

RESOLUTION NO. 22-032
Riley-Purgatory-Bluff Creek Watershed District
Board of Managers

Authorizing execution of cooperative agreement with Lower Minnesota River Watershed District, Nine Mile Creek Watershed District and Richfield-Bloomington Watershed Management Organization for the Lower Minnesota River Chloride Cost-Share Program

Manager _____ offered the following resolution and moved its adoption, seconded by Manager _____:

WHEREAS Riley-Purgatory-Bluff Creek Watershed District's 2018 10-Year Watershed Management Plan identifies chloride (salt) pollution as a critical water-resource challenge in the watershed and a key component of the implementation of the RPBCWD plan (section 9.7) is a program providing cost-share support for chloride-use reduction efforts by local governmental entities and others, including support for projects and actions addressing the Minnesota Pollution Control Agency's Twin Cities Metro Chloride Total Maximum Daily Load study;

WHEREAS at its December 18, 2018, special meeting the RPBCWD Board of Managers authorized execution of the 2019 – Watershed Based Funding Metro grant agreement providing among other support from the Clean Water Land and Legacy Program, and the state Board of Water and Soil Resources designated \$197,209 of the grant funding for the Lower Minnesota River Chloride Cost-Share Program (the Program), to be implemented by RPBCWD in collaboration with Lower Minnesota River Watershed District, Nine Mile Creek Watershed District and Richfield-Bloomington Water Management Organization;

WHEREAS at its March 2, 2022, meeting, RPBCWD committed to reimbursement of \$20,000 to the Eden Prairie Independent School District no. 272 for the purchase of two truck-mounted chloride-application systems that are expected to reduce the school district's use of chloride de-icing materials, and on March 2, 2022 RPBCWD provided \$9,600 in cost-share support to the City of Chaska for purchase of equipment to reduce use of chloride application for winter maintenance, leaving \$167,609 in Program funds available;

WHEREAS the staff and administrators representing each of the collaborating partners for the Program have agreed that the attached draft agreement provides a fair and efficient system for identifying qualifying projects and routing commitments of Program funds to RPBCWD for approval, and RPBCWD staff recommends authorization of the attached agreement for the Program.

NOW THEREFORE BE IT RESOLVED that the RPBCWD Board of Managers authorizes the president, with advice of counsel, to execute the attached cooperative agreement with Lower Minnesota River Watershed District, Nine Mile Creek Watershed District and Richfield-

Bloomington Watershed Management Organization for the implementation and management of the Lower Minnesota River Chloride Cost-Share Program, as finalized with such nonsubstantive changes as are necessary to implement the intent of the managers, the partners and the Program; and

BE IT FURTHER RESOLVED that the RPBCWD Board of Managers delegates to the administrator the authority to execute, with advice of counsel, cost-share agreements dedicating grant funds for specific projects consistent with and fulfilling the Program.

The question was on the adoption of the resolution and there were ____ yeas and ____ nays as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
CRAFTON				
KOCH				
PEDERSEN				
WARD				
ZIEGLER				

Upon vote, the president declared the resolution _____.

* * * * *

I, Dorothy Pedersen, secretary of the Riley-Purgatory-Bluff Creek Watershed District, hereby certifies that I have compared the above resolution with the original thereof as the same appears of record and on file with RPBCWD and find the same to be a true and correct transcription thereof, and further that the resolution is in full force and effect on this date, and Resolution 22-032 has not been modified, amended or rescinded since its adoption.

IN TESTIMONY WHEREOF, I set my hand this ____ day of _____, 2022.

