



RESOLUTION

Resolution number: 22-068

Title: Approving Regional Stormwater Management Plan for Downtown West Victoria Development

- WHEREAS Section 7 of the Minnehaha Creek Watershed District stormwater management rule provides: “An applicant may comply with this rule by providing equal or greater phosphorus control, rate control, or volume control through a regional or subwatershed plan approved by the District”;
- WHEREAS the City of Victoria intends to redevelop a 13.5-acre parcel, west of downtown near the intersection of County Road 11/Victoria Drive and Trunk Highway 5/Arboretum Boulevard;
- WHEREAS the City has proposed to construct three stormwater filtration ponds to provide for stormwater volume, water quality and rate control treatment for redevelopment as it occurs;
- WHEREAS the redevelopment will occur in at least two phases; filtration ponds 1 and 2 will be constructed as part of the upcoming phase 1, filtration pond 3 will be constructed under a future phase of the development;
- WHEREAS the City and the District have prepared a Regional Stormwater Management Agreement that provides for the District to concur in the filtration basin design and receive as-built drawings, provides for development applications within the defined area to use filtration basin capacity pursuant to the terms of the District stormwater management rule, specifies that capacity must be in place and functional for development as it occurs, and commits the City to ongoing facility maintenance;
- WHEREAS the Board of Managers finds that the proposed Regional Stormwater Management Agreement conforms to the requirements of Section 7 of the stormwater management rule;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District administrator to execute the proposed Regional Stormwater Management Agreement between the City of Victoria and the Minnehaha Creek Watershed District, with any further non-substantive changes and on advice of counsel.

Resolution Number 22-068 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 11/3/2022

Secretary Date: November 3, 2022

**REGIONAL STORMWATER MANAGEMENT AGREEMENT
City of Victoria and Minnehaha Creek Watershed District**

***[Downtown West Development- Filtration Practices 1, 2
& 3]***

This Agreement is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (“District”), and the City of Victoria, a statutory city and political subdivision of the State of Minnesota (“City”).

Recitals

A. The District, pursuant to Minnesota Statutes §103D.341, has adopted and implements rules and permit requirements for property owners engaging in land development to permanently manage stormwater generated by development to protect water quality, avoid flooding and otherwise limit development impacts on water resources. The District stormwater management rule is attached as Exhibit A to this Agreement.

B. Paragraph 7(a) of the District’s stormwater management rule allows a permit applicant to meet rule requirements “by providing equal or greater phosphorus control, rate control, or volume control through a regional or subwatershed plan approved by the District.”

C. The City anticipates public and private development within an area of about 13.5 acres delineated on Attachment A to this Agreement (“Development Area”). It expects that the development will consist of about 8.9 acres of impervious surface, with about 3.3 acres under a first phase, and about 5.6 acres under a future phase.

D. To provide stormwater management for this development, the City intends to construct three filtration practices (together, the “Facilities”). Facilities 1, 2 and 3 are being designed, respectively, to receive runoff and provide volume control from 3.14 acres, 0.99 acres and 4.74 acres of impervious surface. The City intends to construct Facilities 1 and 2 initially, and Facility 3 for the purpose of the future development phase. The City intends that the Facilities also will provide for peak flow control for the development.

E. The City and District enter into this Agreement to specify terms for the City’s construction, maintenance and use of the Facilities in accordance with section 7 of the District stormwater management rule.

Terms

THEREFORE the City and the District agree as follows, intending to be legally bound:

A. DESIGN and CONSTRUCTION

1. The City is preparing a 90 percent design of the Facilities that it intends to complete in November 2022. The District will review the 90 percent design to concur that it is a satisfactory design to provide for retention and abstraction of stormwater within the meaning of the District

stormwater management rule, paragraph 3(c)(1) and Appendix A (“Filtration”). The City will complete design plans in accordance with the 90-percent plans, and construct the Facilities. The City and District will cooperate with respect to any inspection or Facility document review undertaken by District staff during the course of construction. During construction, the City will notify the District of any change from the final plans before it is approved by the City, except for field changes, of which the District may be notified promptly after approval.

