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**Title:** Approval of the Wassermann Lake Park Easement and Purchase Agreement

**Resolution number:** 20-010

**Prepared by:** Name: Anna Brown  
Phone: 952-641-4522  
abrown@minnehahacreek.org

**Reviewed by:** Name/Title: Michael Hayman, Project Planning Manager

**Recommended action:** Approval of the revised purchase agreement and easement

**Schedule:** Date: 2/27/2020 Wassermann Lake Park construction contract award  
Date: 3/30/2020 Property closing (Date approximate and tentative)  
Date: 11/1/2020 Park construction substantial completion

**Budget considerations:** Fund name and code: 300-3153 Wassermann West  
Fund budget: \$2,387,728.00 (MCWD cost \$335,560.00)  
Expenditures to date: \$372,382.00 (contracted)  
Requested amount of funding: None

**Past Board action:** Res # 17-014 Title: Authorization to acquire Wassermann West Property  
Res # 17-035 Title: Approval of cooperative agreement and purchase agreement with City of Victoria  
Res # 17-071 Title: Approval of contract for park design and alum feasibility  
Res # 19-063 Title: Approval of second cooperative agreement with Victoria  
Res # 19-069 Title: Authorization to release RFP for design services  
Res # 19-073 Title: Project ordering and design contract award  
Res # 19-106 Title: Contract award for boardwalk construction and winter oak work; approval of Wassermann Park design and authorization to solicit bids

**Summary:**

Since 2017, Minnehaha Creek Watershed District (MCWD) has been working with the City of Victoria to implement a park and site restoration project on Wassermann Lake. Wassermann Lake is an impaired waterbody, and this project represents one element of a multi-pronged strategy to improve water quality and aquatic and terrestrial habitat in Wassermann and its surrounding drainage area. This project, which is currently out for bid, will not only directly contribute towards those goals, but also will provide an opportunity for the public to access and experience the unique natural setting of this priority waterbody.

The Minnehaha Creek Watershed District purchased the Wassermann West property in June 2017, after entering into a cooperative agreement with the City of Victoria providing for preliminary design of the park project. Under that cooperative agreement, following preliminary design completion, the City would purchase the property from MCWD, with MCWD retaining easement over the wetland areas. In December 2017, a purchase agreement was executed to that effect.

In May 2019, MCWD and the City entered into a second, modified cooperative agreement, which provided for increased involvement by MCWD through final design and construction. It also modified the purchase agreement, such that closing on the property would not occur until the construction contract was awarded. The revised purchase agreement is attached.

Since the time of that agreement approval, MCWD and the City have proposed additional modifications to the easement to provide for access and oversight over areas in which MCWD would be investing in the establishment and maintenance of vegetation, but that fell outside of the original easement area. As such, the easement now incorporates a "Natural Areas" section, which provides for MCWDs anticipated work within those areas, and requires MCWD and the City to coordinate if improvements are proposed within that area. The revised easement is also attached.

The project bid is currently open and the contract award planned for February 27, 2020. Per the second cooperative agreement, closing will occur within 21 days of the approval of the contract approval.

**Supporting documents (list attachments):**

1. Revised Purchase Agreement
2. Revised Easement



**RESOLUTION**

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**Resolution number:** 20-010

**Title:** Approval of Wassermann Lake Park Easement and Purchase Agreement

WHEREAS, District and City staff identified the Wassermann West property (the Property), consisting of 33.5 acres, more or less, riparian to the western shore of Wassermann Lake as an opportunity for coordinated project development to meet strategic goals of both the District and City by improving lake water quality, protecting and enhancing riparian wetland and shoreline, and affording public access to Wassermann Lake, among other potential project benefits;

WHEREAS, on February 23, 2017, the MCWD Board of Managers authorized the execution of a purchase agreement for the Property at a cost not to exceed \$875,000, with closing contingent on executing a cooperative agreement with the City providing for conveyance of the property to the City on completion of preliminary plans for public natural resource restoration and recreational improvements; and further authorized staff to develop a purchase agreement with the City as well as a design scope for water quality, ecological enhancement, and public access improvements;

WHEREAS, on May 11, 2017, the MCWD Board of Managers authorized the execution of a cooperative agreement with the City of Victoria (the first cooperative agreement) that included a purchase agreement with the City of Victoria for the eventual conveyance of fee title to the City for a cost of \$850,000, with MCWD retaining easement over the wetland areas;

WHEREAS, on May 23, 2019, the MCWD Board of Managers authorized the execution of a second cooperative agreement with the City of Victoria, which, amongst other terms, provided for the modification of the February 23, 2017 purchase agreement to hold property closing until such as time as a construction contract is awarded and to refine the defined easement area;

WHEREAS, the easement has been further revised to provide for MCWD access to and maintenance of the sites "Natural Areas," area in which MCWD is investing in the establishment of native vegetation but which fall outside of the easement area.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the Board President to execute the purchase agreement and easement in accordance with the second cooperative agreement.

Resolution Number 20-010 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 2/13/2020

\_\_\_\_\_  
 Secretary Date: \_\_\_\_\_

## AMENDMENT to PURCHASE AGREEMENT

This AMENDMENT to PURCHASE AGREEMENT (“**Amendment**”) is made and entered into by the MINNEHAHA CREEK WATERSHED DISTRICT, a watershed district with purposes and powers as set forth in Minnesota Statutes Chapters 103B and 103D (“**Seller**”), and CITY OF VICTORIA, a Minnesota municipal corporation (“**Buyer**”) (together, the “**Parties**”).

### RECITALS

A. On December 19, 2017, the Parties entered into a Purchase Agreement (“**Agreement**”) for the sale of approximately 33.5 acres of land in the City of Victoria, State of Minnesota, and legally described on Attachment A attached hereto and made a part hereof (the “**Real Property**”). The Agreement is attached hereto as Attachment B.

B. The Parties are parties to that certain Second Cooperative Agreement dated July 25, 2019, (“**SCA**”) pursuant to which they memorialized their respective rights and obligations relative to Seller’s sale of the Real Property to Buyer and Buyer’s establishment of local and regional park/conservation land and public access to Wasserman Lake on the Real Property.

C. Paragraph 14 of the SCA states that before closing on the Real Property, the Parties are to execute an amendment to the Agreement that conforms to the terms of that paragraph. The purpose of this Amendment is to fulfill the terms of Paragraph 14 of the SCA.

D. Buyer hereby elects to self-finance City Costs within the meaning of paragraph 15a of the SCA. This Amendment reflects Buyer’s formal action making such election.

### AMENDMENT

NOW, THEREFORE, for good and valuable consideration, Seller and Buyer agree:

1. Subsection 3.2 of the Agreement is amended to read as follows:

3.2 The balance of the Purchase Price will be paid as follows: Eight Hundred and Fifty Thousand and 00/100 Dollars (\$850,000.00) delivered in cash, by wire transfer or other immediately available funds to the Title Company at Closing (the “**Cash At Closing**”).

2. Subsections 4.1 and 4.2 of the Agreement are amended to read as follows:

4.1 The closing of the sale of the Property (the “**Closing**”) shall occur at a mutually agreeable date and time within twenty-one (21) days after the later of: (a) the Parties’ approval of 90 percent plans, within the meaning of paragraph 10 of the SCA; (b) the contract award, if Buyer’s concurrence in the award is not required by paragraph 25 of the SCA; (c) Buyer’s concurrence in the contract award, within the meaning of paragraph 25 of the SCA, if required by that paragraph (the “**Closing Date**”). The Closing will occur on the Closing Date at Title Company’s offices, or such other mutually acceptable location, through an escrow established with Title Company.

4.2 At the Closing, Buyer will deliver into escrow (a) the Cash at Closing, by wire transfer or other immediately available funds; (b) the Easement in the form attached hereto as Exhibit D (the “**Easement**”); and (c) a duly signed closing statement.

