Member Anderson introduced the following resolution and moved its adoption:

CITY OF MEDINA

RESOLUTION NO. 2015-44

RESOLUTION SUPPORTING A MINNESOTA POLLUTION CONTROL AGENCY CLEAN WATER PARTNERSHIP GRANT AGREEMENT FOR THE ARDMORE AVENUE STORMWATER RETROFIT WATER QUALITY IMPROVEMENT PROJECT

WHEREAS, the Minnesota Pollution Control Agency (MPCA) and the City of Medina propose to construct a water quality pond for the removal of sediment and nutrients for the Ardmore Avenue Stormwater Retrofit Improvement Project; and

WHEREAS, the intention of the project is to provide a calculable reduction in phosphorous loads on both Lake Independence and Lake Ardmore, and

WHEREAS, to construct this project the City has been approved to receive grant funds from the Minnesota Pollution Control Agency (MPCA) Clean Water Fund in the amount of \$66,326; and

WHEREAS, the partners will need to provide a 50% grant match of \$33,163, which can be in the form of cash and cash value for in-kind services.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Medina approves the grant agreement from the MPCA Clean Water Fund for the Ardmore Avenue Stormwater Retrofit Water Quality Improvement Project.

Dated: June 2, 2015.

Bob Mitchell Bob Mitchell, Mayor

Attest:

Scott T. Johnson, City Administrator-Clerk

The motion for the adoption of the foregoing resolution was duly seconded by member <u>Pederson</u> and upon vote being taken thereon, the following voted in favor thereof:

Anderson, Cousineau, Mitchell, Pederson

And the following voted against same: (Absent: Martin)

None

Whereupon said resolution was declared duly passed and adopted.

Resolution No. 2015-44

June 2, 2015

Contract No: A153567

COOPERATIVE AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 ("COUNTY"), on behalf of the Hennepin County Department of Environment and Energy, and the City of Medina, 2052 County Road 24, Medina, Minnesota 55340 ("COOPERATOR").

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

COUNTY shall provide to COOPERATOR a sum not to exceed three thousand dollars (\$3,000.00) which funds shall be only for expenses incurred in performing activities specified in the Section 2 and as more fully described in Exhibit A to this agreement or as approved by COUNTY. Approved activities as described in Section 2 and in in Exhibit A, are referred to as the "Assessment". Administrative costs incurred by COOPERATOR are not eligible for reimbursement. This agreement commences July 1, 2015 and expires June 30, 2016, unless cancelled or terminated earlier in accordance with the Default and Cancellation/Termination provisions of this Agreement. Assessment expenses incurred prior to the commencement or incurred after the expiration of this agreement are not eligible for reimbursement.

2. SERVICES TO BE PROVIDED

COOPERATOR and COUNTY shall conduct a Subwatershed Retrofit Assessment for the Ardmore Lake Subwatershed. COOPERATOR is responsible for the completing the Assessment in the urbanized area of the subwatershed (Exhibit B). COUNTY is responsible for completing an Assessment of the non-urbanized, rural area of the subwatershed (Exhibit C). The Assessment will identify sites in the subwatershed for future implementation of best management practices (BMPs), which will reduce phosphorus loads to Lake Independence and improve water quality. The services and deliverables related to completing the Assessment are more fully described in Exhibit A.

3. ACCOUNTING AND RECORD KEEPING

For all expenditures of funds made pursuant to this Agreement, COOPERATOR shall keep financial records including properly executed contracts, invoices, and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures. Accounting methods shall be in accordance with generally accepted accounting principles. COUNTY, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the

accounting practices and procedures of COOPERATOR and involve transactions relating to this Agreement.

4. PAYMENT FOR SERVICES

Payment for services shall be made directly to the COOPERATOR after completion of the services and upon the presentation of a claim as provided by law governing COUNTY's payment of claims and/or invoices. The COOPERATOR shall submit a request for payment accompanied by supporting invoices for services rendered on forms which may be furnished by COUNTY. Payment shall be made within Forty-Five (45) days from receipt of the claim.

