feasibility study but do not expect the total to exceed \$95,000.

The grant funds will be credited to the water fund to offset the associated expenses.

RECOMMENDATION:

If removed from the consent agenda:

“Motion to approve the Grant Agreement #152829 with MPCA.”

ATTACHMENT:

- Grant Agreement #152829

Grant Agreement

State of Minnesota

Doc Type: Contract/Grant Reference

SWIFT Contract: 152829
PO No: 3000023174
Agency Interest ID #: 226322
Activity ID #: PRO20190001

This grant contract is between the State of Minnesota, acting through its Commissioner of the **Minnesota Pollution Control Agency**, 520 Lafayette Road North, St. Paul, MN 55155-4194 (“MPCA” or “State”) and the City of Lake Elmo, 3880 Laverne Avenue North, Lake Elmo, MN 55042 (Grantee)

Recitals

1. Under Minn. Stat. § 116.03, subd.2, the State is empowered to enter into this grant.
2. The State will reimburse the City of Lake Elmo for costs associated with the shutdown of Well No. 1, as provided by the Closed Landfill Program Statute [Minn. Stat. § 115B.42, subd. 2(2)], which provides authority for the MPCA to reimburse others for environmental response actions that are related to qualified facilities in the Closed Landfill Program.
3. Comply with required grants management policies and procedures set forth through [Minn.Stat.§16B.97](#), Subd. 4 (a) (1).
4. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to [Minn.Stat.§16B.98](#), Subd.1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Grant Contract

1. **Term of Grant Contract**

1.1 Effective date: February 1, 2019, or the date the State obtains all required signatures under [Minn. Stat.§16B.98](#), Subd. 5, whichever is later. Per [Minn.Stat.§16B.98](#) Subd. 7, no payments will be made to the Grantee until this grant contract is fully executed.

1.2 Expiration date: June 30, 2019, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

1.3 Survival of Terms. The following clauses survive the expiration or cancellation of this grant agreement: Liability; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure..

2. **Grantee’s Duties**

The Grantee, who is not a state employee, will submit invoices for reimbursement for expenditures related to Well No. 1 being out of service, which was shut down to due impacts associated with the Washington County Landfill. Eligible reimbursement costs may include an emergency backup

generator, isolation valves, and engineering investigation and reporting for the evaluation of water supply alternatives.

3. *Time*

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

4. *Consideration and Payment*

4.1 *Consideration.*

The State will pay for all services performed by the Grantee under this grant contract as follows:

(a) Compensation

The Grantee will be paid according to approved reimbursement invoices.

(b) Travel Expenses

Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will not exceed \$0; provided that the Grantee will be reimbursed for travel and subsistence expenses in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State'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) Total Obligation

The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract will not exceed **\$95,000 (Ninety Five Thousand Dollars)**.

4.2 *Payment*

(a) Invoices

The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the reimbursement expenditures actually performed and the State's Authorized Representative accepts the invoiced services. Invoices must be submitted timely and according to the following schedule: Monthly or at least quarterly.

Invoices must be emailed to mpca.ap@state.mn.us, and contain the following information:

- Name of Grantee
- Grantee's Project Manager
- Grant Amount
- Grant Amount available to date
- Invoice Number
- Invoice Date
- MPCA Project Manager
- SWIFT Contract Number
- Purchase Order Number
- Invoicing Period (actual working period)

Invoices shall be submitted to: mpca.ap@state.mn.us (subject line: Grantee Name and Invoice Number)

If there is a problem with submitting an invoice electronically, please contact the Accounts Payable Unit at 651-757-2491.

The Grantee shall submit an invoice for the final payment upon submittal of the final progress and financial report within 30 (thirty) days of the original or amended end date of this grant agreement. The State reserves the right to review submitted invoices after 30 (thirty) days and make a determination as to payment.

(b) Unexpended Funds

The Grantee must promptly return to the State any unexpended funds that have not been accounted for annually in a financial report to the State due at grant closeout.

4.3 Contracting and Bidding Requirements

Per [Minn. Stat. §471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the law.

(a) For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.

5. Conditions of Payment

All services provided by the Grantee under this grant contract must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

6. Authorized Representative

The State's Authorized Representative is **Stephanie Ryno**, MPCA, 520 Lafayette Road North, St. Paul, MN 55155, 651-757-2070, Stephanie.ryno@state.mn.us, or her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is **Kristina Handt**, City of Lake Elmo, 3880 Laverne Avenue North, Lake Elmo, MN 55042, 651-747-3905, khandt@lakeelmo.org. If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

7. Assignment Amendments, Waiver, and Grant Contract Complete

7.1 Assignment

The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

7.2 Amendments

Any amendments to this grant contract 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 contract, or their successors in office.

7.3 Change Orders

If the State's Project Manager or the Grantee's Authorized Representative identifies a change needed in the workplan and/or budget, either party may initiate a Change Order using the Change Order Form provided by the MPCA. 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 Contract/Agreement, or cause an extension of the term of this Agreement. Major changes require an Amendment rather than a Change Order.

The Change Order Form must be approved and signed by the State's Project Manager and the Grantee's Authorized Representative **in advance of doing the work**. Documented changes will then become an integral and enforceable part of the Agreement. The MPCA has the sole discretion on the determination of whether a requested change is a Change Order or an Amendment. The state reserves the right to refuse any Change Order requests.

7.4 Waiver

If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

7.5 Grant Contract Complete

This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

8. 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 contract 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 contract.

9. 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 State 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.

10. Government Data Practices and Intellectual Property Rights

10.1 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 grant 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. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

10.2 Intellectual Property Rights

(a) 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 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 grant 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 grant 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 grant agreement. 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.

(b) Obligations.

- (1) **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 grant 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 therein.
- (2) **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 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.
- (3) **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 10.2(b)(2). Said license is subject to the State's publicity and acknowledgement requirements set forth in this grant 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.

11. 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.

12. Publicity and Endorsement

12.1 Publicity. *Any publicity regarding the subject matter of this grant contract must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. 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 contract. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the grantee's website when practicable.*

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

13. Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

14. Termination

14.1 Termination by the State

The State may immediately terminate this grant contract 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.

14.2 Termination for Cause

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.

14.3 Termination for Insufficient Funding

The State may immediately terminate this grant contract if:

- (a) It does not obtain funding from the Minnesota Legislature
- (b) Or, if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination must be by written or fax notice to the Grantee. The State is not obligated to pay for any services that are provided after notice and effective date of termination. However, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. The State will not be assessed any penalty if the contract is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. The State must provide the Grantee notice of the lack of funding within a reasonable time of the State's receiving that notice.

15. 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.

Signatures

Document Signature Details -- External User

Order	Ext. User	Status	Actual Singer	Name	Title	Date/Time
1	VN0000201630_3	Pending		KRISTINA HANDT		

Document Signature Details -- Internal Users

Order	Type	Role/User	Status	Actual Signer	Name	Title	Date/Time
1	Role	M_FS_WF _SC_DOC_ SIGNER_0 1	Waiting				
2	Role	M_FS_WF _SC_DOC_ SIGNER_0 2	Waiting				