3. Section 5 of the Agreement is amended to read as follows:

5. **Closing Costs.** At Closing, Buyer will credit Seller an amount equal to \$4,500.00 to reimburse Seller for one-half of the costs incurred by Seller for all search, commitment, abstracting and other fees charged by Title Company in connection with preparation of the Title Commitment (as defined below), the cost of the Survey (as defined below) and the cost of the Phase I (as defined below) for the Real Property. Buyer will pay all premiums for any Owner’s Policy of Title Insurance desired by Buyer, the costs of recording any documents requested by Buyer, and the costs of recording the Deed if delivered by Seller at Closing. Seller and Buyer will split any Title Company closing fee, and allocate all other closing costs according to the customary practice for similar transactions in Carver County, Minnesota. Except as provided in Section 15, each party will pay its own attorneys' fees.

4. Subsection 8.2 of the Agreement is amended to read as follows:

8.2 **Seller’s Conditions to Closing.** Seller’s obligation to consummate the transaction contemplated in this Agreement is contingent upon satisfaction of all of the following (the “**Seller’s Contingencies**”):

(a) on the Closing Date, Buyer’s representations and warranties made in this Agreement remain true and correct, as if remade on and effective as of the Closing Date;

(b) on the Closing Date, Buyer is not in default under this Agreement or any other contract or agreement affecting or relating to the Property; and

(c) Seller approving the Preliminary Plans.

5. Exhibits B and C to the Agreement are deleted.

6. Attachment C hereto, a revised Easement, hereby constitutes Exhibit D of the Agreement.

7. This Amendment is legally effective and binding on execution by both Seller and Buyer, subject to paragraph 22 of the SCA.

8. This Amendment may be executed in counterparts, each of which will be deemed an original. For purposes of executing this Agreement, a facsimile of a signature will be deemed an original.

BUYER:

SELLER:

**CITY OF VICTORIA**

**MINNEHAHA CREEK WATERSHED DISTRICT**

By: \_\_\_\_\_

By: \_\_\_\_\_

Thomas Funk, Mayor

James Wisker, District Administrator

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Dana Hardie, City Manager

Dated: \_\_\_\_\_

## ATTACHMENT A

### LEGAL DESCRIPTION

Parcel A:

All that part of Government Lot 8, Section 23, Township 116, Range 24, which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; thence North 89 degrees 41 minutes 16 seconds East, a distance of 220.95 feet; thence South 63 degrees 24 minutes 30 seconds East, a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

Parcel B:

All that part of the Southwest Quarter of the Southwest Quarter and Government Lot 8, Section 23, Township 116, Range 24, which lies southerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; thence North 89 degrees 41 minutes 16 seconds East, a distance of 220.95 feet; thence South 63 degrees 24 minutes 30 seconds East, a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

And which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1349.00 feet to the point of beginning of the line to be described; thence South 83 degrees 10 minutes 47 seconds East, a distance of 302.49 feet; thence South 75 degrees 14 minutes 21 seconds East, a distance of 77.81 feet; thence South 22 degrees 00 minutes 00 seconds East, a distance of 361.40 feet; thence North 58 degrees 00 minutes 05 seconds East, a distance of 737.00 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

**ATTACHMENT B**  
**PURCHASE AGREEMENT**

**ATTACHMENT C**  
**EASEMENT**



Parcel A: 650230600

All that part of Government Lot 8, Section 23, Township 116, Range 24, according to the government survey therefor and situate in Carver County, Minnesota which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 Minutes 31 seconds East, and assumed bearing along the west line of the Southwest Quarter and Government Lot 8 said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; Thence North 89 degrees 41 minutes 16 seconds East a distance of 220.95 feet; Thence South 63 degrees 24 minutes 30 seconds East a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating

Parcel B: 650230700

All that part of the Southwest Quarter of the Southwest Quarter and Government Lot 8, Section 23, Township 116, Range 24 according to the government survey thereof and situate in Carver County, Minnesota which lies southerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 Minutes 31 seconds East, and assumed bearing along the west line of the Southwest Quarter and Government Lot 8 said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; Thence North 89 degrees 41 minutes 16 seconds East a distance of 220.95 feet; Thence South 63 degrees 24 minutes 30 seconds East a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating

All which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8 said Section 23, a distance of 1349.00 feet to the point of beginning of the line to be described; thence South 83 degrees 10 minutes 47 seconds East, a distance of 302.49 feet; thence South 75 degrees 14 minutes 21 seconds East, a distance of 77.81 feet; thence South 22 degrees 00 minutes 00 seconds East, a distance of 361.40 feet; thence North 58 degrees 00 minutes 05 seconds East, a distance of 737 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into as of the Effective Date, MINNEHAHA CREEK WATERSHED DISTRICT, a watershed district with purposes and powers as set forth in Minnesota Statutes Chapters 103B and 103D (“**Seller**”) and CITY OF VICTORIA, a Minnesota municipal corporation (“**Buyer**”).

### RECITALS

A. Seller owns approximately 32 acres of land in the City of Victoria, State of Minnesota, and legally described on Exhibit A attached hereto and made a part hereof (the “**Real Property**”).

B. Seller and Buyer are parties to that certain Cooperative Agreement dated June 8, 2017 (the “**Cooperative Agreement**”) pursuant to which the parties memorialized their desire and respective obligations relative Seller’s sale of the Real Property to Buyer and Buyer’s establishment of local and regional park/conservation land and public access to Wasserman Lake.

C. In furtherance of the Cooperative Agreement, Seller hereby desires to sell the Real Property to Buyer, together with (i) all licenses, permits and governmental registrations, filings, authorizations and approvals relating to the Real Property (collectively, the “**Permits**”); (ii) all originals and copies of plans and surveys relating to the Real Property; and (iii) any easements, hereditaments and appurtenances to the Real Property (collectively, with the Real Property, the “**Property**”), and Buyer desires to buy the Property from Seller, all subject to and on the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Seller and Buyer agree:

1. **Sale and Purchase.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property, together with and including all hereditaments, appurtenances, easements and rights of way thereunto belonging or in any way appertaining to the Property and also the right, title and interest, if any, of Seller in and to the bounding and abutting streets, alleys and highways, subject to and upon the terms and conditions of this Agreement.

2. **Purchase Price.** The purchase price for the Property is Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000.00) (the “**Purchase Price**”).

3. **Payment of Purchase Price.**

3.1 On or before the second (2<sup>nd</sup>) business day after the Effective Date, Buyer will deposit Ten Thousand and 00/100 Dollars (\$10,000.00) as earnest money (the “**Earnest Money Deposit**”) into an interest bearing escrow account with First American Title Insurance Company (“**Title Company**”) for the benefit of Buyer and Seller. The Earnest Money Deposit is refundable, except as expressly provided in this Agreement, and will be credited, with interest, against the Purchase Price at Closing. All interest accruing on the Earnest Money Deposit shall accrue to the benefit of Buyer.

3.2 The balance of the Purchase Price will be paid as follows:

- a. Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$425,000.00) delivered in cash, by wire transfer or other immediately available funds to the Title Company at Closing (the “**Cash At Closing**”); and
- b. A Promissory Note in the principal amount of Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$425,000.00) and otherwise in the form attached hereto as Exhibit B (the “**Note**”), plus or minus proration and less credits allocable to Buyer in accordance with this Agreement, and secured by a Contract for Deed in the amount of the Note and otherwise in the form attached hereto as Exhibit C (the “**Contract for Deed**”).

#### 4. **Closing.**

4.1 The closing of the sale of the Property (the “**Closing**”) shall occur on the first business day after the later of (a) the expiration of the Due Diligence Period; and (b) the date the Seller and Buyer have agreed on the Preliminary Plans, as defined below (the “**Closing Date**”). The Closing will occur on the Closing Date at Title Company’s offices, or such other mutually acceptable location, through an escrow established with Title Company.

4.2 At the Closing, Buyer will deliver into escrow (a) the Cash at Closing, by wire transfer or other immediately available funds, (b) the Note; (c) the Contract for Deed; (d) the Easement in the form attached hereto as Exhibit D (the “**Easement**”); and (e) a duly signed closing statement.