5. PROFESSIONAL CREDENTIALS

INTENTIONALLY OMITTED

6. INDEPENDENT CONTRACTOR

COOPERATOR shall select the means, method, and manner of performing the services. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting COOPERATOR as the agent, representative, or employee of COUNTY for any purpose. The COOPERATOR is and shall remain an independent contractor for all services performed under this Agreement. COOPERATOR shall secure at its own expense all personnel required in performing services under this Agreement. COOPERATOR's personnel and/or subcontractors engaged to perform any work or services required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or Minnesota Statutes, chapter 176 (which may be referred to as the "Workers' Compensation Act"), on behalf of any personnel, including, without limitation, claims of discrimination against COOPERATOR, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

7. INDEMNIFICATION

COOPERATOR shall defend, indemnify, and hold harmless COUNTY, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of COOPERATOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the

services required by this Agreement, and against all loss by reason of the failure of COOPERATOR to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of COOPERATOR personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the Data provisions set forth in Section 10 below.

8. **INSURANCE**

INTENTIONALLY OMITTED

9. DUTY TO NOTIFY

COOPERATOR shall promptly notify COUNTY of any claim, action, cause of action or litigation brought against COOPERATOR, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement. COOPERATOR shall also notify COUNTY whenever COOPERATOR has a reasonable basis for believing that COOPERATOR and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a claim, action, cause of action, criminal arrest, criminal charge or litigation arising out of and/or related to the services contained in this Agreement.

10. DATA

COOPERATOR, its officers, agents, owners, partners, employees, volunteers and subcontractors shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For clarification and not limitation, COUNTY hereby notifies COOPERATOR that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. COOPERATOR shall promptly notify COUNTY if COOPERATOR becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA.

Classification of data as trade secret data will be determined pursuant to applicable law and, accordingly, merely labeling data as "trade secret" does not necessarily make it protected as such under any applicable law.

11. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers,

records, etc., which are pertinent to the accounting practices and procedures of COOPERATOR and involve transactions relating to this Agreement. COOPERATOR shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its expiration, cancellation or termination.

12. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. COOPERATOR binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations contained in the contract documents.
- B. COOPERATOR shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by COOPERATOR, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve COOPERATOR of its liabilities and obligations under the Agreement.

13. MERGER AND MODIFICATION

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
- B. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. Except as expressly provided, the substantive legal terms contained in this Agreement including but not limited to Indemnification, Insurance, Merger and Modification, Default and Cancellation/Termination or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.

14. DEFAULT AND CANCELLATION/TERMINATION

A. If COOPERATOR fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, it shall be in default. Unless COOPERATOR's default is excused in writing by COUNTY, COUNTY may upon written notice immediately cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until

COOPERATOR's compliance. In the event of a decision to withhold payment, COUNTY shall furnish prior written notice to COOPERATOR.

- B. Upon cancellation or termination of this Agreement:
 - 1. At the discretion of COUNTY and as specified in writing by the Contract Administrator, COOPERATOR shall deliver to the Contract Administrator copies of all writings so specified by COUNTY and prepared by COOPERATOR in accordance with this Agreement. The term "writings" is defined as any of the following that was created by COOPERATOR pursuant to this Agreement:

Handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, or symbols, or combinations thereof.

- 2. COUNTY shall have full ownership and control of all such writings. COOPERATOR shall have the right to retain copies of the writings. However, COOPERATOR shall not, without the prior written consent of COUNTY, use these writings for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such writings; and shall not do anything which in the opinion of COUNTY would affect COUNTY's ownership and/or control of such writings.
- C. Notwithstanding any provision of this Agreement to the contrary, COOPERATOR shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by COOPERATOR. Upon notice to COOPERATOR of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to COOPERATOR for the purpose of set-off until such time as the exact amount of damages due COUNTY from COOPERATOR is determined. Following notice from COUNTY of the claimed breach and damage, COOPERATOR and COUNTY shall attempt to resolve the dispute in good faith.
- D. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.
- E. COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.

