



## STAFF REPORT

DATE: January 7, 2020

### **CONSENT**

**AGENDA ITEM:** Metropolitan Council Water Efficiency Grant Agreement

**TO:** Honorable Mayor and City Council

**SUBMITTED BY:** Jake Dickson, Assistant City Administrator

---

### **BACKGROUND:**

In September of 2019 the Metropolitan Council implemented a water efficiency grant program to provide funding to support technical and behavioral changes that improve municipal water use efficiency in the seven-county metropolitan area. The grant will provide rebates for toilet replacements and smart irrigation controllers that will reduce clean water usage in line with the grant program goal.

Staff submitted the grant application in September of 2019 and received notice of the grant award in December of 2019.

### **ISSUE BEFORE COUNCIL:**

Should the Council approve the Grant Agreement with the Metropolitan Council for the Water Efficiency Grant?

### **PROPOSAL:**

The Metropolitan Council will reimburse 75% of the cost of the water efficiency program. Staff will prepare advertisements, mailings, newsletters, online updates and social media updates to residents to encourage participation in the program. The program is estimated to replace 150 toilets and 250 irrigation controllers in homes. City staff will begin advertising the program in February, as well as updating toilets in City buildings and irrigation systems where appropriate.

The agreement has been reviewed by the City attorney.

### **FISCAL IMPACT:**

The grant provides for an initial reimbursement of up to \$40,000. Additional funding is available if there is a greater level of program participation than anticipated.

### **OPTIONS:**

- 1) Approve the Clean Water Fund Grant Agreement with the Metropolitan Council
- 2) Do not approve the Clean Water Fund Grant Agreement with the Metropolitan Council

### **RECOMMENDATION:**

If removed from the consent agenda:

*Motion to approve the Water Efficiency Grant Agreement with the Metropolitan Council*

### **ATTACHMENTS:**

- Clean Water Fund Grant Agreement NO. SG-1348

**METROPOLITAN COUNCIL  
CLEAN WATER FUND GRANT AGREEMENT NO. SG-13483**

This Clean Water Fund Grant Agreement ("Grant Agreement") is entered into between the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota ("Council") and the City of Lake Elmo, a municipal corporation ("Grantee").

**RECITALS**

1. Minnesota Session Laws 2019, 1<sup>st</sup> Special Session, chapter 2, article 2, section 9, appropriated to the Council funds from the Legacy Amendment's Clean Water Fund ("Clean Water Fund") for State fiscal years 2020 and 2021, to establish a water demand reduction grant program that encourages implementation of water demand reduction measures in municipalities in the seven-county metropolitan area.

2. The Council is authorized by Minnesota Statutes sections 473.129, subdivision 4 to apply for and use grants from the State for any Metropolitan Council purpose and may dispose of the money in accordance with the terms of the appropriation.

3. The Grantee is authorized to receive grants from the Clean Water Fund to protect, enhance and restore water quality in lakes, rivers and streams, to protect groundwater from degradation and protect drinking water sources by encouraging implementation of water demand reduction measures by municipalities in the seven-county metropolitan area to ensure reliability and protection of drinking water supplies.

4. On July 10, 2019, the Council authorized the granting of portions of the appropriation to the Grantees participating in the grant program.

5. The Grantee represents that it is duly qualified and agrees to perform all services described in this Grant Agreement to the reasonable satisfaction of the Council.

**GRANT AGREEMENT**

**1. Term of Grant Agreement.**

1.1. **Effective Date.** The effective date of this Grant Agreement is the date this agreement is fully executed.

1.2. **Grant Activity Period.** The first day of the month following the Effective Date through and including the expiration date.

1.3. **Expiration Date.** Upon satisfactory fulfillment of obligations, but in no event later than June 30, 2022.

1.4. **Survival of Terms.** The following clauses survive the expiration, termination or cancellation of this Grant Agreement; 9. Liability and Insurance; 10. Audits; 11. Government Data Practices; 13. Data Availability; 14. Governing Law, Jurisdiction and Venues; 16. Data Disclosure; 18. Future Eligibility.