4.3 At the Closing, Seller will deliver the following items into escrow, duly signed and, as appropriate, acknowledged by Seller: (a) the Easement; (b) affidavit of non-foreign seller; (c) a closing statement, and; (d) at Seller’s option, a warranty deed (“**Deed**”) conveying good and marketable title to the Property.

4.4 Seller and Buyer will execute and deliver any and all additional documents or instruments that are customary in Minnesota or reasonably required by Title Company.

4.5 Seller will deliver possession of the Property to Buyer, subject to the terms of the Contract for Deed, on the Closing Date.

5. **Closing Costs.** At Closing, Buyer will credit Seller an amount equal to \$4,500.00 to reimburse Seller for one-half of the costs incurred by Seller for all search, commitment, abstracting and other fees charged by Title Company in connection with preparation of the Title Commitment (as defined below), the cost of the Survey (as defined below) and the cost of the Phase I (as defined below) for the Property. Buyer will pay all premiums for any Owner’s Policy of Title Insurance desired by Buyer, the costs of recording any documents requested by Buyer, and the costs of recording the Deed if delivered by Seller at Closing. Buyer will pay the cost of recording the Contract for Deed. Seller and Buyer will split any Title Company closing fee, and allocate all other closing costs according to the customary practice for similar transactions in Carver County, Minnesota. Except as provided in Section 15, each party will pay its own attorneys' fees.

6. **Closing Adjustments.** Seller shall pay all expenses of the Property relating to the period prior to the Closing Date, and Buyer shall pay all expenses of the Property relating to the period on and after the Closing Date. Expenses relating to both before and after the Closing Date will be prorated between Buyer and Seller as of the Closing Date. The Closing Date will be allocated to Buyer. Seller shall pay installments of real estate taxes due and payable in the calendar years prior to the year in

which the Closing Date occurs, and Buyer shall pay all installments of real estate taxes due and payable in the calendar years after the year in which the Closing Date occurs. Installments of real estate taxes due and payable in the calendar year in which the Closing Date occurs shall be prorated as of the Closing Date on a per diem basis. Buyer shall be responsible for all levied, pending, assessed and due and payable special assessments or deferred or past due taxes in accordance with the terms of the Contract for Deed. This Section 6 will survive Closing.

7. **Due Diligence, Title and Survey Matters.** Prior to the date hereof, the Buyer reviewed and approved the following with respect to the Property (collectively, the **"Due Diligence Materials"**): (a) a title commitment (**"Title Commitment"**) issued by the Title Company, together with copies of all recorded documents evidencing the exceptions to title that are described in Schedule B of the Title Commitment; (ii) an updated ALTA survey (**"Survey"**); (iii) a Phase 1 Environmental Site Assessment (**"Phase I"**); and (iv) such other documents, reports, and information that Seller had in its possession relative to the Property. Within ten (10) business days after the Effective Date, Seller will provide Buyer with updates to the Title Commitment or Survey, if any. If there are any changes to the Title Commitment or Survey, then Buyer will have a period of twenty (20) days after receipt of the updated Title Commitment and Survey (the **"Due Diligence Period"**) to provide Seller with any and all written objections thereto, and Seller may, but shall not be obligated to, cure the same prior to Closing. Buyer shall also have the right, prior to the expiration of the Due Diligence Period, to conduct a physical inspection, testing or investigations of the Real Property. Before conducting any on-site inspections, testing or investigations, Buyer will provide Seller with a certificate of liability insurance insuring Buyer and its contractors in an amount of not less than \$1,000,000.00 naming Seller as an additional insured. Any damage caused by Buyer to the Property during any inspections, tests or investigations conducted by Buyer, its employees or agents shall be restored at Buyer's cost. Buyer will indemnify, defend and hold Seller harmless from all liabilities incurred by Seller that arise solely as a result of the negligence or willful misconduct of Buyer, its employees or agents in connection with any inspections, testing or investigations. At any time prior to the expiration of the Due Diligence Period, City may (a) terminate this Agreement or (b) waive its termination right in writing and elect to proceed to Closing. Seller covenants and agrees to satisfy on or before the Closing Date any monetary encumbrances created by Seller. The Property will be subject to any title matters to which Buyer fails to object or waives its objection and such title matters shall be deemed **"Permitted Exceptions"**.

8. **Conditions to Closing.**

8.1 **Buyer's Conditions Precedent to Closing.** Buyer's obligation to consummate the transaction contemplated in this Agreement is contingent upon satisfaction of all of the following (the **"Buyer's Contingencies"**):

- (a) on the Closing Date, Seller's representations and warranties made in this Agreement remain true and correct, as if remade on and effective as of the Closing Date;
- (b) on the Closing Date, Seller is not in default under this Agreement or any other contract or agreement affecting or relating to the Property; and
- (c) prior to the Closing Date, Seller and Buyer have agreed on Preliminary Plans for the park improvement, as defined in the Cooperative Agreement and which include terms of Buyer's operation and maintenance of the park improvement including the following terms, conditions and restrictions: (i)

the approximately 13.0 acres of the Real Property that is upland (the “**Upland**”) will be limited to public uses and the sale of goods or services associated with such public uses; (ii) Seller will have a right of prior consultation as to Buyer’s design and alteration of the Upland, and any improvements and signage to be located on the Upland; (iii) Buyer will be solely responsible for all improvements to be constructed and/or installed on the Upland and Buyer will indemnify Seller and hold it harmless for claims, damages and matters relating to same; and (iv) Seller and Buyer will have mechanism for agreement on cost-sharing for signage and other water-resource related improvements (collectively the “**Preliminary Plans**”).

If any of the Buyer’s Contingencies described above has failed as of the date set for satisfaction thereof, then Buyer may terminate this Agreement by delivering written notice to Seller. If Buyer fails to deliver such written notice, then Buyer will be deemed to have elected to proceed to Closing. If this Agreement terminates pursuant to this Section neither party shall have any further obligation under this Agreement.

**8.2 Seller’s Conditions to Closing.** Seller’s obligations to consummate the transaction contemplated in this Agreement is contingent upon satisfaction of all of the following (the “**Seller’s Contingencies**”):

- (a) on the Closing Date, Buyer’s representations and warranties made in this Agreement remain true and correct, as if remade on and effective as of the Closing Date;
- (b) on the Closing Date, Buyer is not in default under this Agreement or any other contract or agreement affecting or relating to the Property; and
- (c) Seller being satisfied, in its sole and absolute discretion, that Buyer has implemented such ordinances, policies, or other measures to ensure that Buyer will have sufficient, available funds to make full and timely payments under the Note and Contract for Deed for the full term thereof; and
- (d) Seller approving the Preliminary Plans.

**9. Representations and Warranties.**

**9.1 Seller’s Representations and Warranties.** As an essential part of this Agreement and in order to induce Buyer to enter into this Agreement and purchase the Property, Seller hereby represents and warrants to Buyer that:

(a) Seller has not received any written notice that any actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened against or affect the Property.

(b) Seller has not received any written notice of any pending condemnation or eminent domain proceedings. To Seller’s knowledge, there are no condemnation or eminent domain proceedings contemplated against the Property.

(c) Seller has fee simple title interest to the Property.

(d) Seller has duly and validly authorized and executed this Agreement and has full power to enter into and to perform this Agreement according to its terms and the execution and the delivery of this Agreement and the consummation of the transactions contemplated hereby will not constitute a default under any indentures, agreements, mortgages, or any other instruments to which Seller is a party, and is not in contravention of any law, order, ordinance, or regulation by which Seller is bound or subject.

(e) Seller has not used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any Hazardous Materials on or affecting the Real Property in any manner which violates any federal, state or local law, statute, regulation, requirement, ordinance, rule or policy. “**Hazardous Materials**” means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, the Minnesota Environmental Response and Liability Act, as amended, or any other federal, state or local laws, statutes, regulations, requirements, ordinances, rules or policies.