2. On substantial completion, the City will supply Facility as-built plans to the District, signed by a professional engineer or surveyor. On the basis of the as-built and technical specifications, the District will determine the Facility phosphorus removal, rate and volume control capacities for the purpose of its use for stormwater management under the District rule. The City will notify the District in writing when a Facility is functional and on-line to receive and treat stormwater in accordance with its design, and will transmit to the District a copy of the engineer’s certificate of completion.

B. FACILITY USE for REGULATORY COMPLIANCE

1. The capacity that the District determines under paragraph A.2, above, will be available to the City for the purpose of compliance with the District stormwater management rule with respect to land disturbance within the Development Area. The City may use the capacity for its own projects, and may make capacity available to third parties, on such terms as the City may decide. The City and District will maintain and share records of the use of Facility capacity and remaining capacity available for use.

2. An application that proposes to use a Facility for compliance purposes will be processed and evaluated by the District in the ordinary course. Except as specifically stated in this Agreement, District rules and regulatory procedures will apply as in effect at the time an application is considered. To recognize a third party claim to any part of Facility capacity, the District will require that the applicant conform to paragraph 7(d) of the District rule, including written concurrence from the City and confirmation of current maintenance per paragraph C.1, below.

3. In accordance with paragraphs 7(b) and (c) of the District rule, the City or a third party using a Facility for rule compliance will be required to provide an on-site practice to address any local stormwater impact and otherwise achieve an adequate measure of on-site stormwater management.

4. The District stormwater management rule requires that stormwater management facilities be operational concurrent with the creation or replacement of the impervious surface for which they are to provide treatment. The City recognizes that delay in Facility construction may affect the City’s, or a third party’s, ability to use the Facility to meet District rule requirements.

5. At any time, the City may reserve remaining Facility capacity for Total Maximum Daily Load or anti-degradation compliance, prospective City projects, or any other purpose. The parties will memorialize this decision in writing, and the dedicated capacity no longer will be available under paragraph B.1, above.

6. If at a future time the City is exercising sole authority for stormwater management

permitting pursuant to District approval of the City's local water plan under Minnesota Statutes §103B.235, the parties will cooperate so that the District may confirm that permitting accords with the terms of this section B.

C. MAINTENANCE

1. The City will maintain the Facilities in accordance with the terms of the Programmatic Maintenance Agreement between the parties dated January 29, 2014, Attachment B hereto, Incorporated herein (PMA). This maintenance obligation will extend in accordance with the terms of the PMA.
2. If at any time there is evidence that a Facility is not performing to design, the City, in consultation with the District, will perform reasonable investigation to assess performance and determine the cause of inadequate performance, and will take feasible actions to improve performance. A feasible action is one that is technically attainable at a cost not grossly disproportionate to the performance benefit it is capable of achieving.

D. GENERAL

1. The purpose of this Agreement is to establish a framework for the City's use of the Facilities for compliance with District permitting rules. The City is responsible for all costs of Facility design, construction and maintenance.
2. The Agreement is not a joint powers agreement within the meaning of Minnesota Statutes §471.59. Neither party agrees to be responsible for the acts or omissions of the other within the meaning of subdivision 1a(a) of that statute. The District has no authority to select, or role in selecting, the design, means, method or manner of constructing the Facilities or the person or firm who will perform the work. This Agreement creates no right in, and waives no immunity, defense or liability limit with respect to, any third party or the other party to this Agreement. Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement.
3. Each notification required by this Agreement must be made to the project representative. The project representatives of the parties are:

Kayla Westerlund, Manager-Permitting Department
Minnehaha Creek Watershed District
15320 Minnehaha Boulevard
Minnetonka, MN 55345
(952) 471-0590

City of Victoria
1670 Stieger Lake Lane
Victoria, MN 55386
(952) 443-4210

Contact information will be kept current. Either contact may be changed by a party by written notification to the other party.

4. An amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the parties. A party to this Agreement may not assign or transfer any right or obligation hereunder without an assignment agreement executed by the parties and the assignee.

5. A party's failure to enforce a provision of this Agreement does not waive the provision or that party's right to enforce it subsequently.

6. The above Recitals are incorporated into this Agreement.

7. This Agreement is effective when executed by both parties, will remain in force for a five-year term thereafter, and will renew automatically for subsequent five-year terms unless and until terminated by written agreement of the parties.