Dorothy Pedersen, Secretary

Exhibit A
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 for the Lower Minnesota
River Chloride Cost-Share Program

DRAFT

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

April 6, 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]

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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

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Exhibit B
Cost-Share Agreement Template

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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

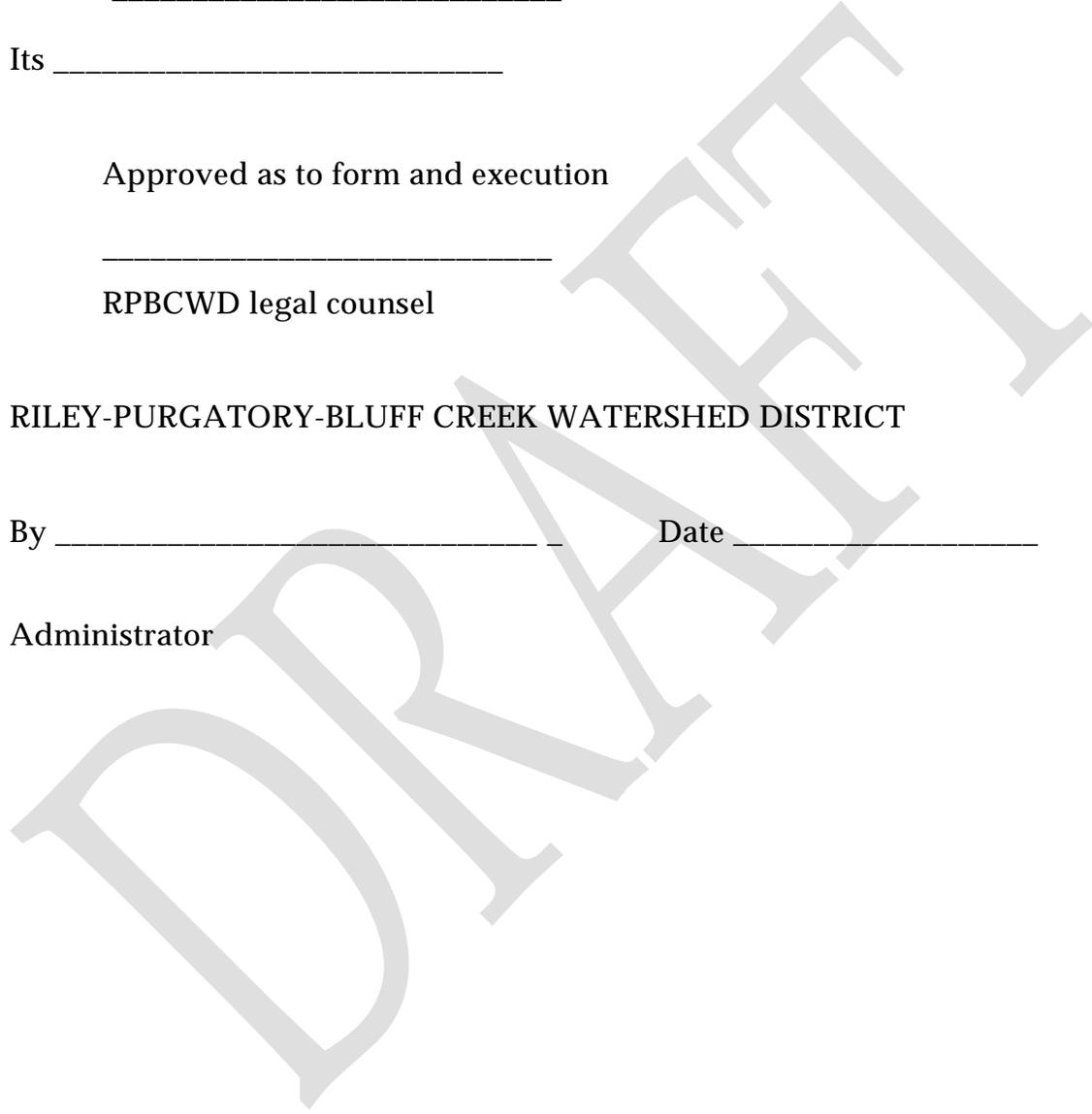


Exhibit A
[project documentation]

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