- F. This Agreement may be canceled/terminated with or without cause by either party upon thirty (30) day written notice.
- H. Upon written notice, COUNTY may immediately suspend or cancel/terminate this Agreement in the event any of the following occur: (i) COUNTY does not obtain anticipated funding from an outside source for this project; (ii) funding for this project from an outside source is withdrawn, frozen, shut-down, is otherwise made unavailable or COUNTY loses the outside funding for any other reason; or (iii) COUNTY determines, in its sole discretion, that funding is, or has become, insufficient. COUNTY is not obligated to pay for any services that are provided after the notice and effective date of the suspension or cancellation/termination. In the event COUNTY suspends, cancels or terminates this Agreement pursuant to this paragraph, COUNTY shall pay any amount due and payable prior to the notice of suspension or cancellation/termination except that COUNTY shall not be obligated to pay any amount as or for penalties, early termination fees, charges, time and materials for services not then performed, costs, expenses or profits on work done.

15. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement do survive such term, cancellation or termination. Such provisions include but are not limited to: SERVICES TO BE PROVIDED (as to ownership of property); INDEPENDENT CONTRACTOR; INDEMNIFICATION; INSURANCE; DUTY TO NOTIFY; DATA; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION/TERMINATION; PROMOTIONAL LITERATURE; and MINNESOTA LAW GOVERNS.

16. CONTRACT ADMINISTRATION

In order to coordinate the services of COOPERATOR with the activities of the Department of Environment and Energy so as to accomplish the purposes of this Agreement, Randy Anhorn, or successor ("Contract Administrator"), shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and COOPERATOR.

17. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. COOPERATOR shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. COOPERATOR acknowledges that the source of funds for payment of services under this Agreement is state grant monies for stormwater assessment. The total state grant amount is seven thousand dollars (\$7,000.00). COUNTY is retaining four thousand dollars (\$4,000.00) and providing three thousand dollars (\$3,000.00) to COOPERATOR. COOPERATOR is responsible for providing and

documenting the required match funds NOT LESS THAN two thousand three hundred thirty-four dollars (\$2,334). COOPERATOR shall comply with all applicable conditions of the attached grant (Exhibit D)

18. PAPER RECYCLING

COUNTY encourages COOPERATOR to develop and implement an office paper and newsprint recycling program.

19. NOTICES

Unless the parties otherwise agree in writing, any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to COOPERATOR shall be sent to the address stated in the opening paragraph of this Agreement.

20. CONFLICT OF INTEREST

CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to CONTRACTOR, CONTRACTOR shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether CONTRACTOR will or will not resign from the other engagement or representation.

22. MINNESOTA LAWS GOVERN

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, state of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the state of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

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COUNTY OF HENNEPIN AUTHORIZATION

COUNTY OF HENNEPIN STATE OF MINNESOTA

Reviewed by the County Attorney's Office	
Assistant County Attorney	By: Environment and Energy Department
	Environment and Energy Department
Date:	
	COOPERATOR,
	The Contractor certifies that the person who executed this agreement is authorized to do so on behalf of the Contractor as required by applicable articles, bylaws, resolutions or ordinances.*
	Printed Name:
	Signed:
	Title:
	Date:

^{*}Contractor shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time Contractor returns the Agreement to the County. Documentation is not required for a sole proprietorship.

EXHIBIT A

COOPERATOR agrees to conduct and complete a Stormwater Retrofit Assessment in the urbanized area (113 acres) of the Ardmore Subwatershed (Exhibit B) and provide the following deliverables.

- 1. Modeling and Scoping Services
 - a. COOPERATOR will use the P8 Urban Catchment Model, or an equivalent model as approved by COUNTY.
 - b. Information necessary for operation of the model will be obtained through remote sensing, an initial field review and follow up field reviews necessary to validate model results. No surveying is proposed for this Assessment. Model results will be used to identify flow volumes and potential project locations with anticipated pollutant reductions.

2. Project Profiles

- a. The intent of these profiles is to provide an understanding of each potential retrofit or Best Management Practice (BMP). For each type of recommended retrofit or BMP, conceptual sketches or photos will be provided. Profiles are not site-specific designs. If a project is subsequently chosen for implementation, site-specific designs will be required under a separate contract.
- b. Each profile will be labeled with a unique ID.
- 3. Cost-Analysis and Project Ranking
 - a. COOPERATOR will provide a table summarizing basic catchment information including:
 - i. Unique ID;
 - ii. Subcatchment size;
 - iii. Parcel ID;
 - iv. Estimated annual stormwater load;
 - v. Estimated pollutant load for total phosphorus and total suspended solids;
 - vi. Estimated reductions in stormwater and pollutant loads as a result of the proposed retrofit or BMP; and
 - vii. Estimated treatment provided per cost of the retrofit or BMP including installation and maintenance costs.
 - b. COOPERATOR will provide a prioritized list of retrofit and BMPs based on the cost effectiveness of the retrofit or BMP.

