
Le Sueur County, MN

Tuesday, March 18, 2014

Board Meeting

Item 10

11:00am Lauren Klement - Environmental Specialist

(If approved by the County Attorney. Documents will be submitted when approved by Brent.)

German Jefferson Feasibility Assessment grant agreement/ Wenck contract

Staff Contact: Lauren Klement

WENCK PROFESSIONAL SERVICES SUBCONTRACT

March 18, 2014

The **AGREEMENT**, Made and entered into March 18, 2014, between Le Sueur County hereinafter called the "**PROJECT SPONSOR**" and Wenck Associates, Inc. called the "**SUBCONTRACTOR**". For the purposes of this contract the County's official designee, shall be considered the County's project officer.

WITNESS: That in consideration of mutual covenants herein contained, the **PROJECT SPONSOR** agrees to employ the **SUBCONTRACTOR** to perform the services hereinafter outlined in connection with providing technical assistance and project coordination with the **German Jefferson Lakes Subordinate Service District Community Feasibility Assessment**. The **PROJECT SPONSOR**, through Clean Water Funding, agrees to pay the **SUBCONTRACTOR** for such services according to the schedule of fees herein contained in Exhibit A. This contract would provide for services between the date of the upcoming executed grant agreement with Minnesota Board of Water and Soil Resources and August 1, 2015.

Further, the **SUBCONTRACTOR** agrees that the **SUBCONTRACTOR** shall provide the technical assistance and project coordination according to Exhibit A.

I. SCOPE OF SERVICES

The period of this contract shall be from the date of the upcoming executed grant agreement with Minnesota Board of Water and Soil Resources to August 1, 2015. Over the Contract Period the services that the **SUBCONTRACTOR** agrees to perform are as follows and as documented in Exhibit A;

1. Complete Feasibility Assessments on Eight (8) Remaining JGSIP Communities
2. Meetings and Presentations of Data to District Board and eleven communities (3 previously completed in 2013 plus the current 8)
3. Project Management and Administration

II COMPENSATION

For the services covered by the contract, the **PROJECT SPONSOR** agrees to pay the **SUBCONTRACTOR** an amount not to exceed \$106,700 as described in Exhibit A. **SUBCONTRACTOR** to submit requests for reimbursements of services rendered via invoices and satisfactory completion of work tasks monthly. The **PROJECT SPONSOR** will withhold 10% of the contract amount dependent upon the presenting the deliverables listed in Exhibit A, to the **PROJECT SPONSOR**. The **SUBCONTRACTOR** agrees to comply with the terms and conditions set forth in the Grant Agreement entered into by and between the Board of Water and Soil Resources and the **PROJECT SPONSOR**, for grant funds to fund this contract. **SUBCONTRACTOR** has received and reviewed the Grant Agreement.

III. IDEMNIFICATION AND HOLD HARMLESS

The **SUBCONTRACTOR** shall fully defend, indemnify and hold harmless the **PROJECT SPONSOR** against any and all claims, losses, liability, suits, judgments, costs and expenses that arise or may arise against

SUBCONTRACTOR, its agents, servants, or employees as a consequence of any act or omission on the part of the **SUBCONTRACTOR** or its agents, servants, or employees while engaged in the performance of the Agreement shall in no way be the obligation or responsibility of the **PROJECT SPONSOR** or any of its members. The **SUBCONTRACTOR** shall indemnify, hold harmless, and defend the **PROJECT SPONSOR** and its members against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney fees which the Client or its members may hereafter sustain, incur, or be required to pay, arising out of or by reason of any act or omission of **SUBCONTRACTOR**, its agents, servants or employee, in the execution, performance, or failure to adequately perform the **SUBCONTRACTOR**'s obligations pursuant to this Agreement.

This agreement to indemnify and hold harmless does not constitute a waiver by any participant of limitations on liability provided under Minnesota State Statutes, Section 466.04.

IV. PROOF OF INSURANCE

The **SUBCONTRACTOR** shall obtain liability, property and auto insurance as it deems necessary and may obtain other insurance it deems necessary to indemnify the **PROJECT SPONSOR** for actions of the **SUBCONTRACTOR** arising out of this Agreement. The **SUBCONTRACTOR** agrees that at all times during the term of this Agreement, have and keep in force liability insurance at an amount required by MS 466.04, subdivision 1.

- A. A single limit or combined limit or excess umbrella general liability insurance policy of an amount not less than \$1,500,000 for total bodily injuries, death, personal injuries or property damage arising from one occurrence with an annual aggregate limit of not less than \$1,500,000.
- B. A single limit or combined limit or excess umbrella automobile liability insurance policy, if applicable, in an amount not less than \$1,500,000 per accident for property damage, \$1,500,000 for bodily injury and/or damages to any one person, and \$1,500,000 for total bodily injuries and/or damages arising from any one accident.
- C. Any policy obtained and maintained under this clause shall provide that it shall not be canceled materially changed, or not renewed without thirty (30) days prior notice thereof to the **PROJECT SPONSOR**.