## 2. Duties, Representations and Warranties of Grantee and Use of Grant Funds.

2.1. The Grantee agrees to conduct, administer and complete in a satisfactory manner and in accordance with the terms and conditions of this Grant Agreement the program ("Grantee Program") which is described in Grantee's application to Council for assistance under the Council's Clean Water Fund grant program. Grantee's application is incorporated into this Grant Agreement as **Exhibit A**. Grantee agrees to perform the Grantee Program in accordance with the timeline in **Exhibit B** of this Grant Agreement and to undertake the financial responsibilities described in **Exhibit B**. The Grantee has the responsibility and obligation to complete the Grantee Program as described in **Exhibit B**. The Council makes no representation or warranties with respect to the success and effectiveness of the Grantee Program. The Council acknowledges that Grantee Program work may be limited to soliciting participation by its residents and businesses in the Grantee Program and requires additional work by the Grantee only to the extent that residents and businesses choose to participate in the Grantee Program, as described in **Exhibit B**.

The Grant Funds must be entirely passed through and can only be used for authorized rebates or grants for qualifying activities.

2.2. Grantee Representations and Warranties. The Grantee represents and warrants to Council, as follows:

A. It has the legal authority to enter into this Grant Agreement and to conduct and administer the Grantee Program and use the Grant Funds for the purpose or purposes described in this Agreement

B. It has taken all actions necessary for its execution of the Agreement and has provided to Council a copy of the resolution by its governing body authorizing Grantee to enter into this Agreement.

C. It has the legal authority to undertake the Clean Water Fund Grant Program, including the Grantee's financial responsibilities in **Exhibit B**

D. As specified in Exhibit A only Grantee's authorized representative may provide certifications required in this Grant Agreement and submit pay claims for reimbursement of Grantee Program costs.

E. It will comply with all the terms of this Agreement.

F. It will comply with all requirements of Clean Water Funding legislation and appropriations, except for requirements that this Grant Agreement explicitly states will be handled by the Council.

G. It has made no material false statement or misstatement of fact in connection with the Grant Funds, and all of the information it has submitted or will submit to the Council relating to the Grant Funds or the disbursement of any of the Grant Funds is and will be true and correct. It agrees that all representations contained in its application for the Clean Water Fund Grant are material representations of fact upon which the Council relied in awarding this Grant and are incorporated into this Agreement by reference.

H. It is not in violation of any provisions of its charter or of the laws of the State of Minnesota, and there are no material actions, suits, or proceedings pending, or to its knowledge threatened, before any judicial body or governmental authority against or affecting it and is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority which would impair its ability to enter into this Grant Agreement, or to perform any of the acts required of it in the Agreement.

I. Compliance with the requirements of this Grant Agreement is not prevented by, is a breach of, or will result in a breach of, any term, condition, or provision of any agreement to which it is bound.

J. The Grantee Program will not violate any applicable zoning or use statute, ordinance, building code, rule or regulation, or any covenant or agreement of record relating thereto.

K. The Grantee Program will be conducted in full compliance with all applicable laws, statutes, rules, ordinances, and regulations issued by any federal, state, or other political subdivisions having jurisdiction over the Grantee Program.

L. It will comply with the financial responsibility requirements contained in **Exhibit B**.

M. It will furnish satisfactory evidence regarding these representations if requested by the Council.

**3. Time.**

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

**4. Eligible Costs.**

Eligible costs are those costs incurred by parties within the jurisdiction of the Grantee for 75% of rebate or grant payments as defined in **Exhibit B**. The Council will not reimburse Grantee for non-eligible costs. Any cost not defined as an eligible cost or not included in the Grant Grantee Program or approved in writing by the Council is a non-eligible cost.

**5. Consideration and Payment.**

5.1 **Consideration.** The Council will reimburse Grantee for eligible costs performed by the Grantee during the Grant Period as specified in this agreement. The Council bears no responsibility for any cost overruns that may be incurred by the Grantee or sub-recipients of any tier. The initial Grant amount to Grantee under this Grant Agreement is \$40,000.00. The Grantee may be eligible to receive additional Grant amounts or an adjustment in Grant amount in accordance with the procedure in the Grant Amendment Form attached and incorporated as **Exhibit C**. Upon signature by both Grantee and Council on **Exhibit C** this Grant is amended by the amount in **Exhibit C**.

5.2. **Advance.** The Council will make no advance of the Grant Amount to Grantee.