Exhibit A Continud

COUNTY agrees to conduct and complete a Stormwater Retrofit Assessment in the rural agricultural area (472 acres) of the Ardmore Subwatershed (Exhibit C) and provide the following deliverables.

- 1. Modeling and Scoping Services
 - a. COUNTY will use a combination of models appropriate to the site and field conditions including but not limited to:
 - i. Stormwater Assessment Tool;
 - ii. HydroCad;
 - iii. National Urban Runoff Program Stormwater Model;
 - iv. Revised Universal Sol Loss Equation;
 - v. Source Loading and Management Model for Windows;
 - vi. Board of Water and Soil Resources Pollution Reduction Model; and
 - vii. Minnesota Feedlot Assessment runoff Model.
 - b. Information necessary for operation of the model will be obtained through remote sensing, an initial field review and follow up field reviews necessary to validate model results. No surveying is proposed for this Assessment. Model results will be used to identify flow volumes and potential project locations with anticipated pollutant reductions.

2. Project Profiles:

- a. The intent of these profiles is to provide an understanding of each potential retrofit or Best Management Practice (BMP). For each type of recommended retrofit or BMP, conceptual sketches or photos will be provided. Profiles are not site-specific designs. If a project is subsequently chosen for implementation, site-specific designs will be required under a separate contract.
- b. Each profile will be labeled with a unique ID.
- 3. Cost-Analysis and Project Ranking:
 - a. COUNTY will provide a table summarizing basic catchment information including:
 - i. Unique ID;
 - ii. Subcatchment size;
 - iii. Parcel ID;
 - iv. Estimated annual stormwater load;
 - v. Estimated pollutant load for total phosphorus and total suspended solids;
 - vi. Estimated reductions in stormwater and pollutant loads as a result of the proposed retrofit or BMP; and

Exhibit A Continued

- vii. Estimated treatment provided per cost of the retrofit or BMP including installation and maintenance costs.
- b. COUNTY will provide a prioritized list of retrofit and BMPs based on the cost effectiveness of the retrofit or BMP.
- 4. COUNTY will compile the deliverables provided by COOPERATOR and COUNTY into a final report and provide a copy of the final report to the COOPERATOR.