For purposes of this Section, “Seller’s knowledge” means the current actual knowledge of Anna Brown, Project Manager for Seller, without a duty of investigation or inquiry.

9.2 **Buyer’s Representations and Warranties.** As an essential part of this Agreement and in order to induce Seller to enter into this Agreement, Buyer hereby represents and warrants to Seller that Buyer has duly and validly authorized and executed this Agreement and has full power to enter into and to perform this Agreement, the Note, the Contract for Deed and the Easement according to their respective terms and the execution and the delivery of this Agreement, the Note, the Contract for Deed and the Easement and the consummation of the transactions contemplated therein will not constitute a default under any indentures, agreements, mortgages, or any other instruments to which Buyer is a party, and is not in contravention of any law, order, ordinance, or regulation by which Buyer is bound or subject.

10. **Assignment.** Neither Seller nor Buyer may assign or transfer their respective interest in this Agreement without the other party’s written consent.

11. **Brokers.** Seller represents and warrants to Buyer that Seller has not engaged the services of any broker in connection with the sale of the Property. Buyer represents and warrants to Seller that Buyer has not engaged the services of any broker in connection with the purchase of the Property. Seller and Buyer each hereby agree to indemnify the other against, and hold the other harmless from, any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party.

12. **Interim Operations.** Commencing on the Effective Date and continuing through and including the Closing Date, Seller shall (a) operate, maintain and manage the Property in the ordinary course of business in accordance with prudent, reasonable business practices, including maintenance of adequate insurance with respect to the Property (including commercial general liability insurance), and compliance with the Permits and all applicable laws, (b) not lease, convey or otherwise transfer any of the Property, (c) execute no contracts, leases or other agreements regarding any of the Property (including any amendment or modification of any existing mortgage and related loan documents or the Permits) that extend beyond the Closing Date without the prior consent of Buyer, and (d) promptly

deliver to Buyer a copy of any notice, consent, waiver, request or other communication Seller receives from any public or private entity with respect to any of the Property.

13. **Default.** In the event that:

13.1 Seller fails to consummate the transactions contemplated in this Agreement for any reason or otherwise breaches any covenant, representation or warranty contained in this Agreement, except to the extent caused by Buyer's default or failure of Buyer to satisfy any conditions precedent to Seller's obligations set forth herein, Buyer shall be entitled to (a) enforce specific performance of this Agreement and in such action, will have the right to recover damages which are suffered by Buyer by reason of the delay in the acquisition of the Property; (b) bring suit for damages for breach of this Agreement; or (c) cancel and terminate this Agreement and be relieved of its obligations hereunder. No delay or omission in the exercise of any right or remedy accruing to Buyer upon any breach by Seller under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Buyer of any condition, or the breach of any term, covenant or condition herein contained, shall not be deemed to be a waiver of any other condition, or of any subsequent breach of any term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Buyer shall be cumulative and not alternative. The exercise of one right, power, option, or remedy shall not bar any other right, power, option or remedy.

13.2 Buyer fails to consummate the transactions contemplated in this Agreement for any reason or otherwise breaches any covenant, representation or warranty contained in this Agreement, except to the extent caused by Seller's default or failure of Seller to satisfy any conditions precedent to Buyer's obligations set forth herein, Seller will have the right to (a) bring suit for damages for breach of this Agreement; (b) terminate this Agreement and be relieved of its obligations hereunder; and/or (c) pursue any and all rights and remedies at law or in equity.

14. **Notices.** Any notice, demand, request or other communication under this Agreement must be in writing, and shall be deemed given when it is personally delivered to the address set forth below or two (2) business days after such notice is mailed by first class mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To Buyer:  
City of Victoria  
1620 Stieger Lake Lane  
Victoria, MN 55386  
Attn.: City Manager

To Seller:  
Minnehaha Creek Watershed District  
15320 Minnetonka Blvd.  
Minnetonka, MN 55345  
Attn.: Mr. James Whisker and Ms. Anna Brown

Either party may change its address for notice purposes by giving written notice to the other party in the manner set forth in this Section.

15. **Attorneys' Fees.** In the event of any proceeding to enforce this Agreement, the non-prevailing party shall pay the reasonable attorneys' fees and costs incurred by the prevailing party.

16. **Confirming Termination.** Notwithstanding anything in this Agreement to the contrary, if this Agreement terminates for any reason, each party agrees to execute any and all documents required by applicable Minnesota Statutes.

17. **Additional Provisions.**

17.1 **Effective Date.** “Effective Date” means the date on which Seller signs the Agreement after Buyer has signed it, as shown on the signature page, but if Seller does not deliver the signed Agreement to Buyer on that day, then the Effective Date will be postponed by one day for each day Seller delays in delivering this Agreement to Buyer.

17.2 **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties relating to the transaction contemplated hereby and may not be amended, waived or discharged except by an instrument in writing executed by both parties.

17.3 **Invalidity.** If any clauses or provisions herein contained would invalidate this Agreement in whole or in part, such clauses or provisions only shall be invalid, and the remainder of this Agreement will remain in full force and effect.

17.4 **Limitation on Offer.** The preparation of the Agreement by Buyer and the submission of this Agreement for the review or execution by any party shall not be deemed to be an offer by Buyer to purchase the Property, and this Agreement shall not be binding upon Buyer unless or until it has been executed by both Seller and Buyer.

17.5 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

17.6 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

17.7 **Time of Essence.** Time is of the essence of this Agreement.

17.8 **Survival.** All of the terms, conditions, covenants, representations and warranties of this Agreement will survive Closing and the delivery of the Contract for Deed for a period of twenty-four (24) months.

17.9 **Dates.** If any date, deadline or time for performance under this Agreement falls on a weekend or is a bank holiday, that date, deadline or time for performance will automatically be extended to the next day that is not on a weekend and is not a bank holiday.

17.10 **Construction.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

17.11 **Counterparts; Facsimile Signature.** This Agreement may be executed in counterparts, each of which will be deemed an original. For purposes of executing this Agreement, a facsimile of a signature will be deemed an original.

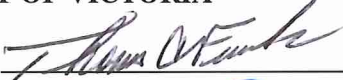
***[SIGNATURES ON FOLLOWING PAGE]***



Seller and Buyer have signed and delivered this Agreement as of the Effective Date.

BUYER:

**CITY OF VICTORIA**

By:   
Its: Mayor

By:   
Its: City Clerk

Dated: 12/14/17

SELLER:

**MINNEHAHA CREEK WATERSHED DISTRICT**

By:   
Its: Administrator

Dated: 12/19/2017

## EXHIBIT A

### LEGAL DESCRIPTION

#### Parcel A:

All that part of Government Lot 8, Section 23, Township 116, Range 24, which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; thence North 89 degrees 41 minutes 16 seconds East, a distance of 220.95 feet; thence South 63 degrees 24 minutes 30 seconds East, a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

#### Parcel B:

All that part of the Southwest Quarter of the Southwest Quarter and Government Lot 8, Section 23, Township 116, Range 24, which lies southerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; thence North 89 degrees 41 minutes 16 seconds East, a distance of 220.95 feet; thence South 63 degrees 24 minutes 30 seconds East, a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

And which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1349.00 feet to the point of beginning of the line to be described; thence South 83 degrees 10 minutes 47 seconds East, a distance of 302.49 feet; thence South 75 degrees 14 minutes 21 seconds East, a distance of 77.81 feet; thence South 22 degrees 00 minutes 00 seconds East, a distance of 361.40 feet; thence North 58 degrees 00 minutes 05 seconds East, a distance of 737.00 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

EXHIBIT B  
PROMISSORY NOTE

\$425,000.00

Victoria, Minnesota  
[ ], 2017

**FOR VALUE RECEIVED, CITY OF VICTORIA**, a statutory city and political subdivision of the State of Minnesota, having an address at 1670 Stieger Lake Lane, Victoria, Minnesota ("**Borrower**"), as maker, hereby unconditionally promises to pay to the order of **MINNEHAHA CREEK WATERSHED DISTRICT**, a public body with power set forth at Minnesota Statutes Chapter 103B and 103D, as lender, having an address at 15320 Minnetonka Boulevard, Minnetonka, Minnesota 55345 ("**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of [FOUR HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$425,000.00)] (the "**Debt**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (this "**Note**") at the rate of 0.50% per annum, and to be paid in accordance with the terms of this Note and that certain Contract for Deed dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Contract**"). All capitalized terms not defined herein shall have the respective meanings set forth in the **Contract**.