5.3. **Payment.** To receive payment, the Grantee must submit a Reimbursement Request/Progress Report on forms provided by the Council, including electronically scanned receipts to verify the cost of eligible devices reported for each reporting period. Reimbursement Request/Progress Reports must be submitted quarterly, even if there are no eligible costs to report. The Grantee must describe its compliance with its the financial requirements, work completed including specific addresses where work was done, and provide sufficient documentation of grant eligible expenditures and any other information the Council reasonably requests. The Council will promptly pay the Grantee after the Grantee presents to the Council a Reimbursement Request/Progress Report and scanned copies of all receipts verifying the cost for all eligible devices reported and the Council's Authorized Representative accepts the invoiced services.

**6. Conditions of Payment.**

6.1. For each approved device for which Grantee requests payment, Grantee must certify the following to the Council: (1) the device has been purchased ; (2) Grantee received receipts for the device; (3) the purchase was not performed in violation of federal, Council, or local law, or regulation.

6.2. Conditions Precedent to Any Reimbursement Request. The obligation of the Council to make reimbursement payments is subject to the following conditions precedent:

A. The Council's receipt of a Reimbursement Request/Progress Report for the funds requested, and electronic copies of receipts verifying the cost for all eligible devices for that reporting period

B. If requested by the Council (in form and substance acceptable to the Council), evidence that (i) the Grantee has legal authority to and has taken all actions necessary to enter into this Agreement and (ii) this Agreement is binding and enforceable against the Grantee.

C. There is no Event of Default under this Grant Agreement or event which would constitute an Event of Default but for the requirement that notice be given or that a period of grace or time elapse.

D. The Grantee has supplied to the Council all other items that the Council may reasonably require to assure good fiscal oversight of state's funding through the Clean Water Fund.

**7. Authorized Representative.**

The Council's Authorized Representative is:

Name: Brian Davis or successor  
Title: Senior Engineer  
Mailing Address: 390 North Robert Street  
St. Paul, MN 55101  
Phone: 651-602-1519  
E-Mail Address: [brian.davis@metc.state.mn.us](mailto:brian.davis@metc.state.mn.us)

The Council's Authorized Representative 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 Council's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is:

Name: Jake Dickson  
Title: Assistant City Administrator  
Mailing Address: 3880 Laverne Ave N, Suite 100  
Lake Elmo, MN 55042  
Phone: 651-747-3908  
E-Mail Address: [jdickson@lakeelmo.org](mailto:jdickson@lakeelmo.org)

If the Grantee's Authorized Representative changes at any time during this Grant Agreement, the Grantee must immediately notify the Council and within 30 days provide a new City resolution (if such resolution is necessary) specifying the new Representative.

**8. Assignment, Amendments, Waiver, and Grant contract Complete.**

8.1 Assignment. The Grantee may neither assign nor transfer any rights or obligations under this Grant Agreement without the prior written consent of the Council and a fully executed Assignment Agreement.

8.2 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 appropriate parties.

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

8.4 Grant Contract Complete. This Grant Agreement contains all negotiations and agreements between the Council and the Grantee. No other understanding regarding this Grant Agreement, whether written or oral, may be used to bind either party.

**9. Liability and Insurance.**

9.1 Liability. The Grantee and the Council agree that they will be responsible for their own acts and the results thereof to the extent authorized by law, and they shall not be responsible for the acts of the other party and the results thereof. The liability of the Council is governed by the Minn. Stat. Chapter 466 and other applicable laws. The liability of the Grantee is governed by the provisions contained in Chapter 466 and other applicable laws.

9.2 Relationship of the Parties. Nothing contained in this Grant Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Grantee and the Council, nor shall the Grantee be considered or deemed to be an agent, representative, or employee of the Council in the performance of this Grant Agreement, or the Grantee Program.

The Grantee represents that it has already or will secure or cause to be secured all personnel required for the performance of this Grant Agreement and the Grantee Program. All personnel of the Grantee or other persons while engaging in the performance of this Grant Agreement the Grantee Program shall not have any contractual relationship with the Council related to the work of the Grantee Program and shall not be considered employees of the Council. In addition, all claims that may arise on behalf of said personnel or other persons out of employment or alleged employment including, but not limited to, claims under the Workers' Compensation Act of the State of Minnesota, claims of discrimination against the Grantee, its officers, agents, contractors, or employees shall in no way be the responsibility of the Council. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the Council, including but not limited to, tenure rights, medical and hospital care, sick and vacation leave, disability benefits, severance pay and retirement benefits.

**10. Audits.**

Under Minn. Stat. § 16C.05, subd. 5, the Grantee's books, records, documents, and accounting procedures and practices relevant to this grant contract are subject to examination by the Council and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the termination date of this Grant Agreement.