V. PROJECT CHANGE REQUESTS

Communication of project change requests will begin between the **SUBCONTRACTOR** and the **PROJECT SPONSOR**. Formal project change requests by the **SUBCONTRACTOR** shall be in writing by the **SUBCONTRACTOR** to the **PROJECT SPONSOR**. Project change requests by the **PROJECT SPONSOR** shall be in writing to the **SUBCONTRACTOR**. All changes to the project are to be approved by the **PROJECT SPONSOR** and are to follow the Clean Water Funding Guidelines.

VI. NON DISCRIMINATION IN EMPLOYMENT

During the performance of this Subcontract, the **SUBCONTRACTOR** shall not, because of age, sexual

preference, political affiliation, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, discriminated against any person with respect to hire, tenure, compensation, terms of employment, upgrading of employment, facilities, privileges or conditions of employment; refuse to hire persons seeking employment; or discharge an employee.

VII. NON DISCRIMINATION IN AVAILABILITY & USE OF FACILITIES

During the performance of this Subcontract, the **SUBCONTRACTOR** shall not exclude any person from participating in, deny them the benefits of, or discriminate against them on the basis of race, color, creed, religion, national origin, sex, marital status, age, sexual preference, political affiliation, or status with regard to public assistance or disability.

VIII. OWNERSHIP OF DOCUMENTS

Any reports, studies, photographs, negatives, graphs, audio or video tapes, computer software or any other documents or materials prepared by or for the **SUBCONTRACTOR** in the performance of its obligations under this Subcontract shall be the exclusive property of the **PROJECT SPONSOR** and all such products shall be remitted to the **PROJECT SPONSOR** upon completion, termination or cancellation of this Subcontract. The **SUBCONTRACTOR** shall not use, willingly allow to or cause to have such products used for any purpose other than the performance of the **SUBCONTRACTOR's** obligations under this Subcontract, without the prior written consent of the State of Minnesota.

IX. TERM

This Agreement shall commence upon approval of each Party and signature of the official with authority to bind the entity listed above.

X. TERMINATION

Termination with just reason must be by written or fax notice to the **PROJECT SPONSOR**. The **PROJECT SPONSOR** will notify the **SUBCONTRACTOR** in writing if termination for insufficient performance and/or lack of fiscal integrity occurs. The State and the **PROJECT SPONSOR** are not obligated to pay for any services that are provided after the notice and effective date of termination.

Termination for Insufficient Funding: If the State terminates this grant or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. The **PROJECT SPONSOR** will notify the **SUBCONTRACTOR** in writing if termination for insufficient funding occurs. The State and **PROJECT SPONSOR** are not obligated to pay for any services that are provided after notice and effective date of termination.

IN WITNESS WHEREOF, the parties hereto have made and executed the Subcontract as of the date and year first above written, intending to be bound thereby.

LE SUEUR COUNTY (PROJECT SPONSOR)

Name

Title

Signature

Date

WENCK ASSOCIATES, INC

Name

Title

Signature

Date

Jefferson German Lakes Septic Inventory Project (JGSIP)
Exhibit A: Work Plan and Budget
Wenck Associates, Inc.

1. Complete Feasibility Assessments on Eight (8) Remaining JGSIP Communities

- Review Septic Inventory Data
- Evaluate Possible Treatment Site Locations
- Conduct Field Assessments of Potential Treatment Areas
- Data Analysis and Final Reports for the following Remaining JGSIP Communities: **Beaver Dam, East Cape Horn, Evergreen Lane, Hardeggers Lane, Stavenau-Holiday Park, Tomahawk Point, Swedes Bay, and West Lake Drive**

Feasibility Assessment Budget: \$73,500

2. Meetings and Presentations

- Present Analysis and Reports to Service District Board
- Determine Community Meeting Format
- Disseminate Results to all 11 JGSIP communities

Meetings and Presentations Budget: \$30,000

3. Project Management

- Project Management and Administration
- Monthly Progress Reports

Project Management Budget: \$3,200

FEE SCHEDULE

1. Complete Remaining Feasibility Reports				
Task	Hours	Average \$/HOUR	Expenses	Budgeted Amount
Review Septic Inventory Data	64	88	0.00	5,630.00
Evaluate Possible Treatment Site Locations	30	88	0.00	2,640.00
Conduct Field Assessments of Potential Treatment Locations	60	117	400.00	7,420.00
Data Analysis and Eight Remaining Reports	596	97	0.00	57,810.00
Task Total				73,500.00