ARTICLE 1: PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note from time to time outstanding at the rates and at the times specified in the Contract and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date set forth in the Contract.

ARTICLE 2: DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender (i) if any payment required in this Note is not paid on or prior to the date when due (taking into account any applicable grace period expressly provided for in the Contract), (ii) if not paid on the Maturity Date, or (iii) if any other Event of Default has occurred and is continuing. Borrower acknowledges and agrees that Lender may, at its sole election, exercise its remedies under this Note or the Contract.

ARTICLE 3: SECURITY

This Note is secured by the Contract. All of the terms, covenants and conditions contained in the Contract are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 4: SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest on account of the Debt, the interest contracted for, charged or received by Lender shall never exceed the maximum legal rate, (b) in calculating whether any interest exceeds the maximum legal rate, all such interest shall, to the extent permitted by applicable law, be amortized, prorated, allocated

and spread over the full amount and term of all principal indebtedness of Borrower to Lender so that the rate of interest does not exceed the maximum legal rate, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the maximum legal rate, any such excess shall be deemed to be immediately reduced to such maximum legal rate and any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

#### ARTICLE 5: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by Borrower and Lender.

#### ARTICLE 6: WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or the Contract made by agreement between Lender or any other person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower or any other person who may become liable for the payment of all or any part of the Debt under this Note or the Contract. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note or the Contract.

#### ARTICLE 7: GOVERNING LAW

**(A) THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA.**

**(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS NOTE MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF MINNEAPOLIS, COUNTY OF HENNEPIN, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.**

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

**CITY OF VICTORIA**

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Clerk

State of Minnesota, County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_ and \_\_\_\_\_, the Mayor and City Clerk, respectively, of CITY OF VICTORIA, a statutory city and political subdivision of the State of Minnesota, on behalf of the city.

(Stamp)

\_\_\_\_\_  
*(signature of notarial officer)*

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_  
*(month/day/year)*

EXHIBIT C  
CONTRACT FOR DEED

(Top 3 inches reserved for recording data)

---

**CONTRACT FOR DEED**  
by **Business Entity**

DATE: \_\_\_\_\_, 2017 (the "Effective Date")

THIS CONTRACT FOR DEED (the "Contract") is made on the above date by **MINNEHAHA CREEK WATERSHED DISTRICT**, a public body with power set forth at Minnesota Statutes Chapter 103B and 103D ("Seller"), and **CITY OF VICTORIA**, a statutory city and political subdivision of the State of Minnesota ("Purchaser").

Seller and Purchaser agree to the following terms:

1. **Property Description.** Seller hereby sells and Purchaser hereby buys real property in Carver County, Minnesota, described as follows:

SEE EXHIBIT A.

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto (the "Property"). Unless otherwise specified, Seller hereby delivers possession of the Property to Purchaser on the date hereof.

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

2. **Title.** Seller warrants that title to the Property is, on the date of this Contract, subject only to the following exceptions:

- (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any;
- (b) Reservation of minerals or mineral rights by the State of Minnesota, if any;
- (c) Utility and drainage easements which do not interfere with present improvements;
- (d) Applicable laws, ordinances, and regulations;
- (e) The lien of real estate taxes and installments of special assessments which are payable by Purchaser pursuant to paragraph 6 of this Contract; and
- (f) Those items recorded against the Property in the public records.

3. **Delivery of Deed.** Upon Purchaser's full performance of this Contract, Seller shall execute, acknowledge, and deliver to Purchaser a Special Warranty Deed (the "**Deed**"), in recordable form, conveying marketable title to the Property to Purchaser, subject only to the following exceptions:

- (a) Those exceptions referred to in paragraph 2(a), (b), (c), (d), and (e) of this Contract; and
- (b) Liens, encumbrances, adverse claims or other matters which Purchaser has created, suffered or permitted to accrue after the date of this Contract.

At Seller's option, upon execution of this Contract Seller may execute, acknowledge and deliver, and Buyer shall accept, the Deed,

4. **Purchase Price.** Purchaser shall pay to Seller at the address of **15320 Minnetonka Boulevard, Minnetonka, Minnesota 55345**, the sum of FOUR HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$425,000.00), as and for the purchase price (the "**Purchase Price**") for the Property, payable in five (5) annual installment payments on or before February 1 of each of the first, second, third, fourth and fifth anniversaries of the Effective Date in an amount equal to \$42,500.00, plus all accrued interest owing on each such payment date. On December 31, 2022 (the "**Maturity Date**"), Purchaser shall pay Seller the outstanding balance due and owing hereunder, plus all accrued interest owing on such payment date as the final BALLOON PAYMENT. The Purchase Price shall accrue interest beginning the Effective Date at the rate of 0.50% per annum. Notwithstanding anything herein to the contrary, provided that Purchaser is not in default under the terms of this Contract and to the extent permitted under applicable law, prior to the Maturity Date Purchaser may deliver written notice to Seller electing to extend the Maturity Date for a period of up to three (3) years, subject to agreement on terms and conditions acceptable to Purchaser and Seller.

5. **Prepayment.** Unless otherwise provided in this Contract, Purchaser shall have the right to fully or partially prepay this Contract at any time without penalty. Any partial prepayment shall be applied first to payment of amounts then due under this Contract, including unpaid accrued interest, and the balance shall be applied to the principal installments to be paid in the inverse order of their maturity. Partial prepayment shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments.

6. **Real Estate Taxes and Assessments.** Purchaser shall pay, before penalty accrues, all real estate taxes and installments of special assessments assessed against the Property which are due and payable on and after the Effective Date and in all subsequent years.

7. **Property Insurance.**

- (a) Insured Risks and Amounts. Purchaser shall keep all buildings, improvements, and fixtures now or later located on or a part of the Property insured against loss by fire, lightning and such other perils as are

included in a standard "all-risk" endorsement, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy, including, without limitation, vandalism, malicious mischief, burglary, theft and, if applicable, steam boiler explosion. Such insurance shall be in an amount no less than the full replacement cost of the buildings, improvements, and fixtures located on the Property from time to time, without deduction for physical depreciation. If any of the buildings, improvements, or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Purchaser shall procure and maintain flood insurance in reasonable amounts.

(b) Notice of Damage. In the event of damage to the Property by fire or other casualty, Purchaser shall promptly give notice of such damage to Seller and the insurance company.

#### **8. Damage to the Property.**

(a) Application of Insurance Proceeds. If the Property is damaged by fire or other casualty, the insurance proceeds paid on account of such damage shall be applied to payment of the amounts payable by Purchaser under this Contract, even if such amounts are not then due to be paid, unless Purchaser makes a permitted election described in the next paragraph. Amounts applied to amounts payable under this Contract shall be first applied to unpaid accrued interest and next to the installments to be paid as provided in this Contract in the inverse order of their maturity. Such payment shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments. The balance of insurance proceeds, if any, shall be the property of Purchaser.

