



STAFF REPORT

DATE: October 17, 2023

CONSENT

AGENDA ITEM: Approve Revised MPCA Grant Agreement for the Stillwater Boulevard (CSAH 14) Trunk Watermain Improvements

SUBMITTED BY: Kristina Handt, City Administrator

REVIEWED BY: Jack Griffin, City Engineer
Marty Powers, Public Works Director
Chad Isakson, Assistant City Engineer

ISSUE BEFORE COUNCIL: Should the City Council approve the revised Grant Agreement with the MPCA for the Stillwater Boulevard (CSAH 14) Trunk Watermain Improvements?

BACKGROUND: At the October 3, 2023 council meeting, the City Council approved the Grant Agreement with the MPCA for the Stillwater Boulevard (CSAH 14) Trunk Watermain Improvements in the amount of \$3,140,000, and ordered the preparation of the Plans and Specifications for the Project.

PROPOSAL DETAILS/ANALYSIS: After the Grant Agreement was approved by council, the MPCA staff notified the City of additional required language regarding sealing requirements for all associated private wells. This provision was omitted in error. City staff worked with the MPCA to update the Agreement accordingly, but was also able to negotiate revised terms for well sealing requirements, similar to the Amendments processed for the Whistling Valley, Torre Pines, and Parkview-Cardinal Projects.

Under the revised Grant Agreement, attached to this agenda report, properties within the project service area that do not seal their private well will remain eligible for the public improvement portion of the project. This provides the City Council the opportunity to not levy assessments for the public improvements. The provision remains in the Agreement that properties that do not choose to seal their private well within the timeframe of the agreement, will not be eligible for reimbursement for the private service connection costs.

The Effective Date of the Agreement is now October 11, 2023, The Expiration Date is December 31, 2025.

FISCAL IMPACT: The Project will be wholly or substantially funded through the MPCA Grant in the amount of \$3,140,000.

RECOMMENDATION: Staff is recommending that the City Council approve, *as part of the Consent Agenda*, the revised Grant Agreement with the MPCA for the Stillwater Boulevard (CSAH 14) Trunk Watermain Improvements. If removed from the *Consent Agenda*, the recommended motion for this action is as follows:

“Move to approve the revised Grant Agreement with the MPCA for the Stillwater Boulevard (CSAH 14) Trunk Watermain Improvements.”

ATTACHMENTS:

1. MPCA Grant Agreement PRO20230002.



Grant Agreement

State of Minnesota

Doc Type: Contract/Grant

SWIFT Contract Number: 236851

Agency Interest ID: 90810

Activity ID: PRO20230002

This Grant Agreement 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 **City of Lake Elmo**, a Minnesota municipal corporation, 3880 Laverne Avenue North, Lake Elmo, MN 55042 ("Grantee" or "Contractor" or "City").

Recitals

1. Under Minn. Stat. § 116.03, subd. 2, the State is empowered to enter into this grant.
2. The City is authorized to enter into this grant under Minn. Stat. § 412.211.
3. The State and City are in need of the **City of Lake Elmo Stillwater Boulevard Trunk Watermain** project, as part of the Conceptual Drinking Water Supply Plan (Conceptual Plan), to address Perfluoroalkyl Substances (PFAS) impacts to drinking water supplies in the East Metro area.
4. Grantee will comply with required grants management policies and procedures set forth through [Minn. Stat. § 16B.97](#), subd. 4(a)(1).
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. Pursuant to [Minn. Stat. § 16B.98](#), subd. 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

Grant Agreement

1. Term of Grant Agreement

1.1 Effective date: October 11, 2023, Per [Minn. Stat. § 16B.98](#), Subd. 5, the Grantee must not begin work until this grant contract is fully executed and the State's Authorized Representative has notified the Grantee that work may commence. 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: December 31, 2025, 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: Indemnification; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure.