2. Presentations/Meetings				
Task	Hours	Average \$/HOUR	Expenses	Budgeted Amount
Present Analysis and Reports to Service District Board	15	120	300.00	2,100.00
Determine Community Meeting Format	3	100	0.00	300.00
Disseminate Information to the 11 JGSIP Communities	220	120	1,200.00	27,600.00
Task Total				30,000.00

3. Project Management				
Task	Hours	Average \$/HOUR	Expenses	Budgeted Amount
Project Management	32	100	0.00	3,200.00
Task Total				3,200.00

TOTAL				106,700.00
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**FY 2014 STATE OF MINNESOTA
BOARD OF WATER and SOIL RESOURCES
COMPETITIVE GRANTS PROGRAM
GRANT AGREEMENT**

This grant agreement is between the State of Minnesota, acting through its Board of Water and Soil Resources (Board) and **Le Sueur County, Le Center, Minnesota 56057**.

Fiscal Agent: Le Sueur County

<i>This grant is for the following Grant Programs :</i>		
C14-7873	German Jefferson Lakes Subordinate Service District Community Feasibility Assessment	\$110,700

Total Grant Awarded: \$110,700

Recitals

1. The Laws of Minnesota 2013, Chapter 137, Article 2, Section 7, appropriated Clean Water Fund (CWF) funds to the Board for the FY 2014 Competitive Grants Program.
2. The Minnesota Department of Health has transferred funds to the Board for the Well Sealing Grants Program.
3. Minnesota Statutes 103B.101, subd. 9 (1), and 103B.3369, authorize the Board to award this grant.
4. The Board has adopted the FY 2014 Clean Water Fund Competitive Grants Policy in Board Resolution 13-63 and 13-93 to authorize and implement this Program.
5. The Board has adopted Board Resolutions 14-05 and 14-06 to allocate funds for the FY 2014 Competitive Grants Programs.
6. The Grantee has submitted a BWSR approved work plan for this Program which is incorporated into this agreement by reference.
7. 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.
8. As a condition of the grant, Grantee agrees to minimize administration costs.

Authorized Representative

The State's Authorized Representative is David Weirens, Acting Assistant Director, BWSR, 520 Lafayette Road North, Saint Paul, MN 55155, 651-297-3432, or his successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services and performance provided under this grant agreement.

The Grantee's Authorized Representative is **Lauren Klement** **TITLE:** Environmental Resources Specialist
ADDRESS: 88 South Park Avenue
CITY: Le Center MN 56057-1600
TELEPHONE NUMBER: 507-357-8540

If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the Board.

Grant Agreement

1 Term of Grant Agreement

- 1.1 **Effective date:** The date the Board obtains all required signatures under Minn. Stat. § 16B.98, Subd.5. **The Grantee must not begin work under this grant contract until this grant agreement is fully executed and the Grantee has been notified by the State's Authorized Representative to begin the work.**
- 1.2 **Expiration date:** December 31, 2016, or until all obligations have been satisfactorily fulfilled, whichever comes first.
- 1.3 **Survival of Terms:** The following clauses survive the expiration or cancellation of this Agreement: 7. Liability; 8. State Audits; 9. Government Data Practices; 11. Publicity and Endorsement; 12. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.

2 Grantee's Duties

The Grantee is responsible for the specific duties for the Program as follows:

- 2.1 **Implementation:** The Grantee will implement the work plan, which is incorporated into this Agreement by reference, according to the FY 2014 Clean Water Fund Competitive Grants Policy.
- 2.2 **Reporting:** All data and information provided in a Grantee's report shall be considered public.
 - 2.2.1 The Grantee will submit an annual progress report to the Board by February 1 of each year on the status of program implementation by the Grantee. Information provided must conform to the requirements and formats set by the Board.
 - 2.2.2 The Grantee will display on its website the previous calendar year's detailed information on the expenditure of these State grant funds and measurable outcomes as a result of the expenditure of these State grant funds according to the format specified by the BWSR, by March 15 of each year.
 - 2.2.3 The Grantee will submit a final progress report to the Board by February 1, 2017 or within 30 days of completion of the Project, whichever occurs sooner. Information provided must conform to the requirements and formats set by the Board.
- 2.3 **Match:** The Grantee will ensure any local match requirement will be provided as stated in Grantee's approved work plan.