(b) Purchaser's Election to Rebuild. If Purchaser is not in default under this Contract, or after curing any such default, Purchaser may elect to have that portion of such insurance proceeds necessary to repair, replace, or restore the damaged Property (the "**Repairs**") deposited in escrow with a bank or title insurance company qualified to do business in the State of Minnesota, or such other party as may be mutually agreeable to Seller and Purchaser. The election may only be made by written notice to Seller within ninety (90) days after the damage occurs. If such a permitted election is made by Purchaser, Seller and Purchaser shall jointly deposit, when paid, such insurance proceeds into such escrow. If such insurance proceeds are insufficient for the Repairs, Purchaser shall, before the commencement of the Repairs, deposit into such escrow sufficient additional money to insure the full payment for the Repairs. All escrowed funds shall be disbursed by the escrowee in accordance generally accepted sound construction disbursement procedures. The costs incurred or to be incurred on account of such escrow shall be deposited by Purchaser into such escrow before the commencement of the Repairs. Purchaser shall complete the Repairs as soon as reasonably possible and in a good and workmanlike manner, and in any event the Repairs shall be completed by Purchaser within two (2) years after the damage occurs. If, following the completion of and payment for the Repairs, there remains any undisbursed escrow funds, such funds shall be applied to payment of the amounts payable by Purchaser under this Contract in accordance with paragraph 8(a) above.

#### **9. Injury or Damage Occurring on the Property.**

(a) Liability. Seller shall be free from liability and claims for damages by reason of injuries or damage occurring on or after the date of this Contract to any person or persons or property while on or about the Property. Purchaser shall defend, indemnify and hold Seller harmless from all claims, demands, liability, loss, cost, expense, cost and obligations, including without limitation reasonable attorneys' fees, on account of or arising out of any such injuries or damage.

(b) Liability Insurance. At all times prior to the maturity date hereunder, Purchaser shall, at Purchaser's own expense, procure and maintain liability insurance with limits of not less than \$1,500,000 per occurrence insuring against claims for bodily injury, death and property damage occurring on or about the Property. Purchaser shall cause Seller to be named as an additional insured and within three (3) days after a request from Seller will provide Seller with a certificate of insurance evidencing that such insurance is in full force



and effect and endorsement(s) establishing Seller's additional insured status. Nothing herein creates any right in any third party of waives or limits any immunity, defense or liability limit available under applicable law to Seller or Purchaser.

10. **Insurance Generally.** The insurance which Purchaser is required to procure and maintain pursuant to paragraphs 7 and 9 of this Contract shall be issued by an insurance provider licensed to do business in the State of Minnesota and acceptable to Seller. The insurance shall be maintained by Purchaser at all times while any amount remains unpaid under this Contract. Purchaser shall provide to Seller not less than thirty (30) days written notice before any cancellation, non-renewal, termination or change in coverage, and Purchaser shall deliver to Seller a duplicate original or certificate of such insurance policy or policies.

11. **Condemnation.** If all or any part of the Property is taken in condemnation proceedings instituted under power of eminent domain or is conveyed in lieu thereof under threat of condemnation, the money paid pursuant to such condemnation or conveyance in lieu thereof shall be applied to the payment of the amounts payable by Purchaser under this Contract, even if such amounts are not then due to be paid. Such amounts shall be applied in the same manner as a prepayment as provided in paragraph 5 of this Contract. Such payments shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments. The balance, if any, shall be the property of Purchaser.

12. **Waste, Repair, and Liens.** Purchaser shall not commit or allow waste of the Property. Purchaser shall maintain the Property in good condition and repair. Purchaser shall not create or permit to accrue liens against the Property which constitute a lien against Seller's interest in the Property. Purchaser shall pay to Seller all amounts, costs and expenses, including reasonable attorneys' fees, incurred by Seller to remove any liens not permitted by this Contract.

13. **Compliance with Laws.** Purchaser shall comply or cause compliance with all laws and regulations of any governmental authority which affect the Property or the manner of using or operating the same, and with all restrictive covenants, if any, affecting title to the Property or the use thereof.

14. **Recording of Contract; Deed Tax.** Seller may, at Purchaser's expense, record this Contract in the Office of the County Recorder or Registrar of Titles in the county in which the Property is located within thirty (30) days after the date hereof. Purchaser shall pay any penalty imposed under Minn. Stat. 507.235 for failure to timely record the Contract. Purchaser shall pay the deed tax due upon the recording of the Deed to be delivered by Seller.

15. **Notice of Assignment.** Neither party may assign its interest in the Property or this Contract without the prior approval of the other party.

16. **Protection of Interests.** If Purchaser fails to pay any sum of money required under the terms of this Contract or fails to perform any of the Purchaser's obligations as set forth in this Contract, and such failure is not cured within fifteen (15) days of Seller's written notice to Purchaser of such failure, Seller may, at Seller's option, pay the same or cause the same to be performed, or both, and the amounts so paid by Seller and the cost of such performance shall be payable at once, with interest at the rate of ten percent (10%) per annum, as an additional amount due Seller under this Contract. If Seller hereafter creates, suffers or permits to accrue, any mortgage, contract for deed, lien or encumbrance against the Property which is not herein expressly assumed by Purchaser, and provided Purchaser is not in default under this Contract, Seller shall timely pay all amounts due thereon, and if Seller fails to do so, Purchaser may, at Purchaser's option, pay any such delinquent amounts or take any actions

reasonably necessary to cure defaults there under and deduct the amounts so paid together with interest at the rate provided in this Contract from the payments next coming due under this Contract.

17. **Defaults and Remedies.** The time of performance by Purchaser of the terms of this Contract is an essential part of this Contract. If Seller has not delivered the Deed upon execution of this Contract, and if Purchaser fails to timely perform any term of this Contract within fifteen (15) days after receipt from Seller of written notice of such failure, Seller may, at Seller's option, elect to declare this Contract cancelled and terminated by notice to Purchaser in accordance with applicable law or elect any other remedy available at law or in equity; provided, however, that if such failure cannot reasonably be cured within such fifteen (15) day period, the deadline to complete such cure shall be extended so long as Purchaser is diligently and continuously prosecuting such cure to completion. If Seller elects to terminate this Contract and Seller has not delivered the Deed to Purchaser, all right, title, and interest acquired under this Contract by Purchaser shall then cease and terminate, and all improvements made upon the Property and all payments made by Purchaser pursuant to this Contract (including escrow payments, if any) shall belong to Seller as liquidated damages for breach of this Contract. Neither the extension of the time for payment of any sum of money to be paid hereunder nor any waiver by Seller of Seller's rights to declare this Contract forfeited by reason of any breach shall in any manner affect Seller's right to cancel this Contract because of defaults subsequently occurring, and no extension of time shall be valid unless agreed to in writing. After service of notice of default and failure to cure such default within the period prescribed by this Contract, Purchaser shall, upon demand, surrender possession of the Property to Seller, but Purchaser shall be entitled to possession of the Property until the expiration of such period. Failure by Seller to exercise one or more remedies available under this paragraph 17 shall not constitute a waiver of the right to exercise such remedy or remedies thereafter. Notwithstanding anything herein to the contrary, Purchaser acknowledges and agree that Seller may, in its sole election, exercise its rights and remedies under that certain Promissory Note dated \_\_\_\_\_, 2017 by Purchaser in favor of Seller or this Contract. Following a default and Seller's exercise of its remedies under this Contract, Seller shall have the right, at its sole election, to elect to retain any and all improvements constructed and/or installed on the Property by or on behalf of Purchaser or cause Purchaser, at its sole cost and expense, to remove such improvements and repair any damage to the Property caused by such removal.

18. **Hazardous Substances.** Purchaser shall not bring, store, generate, or treat hazardous wastes or substances or petroleum products upon the Property. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from any and all claims, demands, actions, causes of action, liabilities or rights which may be asserted against Seller with respect to such substances, or products, it being understood and agreed that this obligation will survive the cancellation of this Contract or the delivery of the Deed pursuant to the terms hereof.

19. **Binding Effect.** The terms of this Contract shall run with the land and bind the parties hereto and their successors in interest.

21. **Headings.** Headings of the paragraphs of this Contract are for convenience only and do not define, limit, or construe the contents of such paragraphs.

22. **Counterparts:** This Contract may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed original, but all such counterparts together shall constitute but one and the same instrument.

[Remainder of page intentionally left blank.]