IN TESTIMONY WHEREOF the parties have executed this Agreement by their authorized officers.

CITY OF VICTORIA

By _____
Its Mayor

Date:

By _____
Its City Manager

Date:

Approved for form and execution:

MCWD Counsel

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Its President

Date:

Exhibit A
Development Area

K:\TWC_Civil\City\Victoria\Stieger Lake Lane Improvements\CAD\Plan Sheets\Exhibits\DOWNTOWN WEST\220916-DTWest_PropFutureStormwaterSystem.dwg September 16, 2022 - 4:27pm

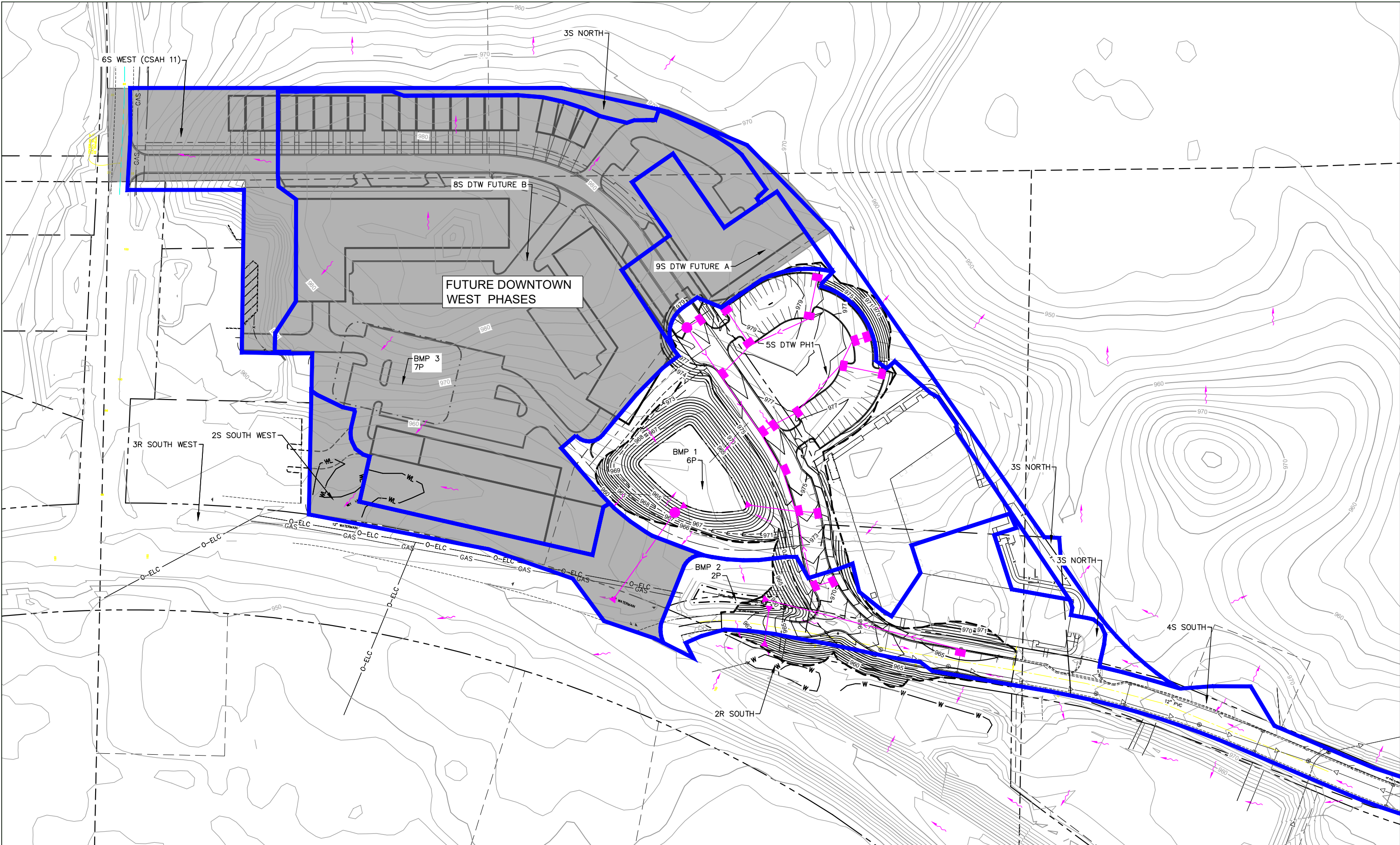


Exhibit B
City of Victoria Programmatic Maintenance Agreement

PROGRAMMATIC MAINTENANCE AGREEMENT
Stormwater Management Facilities, Waterbody Crossings & Structures, Wetland Buffers and
Shoreline & Streambank Stabilizations

Between the Minnehaha Creek Watershed District
and the City of Victoria

This Maintenance Agreement (Agreement) is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD), and the City of Victoria, an incorporated municipality and political subdivision of the State of Minnesota (CITY).

Recitals and Statement of Purpose

WHEREAS pursuant to Minnesota Statutes § 103D.345, the MCWD has adopted and implements the Stormwater Management Rule, Wetland Protection Rule, the Waterbody Crossings & Structures Rule and the Shoreline & Streambank Stabilization Rule;

WHEREAS under the Stormwater Management Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner's perpetual obligation to inspect and maintain stormwater-management facilities;

WHEREAS in each case, a public landowner, as an alternative to a recorded instrument, may meet the maintenance requirement by documenting its obligations in an unrecorded written agreement with the MCWD;

WHEREAS CITY from time to time is subject to stormwater management, wetland buffer, waterbody crossings and structures and shoreline & streambank stabilization maintenance requirements pursuant to the terms of an MCWD permit; and

WHEREAS the parties concur that it is clearer and procedurally more efficient for the MCWD and CITY to agree at this time on standard requirements for stormwater management, wetland buffer protection, waterbody crossings and structures maintenance and shoreline & streambank stabilizations, so that this Agreement may be incorporated into future permits as applicable.

THEREFORE IT IS AGREED as follows:

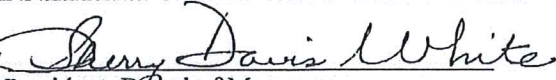
1. All features requiring maintenance under an MCWD permit shall be maintained in perpetuity in accordance with Attachment A, Maintenance Plan & Schedule.
2. MCWD permits for specific projects may contain additional maintenance conditions in accordance with MCWD rules, as they may be amended from time to time.