2. Grantee's Duties and Well Sealing

2.1 Grantee's Duties. The grantee will plan, design and construct the trunk water transmission

line along Stillwater Boulevard in the City of Lake Elmo (extending 885 feet east of Jamaca Ave to approximately 1,530 feet west of Lake Elmo Avenue). This project also includes the private connection of two homes with well advisories along the watermain extension to municipal water. The neighboring eight homes may be eligible for private service connection in the future if new sampling data results in a well advisory.

The project will include grant funding and administrative processes for ensuring each eligible property completes the private service connection from the service stub to each home, including water meter installation, sealing of the private well, removal of any existing granular activated carbon (GAC) filters, and all permitting and connection fees. The City intends to directly implement the public improvement portion of the project for the water main components that will remain owned and operated by the City and will require property owners to contract directly for the work to be completed on their individual properties. The private property work will be funded on a reimbursement basis. The City will distribute materials, provided by the MPCA, regarding individual/residential private water service connections and well sealing to all residents impacted by this project.

- 2.2 Well Sealing.** All associated wells with properties getting individual/residential water service connections are required to be properly sealed and abandoned as part of the project within the timeframe of the grant agreement in order to get reimbursement for private connections. All well sealing will follow Minnesota Department of Health (MDH) regulations and will only be done by licensed well contractors.

Reimbursement for individual/residential water service connections and well sealing will not occur until proof of well sealing has been provided to MPCA.

MPCA may identify certain wells as potential monitoring wells. If agreed upon by MPCA, the City and the well owner, MPCA will assume responsibility of converting those wells to monitoring wells. In these instances, proof of well sealing is not required for reimbursement of individual/residential private water service connection costs.

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. Consideration and Payment

- 4.1 Consideration.** The State will pay for all services performed by the Grantee under this grant agreement as follows:

(a) Compensation. The MPCA will reimburse the Grantee according to approved invoices relating to the duties listed in Clause 2. The MPCA will review the expense documentation submitted by the Grantee for the costs and will reimburse the Grantee for reasonable and necessary expenditures, as determined by the MPCA. Any project components and costs inconsistent with the Conceptual Plan will be required to have supporting documentation for consideration of eligibility. Items that are determined ineligible will not be reimbursed. The Grantee must submit a request in writing to the MPCA for approval prior to using the contingency funds.

(b) Travel expenses. Reimbursement for travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant agreement will be provided to

meet the duties listed in Clause 2; 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 agreement will not exceed **\$3,140,000.00 (Three Million One Hundred Forty Thousand Dollars and Zero Cents)**.

4.2 Payment

- (a) Invoices.** The State will promptly pay the Grantee after the Grantee presents an itemized invoice for the services 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 project manager
- Copies of paid in full invoices
- Proof of well sealing (when applicable)
- Invoice number
- Invoice date
- MPCA project manager
- SWIFT Contract No.
- Invoicing period (actual working period)
- Prevailing Wage documentation (if applicable)

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 invoices submitted 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 and have a total project cost 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.

- (b) The grantee must not contract with vendors who are suspended or debarred in MN:
<https://mn.gov/admin/osp/government/suspended-debarred/>

4.4 Prevailing Wage (if applicable)

Pursuant to Minnesota Statutes 177.41 to 177.44 and corresponding Minnesota Rules 5200.1000 to 5200.1120, this contract is subject to the prevailing wages as established by the Minnesota Department of Labor and Industry. Specifically, all contractors and subcontractors must pay all laborers and mechanics the established prevailing wages for work performed under the contract. Failure to comply with the aforementioned may result in civil or criminal penalties. Rates are listed in **Attachment A**.

In compliance with Minn. Stat. § 177.43, subd. 3 and §177.44, subd. 5, the wages of laborers, workers, and the mechanics on projects financed in whole or part by State Funds should be comparable to wages paid for similar work in the community as a whole. Project includes erection, construction, remodeling, or repairing of a public building or other public work financed in whole or part by State funds.

Any work on real property which uses the skill sets of any trades covered by Labor Code and Class under prevailing wages is construction and requires prevailing wages. See <http://www.doli.state.mn.us/LS/PrevWage.asp> for a list of affected trades.

The Contractor shall pay prevailing wages to its employees when conducting construction activities under this agreement.