**11. Government Data Practices.**

The Grantee and Council must comply with the Minnesota Government Data Practices Act, Minn. Stat. Chapter 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 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 Council. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the Council.

**12. 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 Council 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 Council's obligation or responsibility.

**13. Data Availability.**

To the extent and as requested by the Council, Grantee agrees to comply with Minn. Stat. § 114D.50, subd. 5 requirements for data collected by the Grantee Programs funded with money from the Clean Water Fund that have value for planning and management of natural resources, emergency preparedness and infrastructure investments, including but not limited to the requirement that to the extent practicable, summary data and results of Grantee Programs funded with money from the Clean Water Fund should be readily accessible on the internet and identified as a Clean Water Fund Grantee Program. The Council will put overall summary information on the internet and will encourage the Grantee put its city information on the web. Grantee understands and agrees that Council may list its name and summary information on the internet or in any other Grantor reporting.

Data collected by the Grantee Programs, if any, funded with money from the Clean Water Fund that have value for planning and management of natural resources, emergency preparedness, and infrastructure investments must conform to the enterprise information architecture developed by the Office of MN.IT Services. Spatial data must conform to geographic information system guidelines and standards outlined in that architecture and adopted by the Minnesota Geographic Data Clearinghouse at the Minnesota Geospatial Information Office. A description of these data that adheres to the Office of MN.IT Services geographic metadata standards must be submitted to the Minnesota Geospatial Information Office to be made available online through the clearinghouse and the data must be accessible and free to the public unless made private under chapter 13. To the extent practicable, summary data and results of the Grantee Program funded with money from the clean water fund should be readily accessible on the Internet and identified as a Clean Water Fund Grantee Program.

**14. 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 grant contract, or its breach, must be in the appropriate state or federal court of competent jurisdiction in Ramsey County, Minnesota.

**15. Termination.**

The Council 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 for services prequalified and satisfactorily performed before the termination notice.

**16. Data Disclosure.**

Under Minn. Stat. § 270C.65, subd. 3, and other applicable law, the Grantee consents to disclosure of its federal employer tax identification number, and/or Minnesota tax identification number, already provided to the Council, to federal and state tax agencies and Council personnel involved in the payment of Council obligations. Grantee will require compliance with this Section 16 by Grantee's subrecipient of Grant funds and shall submit evidence of such compliance to Council as requested.

**17. Notices.**

In addition to any notice required under applicable law to be given in another manner, any notices required hereunder must be in writing and must be personally served or sent by email or United States mail, to the business address of the party to whom it is directed. The business address is the address specified below or such different address as may be specified, by either party by written notice to the other:

To the Grantee at:

Name: Jake Dickson  
Title: Assistant City Administrator  
Mailing Address: 3880 Laverne Ave N, Suite 100  
Lake Elmo, MN 55042  
Phone: 651-747-3908  
E-Mail Address: [jdickson@lakeelmo.org](mailto:jdickson@lakeelmo.org)

To the Council's Authorized Representative at:

Name: Brian Davis or successor  
Title: Senior Engineer  
Mailing Address: 390 North Robert Street  
St. Paul, MN 55101  
Phone: 651-602-1519  
E-Mail Address: [brian.davis@metc.state.mn.us](mailto:brian.davis@metc.state.mn.us)

**18. Miscellaneous.**

18.1 Report to Legislature. As provided in Minn. Stat. § 3.195, the Council must submit a report on the expenditure and use of money appropriated under the Clean Water Fund to the legislature by January 15 of each year. The report must detail the outcomes in terms of additional use of Clean Water Fund resources, user satisfaction surveys, and other appropriate outcomes. The grantee agrees to provide to the Council by January 1 of each year a report on any user satisfaction surveys it has related to this Grantee Program, and other appropriate outcomes of the Grantee Program as prescribed in Section 18.3 of this Agreement.

18.2 Supplement. The funds granted under this agreement are to supplement and shall not substitute for traditional sources of funding. Grantee certifies to the Council that there was and is no



traditional Grantee sources of funding for the City to help fund one-fourth of the subject water efficiency rebate or grant work.