3. CITY will submit a copy of the Storm Water Pollution Prevention Plan annual report prepared under its Municipal Separate Storm Sewer System permit to the MCWD each year.
4. If CITY conveys into private ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of sale, and enforce: (a) that the purchaser record a declaration on the property incorporating the maintenance requirements of this Agreement; and (b) that recordation occur either before any other encumbrance is recorded on the property or, if after, only as accompanied by a subordination and consent executed by the encumbrance holder

ensuring that the declaration will run with the land in perpetuity. If CITY conveys into public ownership a fee interest in any property that has become subject to this Agreement, it shall require as a condition of the purchase and sale agreement that the purchaser accept an assignment of all obligations vested under this Agreement.

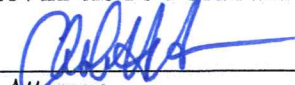
5. This Agreement may be amended only in a writing signed by the parties.
6. This Agreement is in force for five years from the date on which it has been fully executed and will renew automatically for five year terms unless terminated. Either party may terminate the Agreement on 30 days' written notice to the other. Any obligations vested in CITY through incorporation into an issued permit before the effective date of termination will survive expiration.
7. The recitals are incorporated as a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

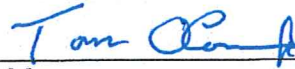
MINNEHAHA CREEK WATERSHED DISTRICT


By:  Date: 1-29-14
President, Board of Managers

APPROVED AS TO FORM and EXECUTION

By:  ~~Date:~~
Its Attorney

CITY OF CITY

By:  Date:
Its Mayor

By:  Date:
Its Administrator

APPROVED AS TO FORM and EXECUTION

By: _____ Date:
City Attorney

ATTACHMENT A

MAINTENANCE PLAN & SCHEDULE

1. WETLAND BUFFER AREAS

- a. Buffer vegetation will not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities, or other actions to maintain or improve buffer quality, Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface will be placed within a buffer, except that construction of a trail or path of no more than 4 feet in width to provide riparian access through the buffer is acceptable. No fill, debris or other material will be excavated from or placed within a buffer.
- b. Permanent wetland buffer monuments will be maintained in the locations shown on the approved site plan. Language shall indicate the purpose of the buffer, restrictions, and the name and phone number of the Minnehaha Creek Watershed District.