PURCHASER:

SELLER:

**CITY OF VICTORIA**

**MINNEHAHA CREEK WATERSHED DISTRICT**

By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Its: City Clerk

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

State of Minnesota, County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_ of **MINNEHAHA CREEK WATERSHED DISTRICT**, a public body with power set forth at Minnesota Statutes Chapter 103B and 103D, on behalf of the public body.

(Stamp)

\_\_\_\_\_  
*(signature of notarial officer)*

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_  
*(month/day/year)*

State of Minnesota, County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2017, by \_\_\_\_\_ and \_\_\_\_\_ the Mayor and City Clerk, respectively, of CITY OF VICTORIA, a statutory city and political subdivision of the State of Minnesota, on behalf of the city.

(Stamp)

\_\_\_\_\_  
*(signature of notarial officer)*

Title (and Rank): \_\_\_\_\_

My commission expires: \_\_\_\_\_  
*(month/day/year)*

THIS INSTRUMENT WAS DRAFTED BY:  
Dorsey & Whitney LLP (LKG)  
50 South Sixth Street  
Suite 1500  
Minneapolis, MN 55402  
(612) 340-2600

TAX STATEMENTS FOR THE REAL  
PROPERTY DESCRIBED IN THIS  
INSTRUMENT SHOULD BE SENT TO:  
City of Victoria

\_\_\_\_\_  
\_\_\_\_\_

**Note: Failure to record this contract for deed may give other parties priority over Purchaser's interest in the property**

EXHIBIT D

**EASEMENT**

**On the Property of City of Victoria (PID 650230600 and PID 650230700)  
Carver County, Minnesota**

**Legal description of burdened property:  
Attachment A**

This Easement is entered into between the City of Victoria, a statutory city and political subdivision of the State of Minnesota (“Grantor”), and the Minnehaha Creek Watershed District, a public body with powers set forth at Minnesota Statutes Chapters 103B and 103D (“Grantee”).

A. Grantor owns in fee simple certain real property located in Carver County, Minnesota, as legally described in Attachment A hereto (the “Burdened Property”).

B. The Burdened Property is riparian to Wassermann Lake and contains about 20.5 acres of wetland. The wetland area contains part of a basin that receives runoff from a catchment to the west before it discharges to Wassermann Lake.

C. By an executed agreement between Grantor and Grantee, Grantor has committed to convey this Easement so that Grantee can restore, manage and preserve the wetland area and basin for water quality and habitat improvement purposes. By that agreement, Grantee acquired the Burdened Property in fee, and in turn has conveyed the Burdened Property to Grantor for development and use as public park land, while requiring grant of this Easement.

THEREFORE, for the payment of one dollar and other good and valuable consideration, and the mutual terms set forth herein, the receipt and sufficiency of which hereby are acknowledged, Grantor conveys to Grantee and Grantee accepts the Easement on the Burdened Property, subject to terms specifically set forth herein.

1. Easement Description. The Easement Area is as legally described and delineated on the site plan at Attachment B hereto.

2. Grantee’s Easement Rights. Grantor conveys to Grantee the right to engage in the following activities within the Easement Area. The rights conveyed to Grantee hereunder may be exercised by authorized representatives, agents, contractors and subcontractors of Grantee.

a. Land Alteration. Grantee may modify lands by excavation, dredging, grading, fill and shaping. Grantee owns all right, title and interest in any spoils, soil and vegetative material removed, but will deposit the material in an upland location on the Burdened Property at Grantor’s request on reasonable terms arranged with Grantor.

b. Flowage and Flow Management. Grantee may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Grantee may install, maintain and remove rock, bioengineered elements and fabricated structures within the Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation and Nutrient Management. Grantee may remove surface vegetation, brush and trees within the Easement Area. Grantee may plant vegetation within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns. Grantee may apply aluminum sulfate and similar nutrient management treatments in accordance with professional practice.

e. Exclusion Structures. Consistent with paragraph 4.h, below, Grantee may install, maintain and remove fencing or other appurtenances to protect habitat or ecological features.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, Grantee may use the Easement Area for site inspection, investigation and testing; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. Grantee may enter the Easement Area to inspect, maintain, modify and reconstruct improvements.

Before constructing or installing new improvements, Grantee will communicate its intent to Grantor and, at Grantor's request, consult in good faith regarding the improvements.

3. Access and Staging. Grantee may cross the Burdened Property on foot, by motorized vehicle or with equipment to reach the Easement Area. During active work within the Easement Area, Grantee may stage equipment and stockpile materials outside of the Easement Area subject to reasonable terms and conditions of Grantor. Grantor may designate a route across the Burdened Property provided it is reasonably convenient to Grantee. Grantee will repair any damage to the Burdened Property caused by its access and staging.

4. Grantor's Limitations within Easement Area. Grantor reserves all rights and privileges associated with ownership of the Burdened Property, subject to the following constraints within the Easement Area. For the purposes of this section 4, "Grantor" includes all those acting under authority, direction or permission of Grantor.

a. Prohibited Uses. Grantor will not perform an act that would materially impair or interfere with Grantee's ability to exercise its rights under this Easement.

b. Construction. Grantor will not construct or install a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Grantor will not install a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by Grantee.

d. Surface Alteration. Grantor will not alter surface soils including, without limitation, filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Placement of Waste, Fill or Other Material. Grantor will not dump, dispose of or otherwise place refuse, brush or other waste material.

f. Trees, Shrubs and Other Vegetation. Grantor will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides, except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of water resources, and in each case with written Grantee approval.

g. Motorized Vehicles. Grantor will not operate a motorized vehicle or motorized equipment except for the purpose of activity otherwise authorized under this section 4.

h. Trails, Boardwalks and Signage. Notwithstanding any other provision of this section 4, Grantor may install, maintain and remove trails, boardwalks, signage and related appurtenances for public recreation and education. Any such work will be in accordance with terms and specifications approved by Grantee in writing, approval not to be unreasonably withheld.

Grantor reserves the right to sell, transfer, lease or encumber all or part of the Burdened Property subject to this Easement. Grantor will inform all others who exercise any right on the Burdened Property, by or through Grantor, of this Easement and the constraints that it imposes.

5. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including Grantee, as it may apply to the Burdened Property or any activity on it.

6. Taxes and Insurance. Grantor retains all financial obligations, and bears all costs and liabilities, accruing from the fee ownership of the Burdened Property, and will pay all taxes and assessments levied against the Burdened Property. Each of the parties remains solely responsible to maintain liability and other insurance for its own use of and authority over the Burdened Property.

7. Burdened Property Management. Grantee will be responsible for inspection and maintenance of the condition of all improvements it has constructed or installed under this Easement. Grantee holds Grantor harmless, and will defend and indemnify Grantor, from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages arising out of Grantor's design, construction, operation or maintenance of such improvements, except to the extent resulting from an action or inaction of Grantor for which Grantor independently would be subject to liability. As the fee owner of the Burdened Property and municipal land manager, Grantor will be responsible for day-to-day inspection and maintenance of the Burdened Property, including that portion burdened by this Easement. This responsibility includes, but is not limited to, sanitation; inspection for and addressing obvious hazards resulting from events such as severe weather; inappropriate or unlawful use; and law enforcement.

8. Waiver. A decision by a party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

9. Acts Beyond Party's Control. A party will not exercise its right of enforcement against another party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable

control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

10. Notices. Any notice or other communication that a party must give to the other will be in writing and delivered to the following address, or other address as the party designates by written notice to the other:

Administrator  
Minnehaha Creek Watershed District  
15320 Minnehaha Boulevard  
Minnetonka, MN 55345

City Manager  
City of Victoria  
1670 Stieger Lake Lane  
Victoria, MN 55386

11. Miscellaneous. The parties may amend this Easement only by a duly executed writing. This Easement and all terms herein bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and run in perpetuity with the Burdened Property. Grantee bears the cost of duly recording or registering this Easement at the Carver County Office of Property Records.