3 Time

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

4 Terms of Payment

- 4.1 Grant funds will be distributed in three installments: 1) The first payment of 50% will be distributed after the execution of the Grant Agreement. 2) The second payment of 40% will be distributed after the first payment of 50% has been expended and reporting requirements have been met. An eLINK Interim Financial Report that summarizes expenditures of the first 50% must be signed by the Grantee and approved by BWSR. Selected grantees may be required at this point to submit documentation of the expenditures reported on the Interim Financial Report for verification. 3) The third payment of 10% will be distributed after the grant has been fully expended and reporting requirements are met. The final, 10% payment must be requested within 30 days of the expiration date of the grant agreement. An eLINK Final Financial Report that summarizes final expenditures for the grant must be signed by the grantee and approved by BWSR
- 4.2 All costs must be incurred within the grant period.
- 4.3 All incurred costs must be paid before the amount of unspent grant funds is determined. Unspent grant funds must be returned within 30 days of the expiration date of the grant agreement.
- 4.4 The obligation of the State under this Grant Agreement will not exceed the amount stated above.
- 4.5 This grant includes an advance payment of 50 percent of the grant's total amount. Advance payments allow the grantee to have adequate operating capital for start-up costs, ensure their financial commitment to landowners and contractors, and to better schedule work into the future.

5 Conditions of Payment

All services provided by the Grantee under this Grant Agreement must be performed to the State's satisfaction, as set forth in this Agreement and in the BWSR approved work plan for this program. Compliance will be determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, policies, ordinances, rules, FY 2014 Clean Water Fund Competitive Grants Policy, 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.

The Minnesota Department of Administration's Office of Grants Management Policy On Grant Closeout Evaluation (Policy 08 – 13) requires the Board to consider a grant applicant's past performance before awarding subsequent grants to them. The Board must consider a grant applicant's performance on prior grants before making a new grant award of over \$5,000. The Board may withhold payment on this and grants from other programs if the Grantee is not in compliance with all Board reporting requirements.

6 Assignment, Amendments, and Waiver

- 6.1 **Assignment.** The Grantee may neither assign nor transfer any rights or obligations under this grant agreement without the prior consent of the State and a fully executed Assignment Agreement, executed and approved by the same parties who executed and approved this grant agreement, or their successors in office.
- 6.2 **Amendments.** Any amendment to this grant agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant agreement, or their successors in office. Amendments must be executed prior to the expiration of the original agreement or any amendments thereto.
- 6.3 **Waiver.** If the State fails to enforce any provision of this grant agreement, that failure does not waive the provision or its right to enforce it.

7 Liability

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this Grant Agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this Grant Agreement.

8 State Audits

Under Minn. Stat. § 16B.98, subd. 8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this Grant Agreement or transaction are subject to examination by the Board and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Grant Agreement, receipt and approval of all final reports, or the required period of time to satisfy all State and program retention requirements, whichever is later.

- 8.1 The books, records, documents, accounting procedures and practices of the Grantee and its designated local units of government and contractors relevant to this grant, may be examined at any time by the Board or Board's designee and are subject to verification. The Grantee or delegated local unit of government will maintain records relating to the receipt and expenditure of grant funds.
- 8.2 The Grantee or designated local unit of government implementing this Agreement will provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board if requested.

9 Government Data Practices

The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this Grant Agreement. The civil remedies

of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State.

10 Workers' Compensation

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

11 Governing Law, Jurisdiction, and Venue

11.1 **Publicity.** Any publicity regarding the subject matter of this grant contract must identify the Board as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract.

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

12 Governing Law, Jurisdiction, and Venue

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

13 Termination

13.1 The State may cancel this Grant Agreement at any time, with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

13.2 In the event of a lawsuit, an appropriation from a Clean Water Fund is canceled to the extent that a court determines that the appropriation unconstitutionally substitutes for a traditional source of funding.

14 Data Disclosure

Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring the Grantee to file State tax returns and pay delinquent state tax liabilities, if any.

15 Prevailing Wage

It is the responsibility of the Grantee or contractor to pay prevailing wages on construction projects to which State prevailing wage laws apply (Minn. Stat. 177.42 – 177.44). All laborers and mechanics employed by grant recipients and subcontractors funded in whole or in part with these State funds shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality.

16 Constitutional Compliance

It is the responsibility of the Grantee to comply with requirements of the Minnesota Constitution regarding use of Clean Water Funds to supplement traditional sources of funding.

17 Signage

It is the responsibility of the Grantee to comply with requirements for project signage, as provided in, Minnesota Laws 2010, chapter 361, article 3, section 5 (b) for Clean Water Fund projects.

18 Intellectual Property Rights

The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this grant*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this grant. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this grant. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee upon completion or cancellation of this grant at the State's request. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

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

Approved :

Le Sueur County

Board Of Water and Soil Resources

By : _____ **By :** _____

Title : _____ **Title :** Acting Assistant Director

Date : _____ **Date :** _____