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Exhibit B

Ardmore Subwatershed Assessment



Urban Area of Ardmore Subwatershed Assessment 113 acres

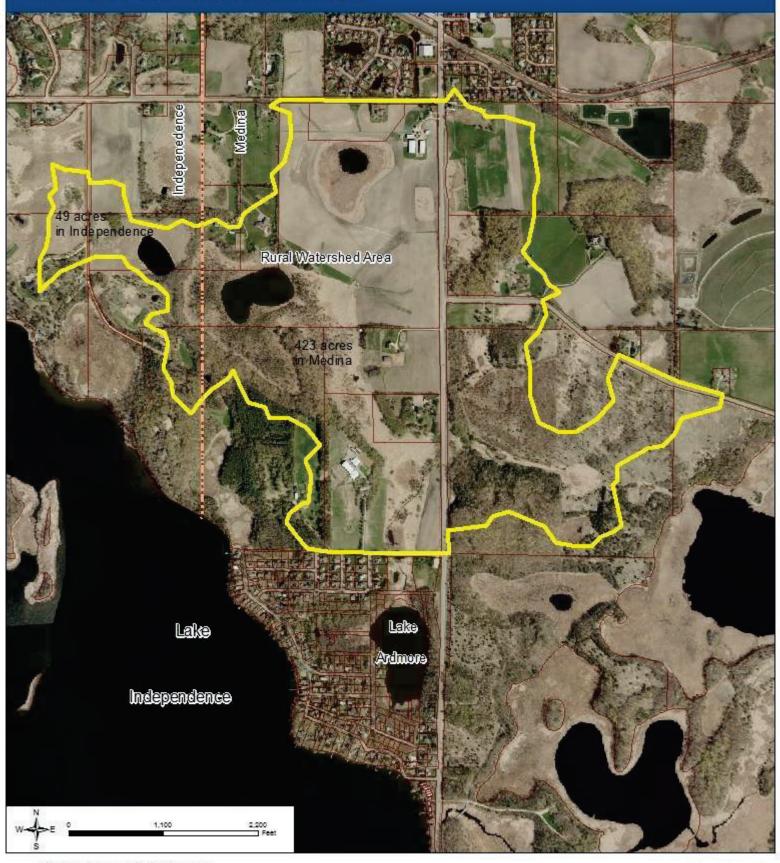
January 2015

This map (i) is furnished "AS IS" with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this map.



Exhibit C

Ardmore Subwatershed Assessment



Rural Area of Ardmore Subwatershed Assessment 472 acres

January 2015

This map (i) is furnished "AS IS" with no representation as to completeness or accuracy; (ii) is furnished with no warranty of any kind; and (iii) is not suitable for legal, engineering or surveying purposes. Hennepin County shall not be liable for any damage, injury or loss resulting from this map.



FY14 MCD Subwatershed Analysis (SWA) Program Application Submit completed form to WCD, Host District

A. Requesting District a	and Contact	斯克里斯斯斯克						
<u>District Name</u>	Project Contact		Contact	Phone	Contact Email			
Hennepin County	Randy Anhorn		(612) 34	48-2027	randy.anhorn@hennepin.us			
B. Project Information (attach location map)								
Project Name								
Ardmore Subwatershed Retrofit Analysis Project								
Receiving Water(s)		Drainage Area (a	cres)	Target Pollutant(s)				
Lake Independence		585 acres (113 u 472 rural)	rban,	Phosphorus and sediments				
Project Type: Protection Project (receiving water not impaired) X Restoration Project (receiving water on 303D list)								
Assessment Type: Urban Subwatershed X Rural/Agricultural Subwatershed								
C. Prioritization Model								
X P8 X WinSLAMM								
*Other prioritization models must be approved by host district								
D. Funding	Water State Control							
Grant Request Amount (1)	Non-State Match Amount	(2) Match Sour	Match Sources (list)					
\$7,000	\$4,000		City of Medina and Hennepin County					
1 – Each member district may request up to \$22,000.00 total for all applications during the current grant cycle. 2 – Non-state match must be at least 25% of total SWA analysis costs (metro-wide); attach additional sheets as needed.								
E. Project Narrative								
Describe receiving water	(s), contributing subwaters	hed area, local partne	ships, pot	tential funding for BMP	implementation, previous related			
studies, etc. Attach extra sheets as needed, and attach any site specific information that you think warrants special consideration. Provide specific rationale why you think it should be considered):								
See Attached								
The Lake Independence TMDL determined that there is 96 pounds of phosphorus per year that enters the lake from the Ardmore watershed. An estimated 10 – 20 more pounds of phosphorous enter the lake from the urbanized portion of the Direct Runoff watershed.								
25 Lo more pounds of phosphorous enter the lake from the dibanized portion of the bliect runon watersned.								
F. General Requirement	\$							
x Non-Point: MCD SWA funds will be used to address non-point source water quality problems.								
χ <i>Technical Review:</i> The subwatershed analysis project has been reviewed by the local SWCD technical district staff.								
X Criteria: Member district will meet MCD SWA Minimum Criteria to complete the subwatershed analysis project.								
Reporting: Member district will submit project status reports to Host by January 1 and July 1 of each year during the project and final report as described in the MCD SWA Minimum Criteria.								
χ Deadlines: Member districts are encouraged to submit applications by July 1, 2015 or indicated they will not use all of their allocated funding. Member district will complete all SWA Final Reports by September 31, 2016.								
7.15								
Program Tracking - Host & Fiscal Agent Use Only								
	Application	Approved Fi	nal Repor	t eLINK Data	r an			
	Host Agent		ost Agent	☐ Host Agen	t			

Fiscal Agent

☐ Fiscal Agent

Fiscal Agent