Applicability. In accordance with Minn. Stat. § 177.43, subd. 7. This does not apply to an agreement or work under an agreement, under which:

- A. the estimated total cost of completing the project is less than \$2,500 and only one trade or occupation is required to complete the work; or
- B. the estimated total cost of completing the project is less than \$25,000 and more than one trade or occupation is required to complete it.

Choose from Commercial, Highway/Heavy, or Residential Wage Rates:

The prevailing wage rate requirements are attached as **Attachment A**.

Prevailing Wage Payroll Information:

In accordance with Minn. Stat. § 177.30, subd. 4, and § 177.43, subd. 3, the Contractor and Subcontractor shall furnish to the Contracting Authority and the Project Owner:

- All payrolls, of all workers on the project, a certified payroll report via e-mail as attachments, a State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and Statement of Compliance Form as a PDF file to the appropriate e-mail addresses: prevailingwage.pca@state.mn.us and Megan.Holthaus@state.mn.us.
- The Subject line on the Contractor's or Subcontractor's e-mail must give their firm's name and the Contract or Purchase Order Number.

- These completed forms must be furnished not more than 14 days after the end of each pay period.
- The State of Minnesota Prevailing Wage Payroll Report and Statement of Compliance Form are available on the MMD website at <http://www.mmd.admin.state.mn.us/mn02000.htm>. Submit the completed and signed State of Minnesota Prevailing Wage Payroll Report as a Microsoft Excel file and the Statement of Compliance Form as a PDF file, no other payroll forms will be accepted to meet this requirement.

The prevailing wage payroll information forms that are submitted shall be maintained by the contracting agency for a minimum of three years after final payment has been made on the project. All of the data provided on the Prevailing Wage Payroll Information Form will be public data, which is available to anyone upon request.

Refer vendor questions regarding the Prevailing Wage Laws to the Department of Labor and Industry at 651-284-5091 or visit the website for Labor Standards Section, Prevailing Wage <http://www.doli.state.mn.us/LS/PrevWage.asp>.

All construction work needs an IC-134 form submitted by the Contractor before payment can be made. The Contractor can find a copy of the IC-134 online at the Minnesota Department of Revenue website at <https://www.revenue.state.mn.us/sites/default/files/2019-01/ic134.pdf>.

4.5 Reporting Requirements

The Grantee shall submit to the State quarterly status reports, based on the effective date of this agreement.

5. Conditions of Payment

All services provided by the Grantee under this grant agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative/MPCA's Project Manager 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/Project Manager is **Elizabeth Kaufenberg**, 520 Lafayette Road, St. Paul, MN 55155, 651-757-2481, elizabeth.kaufenberg@state.mn.us, or their successor, and has the authority to monitor the Grantee's performance and to accept the services provided under this agreement. If the services are satisfactory, the MPCA's Project Manager will certify acceptance of each invoice submitted for payment.

The State's Project Manager is **Megan Holthaus**, 520 Lafayette Road, St. Paul, MN 55155, 651-757-2843, Megan.Holthaus@state.mn.us, or their successor.

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

7. Assignment, Amendments, Change Orders, Waiver, and Grant Agreement Complete

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

7.2 Amendments. Any amendments 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.

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 agreement, that failure does not waive the provision or the State's right to enforce it.

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

8. Indemnification

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.

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

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. 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 agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

13. Termination

13.1 Termination by the State. The State or Grantee may immediately terminate this grant agreement with or without cause, upon 30-days' written notice to the other party. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

13.2 Termination for cause. The State may immediately terminate this grant agreement if the State finds that there has been a failure to comply with the provisions of this grant agreement, 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.

13.3 Termination for insufficient funding. The State may immediately terminate this grant agreement 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 agreement 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.

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. Payment to subcontractors (if applicable)

As required by Minn. Stat. § 16A.1245, the prime contractor must pay all subcontractors, less any retainage, within 10 calendar days of the prime contractor's receipt of payment from the State for undisputed services provided by the subcontractor(s) and must pay interest at the rate of one and one-half percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

Signatures