2. SHORELINE & STREAMBANK STABILIZATIONS

- a. The project area will be inspected at least annually and any erosion or structural problems observed will be corrected within 30 days of inspection to establish and maintain a naturalized, ecologically healthy [shoreline/streambank] that is structurally stable and resistant to erosion. [Shoreline/Streambank] plantings will be replaced and seeded areas will be reseeded as necessary in the spring and fall of each year in accordance with the approved plan to maintain the ecological health and function of the shoreline. Removal of invasive species will occur on an ongoing basis. Weeds will be hand pulled or spot treated with aquatic formulations of herbicide according to instructions on the herbicide label. All planted and seeded areas will be maintained in perpetuity free from mowing or other vegetative disturbance, fertilizer application, yard or other waste disposal, the placement of structures or any other alteration that impedes the function of the shoreline in protecting water quality, shading the riparian edge, moderating flow into any adjacent wetland or waterbody, or providing wildlife habitat.

3. WATERBODY CROSSINGS & STRUCTURES

- a. Crossings and structures in contact with the bed or bank of a waterbody will be inspected at least once a year and maintained in good repair in perpetuity to ensure continuing adequate hydraulic and navigational capacity is retained in accordance with approved plans, to ensure no net increase in the flood stage beyond that achieved by the approved plans, to prevent adverse effects on water quality, changes to the existing flowline/gradient and increased scour, erosion or sedimentation, and to minimize the potential for obstruction of the waterbody.

4. STORMWATER FACILITIES

- a. **Stormwater retention and treatment basin(s).** Stormwater retention and treatment basin(s) must be inspected at least once a year to determine if the basin's retention and treatment characteristics are adequate and continue to perform per design. Culverts and outfall structures must be inspected at least annually and kept clear of any obstructions or sediment accumulation. Sediment accumulation must be measured by a method accurate to within one vertical foot. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent of its original design volume. Based on this inspection, if the stormwater basin(s) is identified for sediment cleanout, the basin(s) will be restored to its original design contours and vegetation in disturbed areas restored within one year of the inspection date.
- b. **Raingardens, infiltration basins and filtration basins.** Raingardens, infiltration basins and filtration basins will be inspected annually to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris will be removed as needed and healthy plant growth will be maintained to ensure that the facilities continue to perform per design.
- c. **Vegetated swales.** Vegetated swales will remain free from mowing or other vegetative disturbance, fertilizer application, yard or other waste disposal, the placement of structures or any other alteration that impedes the function of the vegetated swale.
- d. **Pervious pavement.** Pervious pavement will be inspected after at least one major storm per year and otherwise annually to ensure continuing performance per design. Surface openings will be vacuumed in dry weather to remove dry, encrusted sediment as necessary. Broken units that impair the structural integrity of the surface will be replaced. If water stands for an extended period of time, the base materials will be removed and replaced.
- e. **Underground storage facilities.** Underground storage facilities will be inspected at least annually to ensure continuing performance per design. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of the original design volume. Accumulated debris and sediment will be

removed, and inlet and outlet structures will be kept clear of any flow impediments.

- f. **Grit chambers, sump catch basins and sump manholes.** Grit chambers, sump catch basins and sump manholes will be inspected in the spring, summer and fall of each year. All sediment and debris will be removed as needed such that the stormwater facilities operate as designed and permitted.
- g. **Proprietary stormwater facilities.** Proprietary stormwater facilities will be inspected at least annually and maintained as specified or recommended by the manufacturer and/or installer
- h. **Reporting.** The Declarant will submit to the MCWD annually a brief written report that describes stormwater facility maintenance activities performed under this declaration, including dates, locations of inspections and the maintenance activities performed.