18.3 Measurable Outcomes. If requested by the Council, Grantee agrees to demonstrate compliance with the following: A Grantee Program or program receiving funding from the Clean Water Fund must meet or exceed the constitutional requirement to protect, enhance, and restore water quality in lakes, rivers and streams and to protect groundwater and drinking water from degradation. A Grantee Program or program receiving funding from the Clean Water Fund must include measurable outcomes, as defined in section 3.303, subdivision 10, and a plan for measuring and evaluating the results. A Grantee Program or program must be consistent with current science and incorporate state-of-the-art technology. All information for funded Grantee Program work, including the proposed measurable outcomes, must be made available for publication on the web site required under Minn. Stat. § 3.303, subdivision 10, as soon as practicable and forwarded to the Council and the Legislative Coordinating Commission under the provisions of Minn. Stat. § 3.303, subd. 10. The Grantee must compile and submit all information for funded Grantee Programs or programs, including the proposed measurable outcomes and all other items required under section 3.303, subdivision 10, to the Council and, if requested by the Council, the Legislative Coordinating Commission as soon as practicable or by January 15 of the applicable fiscal year, whichever comes first.

18.4 Minn. Stat. § 16B.98. Grants funded by the Clean Water Fund must be implemented according to section 16B.98 and must account for all expenditures.

18.5 Benefit to Minnesota Waters. Money from the Clean Water Fund may only be spent on Grantee Programs that benefit Minnesota waters.

18.6 Website. If the Grantee has information on its website about the water efficiency grant program under Minn. Stat. § 114D.50, the Grantee will when practicable in accordance with Minn. Stat. § 114D.50, subd. 4 (f) prominently display on the Grantee's website home page the Legacy logo accompanied by the phrase "Click here for more information." When a person clicks on the Legacy logo image, the website must direct the person to a web page that includes both the contact information that a person may use to obtain additional information, as well as a link to the Council's and Legislative Coordinating Commission Website required under section 3.303, subdivision 10.

18.7 Future Eligibility. Future eligibility for money from the Clean Water Fund is contingent upon the Grantee satisfying all application requirements related to Council's fulfillment of Minn. Stat. § 114D.50 as well as any additional requirements contained in 2019, 1<sup>st</sup> Special Session, chapter 2, article 2, section 9.

18.8 Prevailing Wages. The Grantee agrees to comply with all of the applicable provisions contained in chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435, as they may be amended, modified or replaced from time to time with respect to the Grantee Program. By agreeing to this provision, the Grantee is not acknowledging or agreeing that the cited provisions apply to the Grantee Program.

18.9 Disability Access. Where appropriate, Grantee of clean water funds, in consultation with the Council on Disability and other appropriate governor-appointed disability councils, boards, committees, and commissions, should make progress toward providing greater access to programs, print publications, and digital media for people with disabilities related to the programs the recipient funds using appropriations made in this agreement.

18.10. General Provisions.

- (i) Grants. The Grantee shall implement this Grant Agreement according to Minnesota Statutes, section 16B.98, and shall account for all expenditures of funds.
- (ii) Lawsuit. This Grant shall be canceled to the extent that a court determines that the appropriation illegally substitutes for a traditional source of funding.
- (iii) Termination Due to Lack of Funds. Grantee recognizes that Council's obligation to reimburse Grantee for eligible Grantee Program costs is dependent upon Council's receipt of funds from the State of Minnesota appropriated to Council under 2019 Session Laws, 1<sup>st</sup> Special Session, Chapter 2, Article 2, Section 9. Should the State of Minnesota terminate such appropriation or should such funds become unavailable to Council for any reason, Council shall, upon written notice to Grantee of termination or unavailability of such funds, have no further obligations for reimbursement or otherwise under this Grant Agreement. In the event of such written notice, Grantee has no further obligation to complete the Grantee Program as required by this Grant Agreement.

**19. Default and Remedies.**

19.1 Defaults. The Grantee's failure to fully comply with all of the provisions contained in this Grant Agreement shall be an event of default hereunder ("Event of Default").

19.2. Remedies. Upon an event of default, the Council may exercise any one or more of the following remedies:

- a. Refrain from disbursing the Grant.
- b. Demand that all or any portion of the Grant already disbursed be repaid to it, and upon such demand the Grantee shall repay such amount to the Council.
- c. Enforce any additional remedies the Council may have at law or in equity.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed by their duly authorized representatives.

**METROPOLITAN COUNCIL**

By: \_\_\_\_\_  
Regional Administrator, successor, or delegate

Date: \_\_\_\_\_

**GRANTEE:**

The Grantee certifies that the appropriate person(s) have executed the grant contract on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name and Title

Date: \_\_\_\_\_