12. Recitations and Attachments Incorporated. All recitations, and Attachments A and B, are a part of this agreement.

**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereto execute and deliver this Easement.

**MINNEHAHA CREEK WATERSHED DISTRICT**

By: \_\_\_\_\_  
Its: President

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

**CITY of VICTORIA**



By: \_\_\_\_\_

Its: Mayor

By: \_\_\_\_\_

Its: City Clerk

**STATE OF MINNESOTA  
COUNTY OF CARVER**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_ and \_\_\_\_\_ the Mayor and City Clerk, respectively, of the City of Victoria, Minnesota.

\_\_\_\_\_  
Notary Public

Prepared by Smith Partners PLLP  
400 Second Avenue South, Suite 1200  
Minneapolis, MN 55401  
612-344-1400

**EASEMENT**  
**On the Property of City of Victoria (PID 650230600 and PID 650230700)**  
**Carver County, Minnesota**

**Legal description of burdened property:**  
**Attachment A**

This Easement is entered into between the City of Victoria, a statutory city and political subdivision of the State of Minnesota (“Grantor”), and the Minnehaha Creek Watershed District, a public body with powers set forth at Minnesota Statutes Chapters 103B and 103D (“Grantee”).

A. Grantor owns in fee simple certain real property located in Carver County, Minnesota, consisting of two contiguous tax parcels together comprising about 33.5 acres, as legally described in Attachment A hereto (the “Burdened Property”).

B. The Burdened Property is riparian to Wassermann Lake and contains about 20.5 acres of wetland. The wetland area contains part of a basin that receives runoff from a catchment to the west before it discharges to Wassermann Lake.

C. By an executed agreement between Grantor and Grantee, titled “Second Cooperative Agreement, City of Victoria and Minnehaha Creek Watershed District, Land Conveyance and Park Development, Wassermann Lake Property (INSERT DATE) (“Agreement”), Grantor has committed to convey this Easement so that Grantee can restore, manage and preserve the wetland area and basin for water quality and habitat improvement purposes. By the Agreement, Grantee acquired the Burdened Property in fee, and in turn has conveyed the Burdened Property to Grantor for development and use as public park land, while requiring grant of this Easement.

D. By the Agreement, and an operations plan developed thereunder, Grantor and Grantee are cooperating to construct and maintain recreational improvements and natural resource enhancements on the Burdened Property. Under the operations plan, Grantee is to perform and maintain certain water quality and habitat

improvement work in areas other than the wetland area and basin referenced in the preceding recital.

NOW THEREFORE, for the payment of one dollar and other good and valuable consideration, and the mutual terms set forth herein, the receipt and sufficiency of which hereby are acknowledged, Grantor conveys to Grantee and Grantee accepts the Easement on the Burdened Property, subject to terms specifically set forth herein.

### **EASEMENT AREA**

1. Easement Area Description. The Easement Area is as legally described and delineated on the site plan at Attachment B hereto.

2. Grantee's Rights Within the Easement Area. Grantor conveys to Grantee the right to engage in the following activities within the Easement Area. The rights conveyed to Grantee hereunder may be exercised by authorized representatives, agents, contractors and subcontractors of Grantee.

a. Land Alteration. Grantee may modify lands by excavation, dredging, grading, fill and shaping. Grantee owns all right, title and interest in any spoils, soil and vegetative material removed, but will deposit the material in an upland location on the Burdened Property at Grantor's request on reasonable terms arranged with Grantor.

b. Flowage and Flow Management. Grantee may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Easement Area. This does not include the right to increase flood elevation on, or drain or redirect surface flows on or across, any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Grantee may install, maintain and remove rock, bioengineered elements and fabricated structures within the Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation and Nutrient Management. Grantee may remove surface vegetation, brush and trees within the Easement Area. Grantee may plant vegetation within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns. Grantee may apply aluminum

sulfate and similar nutrient management treatments in accordance with professional practice.

e. Exclusion Structures. Consistent with paragraph 4.h, below, Grantee may install, maintain and remove fencing or other appurtenances to protect habitat or ecological features.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, Grantee may use the Easement Area for site inspection, investigation and testing; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. Grantee may enter the Easement Area to inspect, maintain, modify and reconstruct improvements.

Before constructing or installing new improvements, Grantee will communicate its intent to Grantor and, at Grantor's request, consult in good faith regarding the improvements.

3. Access and Staging for Work in Easement Area. Grantee may cross the Burdened Property on foot, by motorized vehicle or with equipment to reach the Easement Area. During active work within the Easement Area, Grantee may stage equipment and stockpile materials outside of the Easement Area subject to reasonable terms and conditions of Grantor. Grantor may designate a route across the Burdened Property provided it is reasonably convenient to Grantee. Grantee will repair any damage to the Burdened Property caused by its access and staging.

4. Grantor's Limitations within Easement Area. Grantor's rights within the Easement Area are subject to the conditions listed in this section 4. For the purposes of this section 4, "Grantor" includes all those acting under authority, direction or permission of Grantor.

a. Prohibited Uses. Grantor will not perform an act that would materially impair or interfere with Grantee's ability to exercise its rights under this Easement.

b. Construction. Grantor will not construct or install a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Grantor will not install a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by Grantee.

d. Surface Alteration. Grantor will not alter surface soils including, without limitation, filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Placement of Waste, Fill or Other Material. Grantor will not dump, dispose of or otherwise place refuse, brush or other waste material.

f. Trees, Shrubs and Other Vegetation. Grantor will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides, except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of water resources, and in each case with written Grantee approval.

g. Motorized Vehicles. Grantor will not operate a motorized vehicle or motorized equipment except for the purpose of activity otherwise authorized under this section 4.

h. Trails, Boardwalks and Signage. Notwithstanding any other provision of this section 4, Grantor may install, maintain and remove trails, boardwalks, signage and related appurtenances for public recreation and education. Any such work will be in accordance with terms and specifications approved by Grantee in writing, approval not to be unreasonably withheld.

## NATURAL AREAS

5. Natural Areas Description. The Natural Areas are as delineated on the site plan at Attachment C hereto.

6. Grantee's Rights Within the Natural Areas. Grantor conveys to Grantee the right to engage in the following activities within the Natural Areas. The rights conveyed to Grantee hereunder may be exercised by authorized representatives, agents, contractors and subcontractors of Grantee.

a. Vegetation Management. Grantee may remove, install and manage surface vegetation, brush and trees, by means including but not limited to planting and seeding, mowing, weeding, use of approved herbicides and controlled burns.

b. Soil Movement. For the purposes of paragraph 6.a, and for soil stability and function, habitat and related natural resource purposes, Grantee may modify the underlying lands by excavation, grading, fill, shaping and soil amendment, and may lawfully dispose of excess material within the

Easement Area or, with Grantor's written approval, otherwise on the Burdened Property.

c. Signage, Fencing and Appurtenances. Grantee may install, maintain and remove signage, fencing and other appurtenances to protect habitat or ecological features.

7. Access and Staging for Work in Natural Areas. Grantee may cross the Burdened Property on foot, by motorized vehicle or with motorized equipment, and may stage on the Burdened Property vehicles, equipment and materials used for the work. Before operating motorized vehicles or equipment on unpaved area outside of the Natural Areas, and before parking a vehicle overnight, or staging work, outside of the Natural Areas, Grantee will notify Grantor and conform to reasonable terms and conditions stipulated by Grantor. Grantee will repair any damage to the Burdened Property outside of the Natural Areas caused by its activity under this Easement.

8. Grantor's Limitations Within Natural Areas. Grantor will not disturb or do work in the Natural Areas except with approval of, and subject to reasonable terms and conditions stipulated by, Grantee. The operations plan referenced in Recital D, above, is one form of Grantee approval within the meaning of this section 8.

## **GENERAL TERMS**

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including Grantee, as it may apply to the Burdened Property or any activity on it.

10. Grantor's Rights as Fee Owner. Grantor reserves all rights and privileges associated with ownership of the Burdened Property, subject to the constraints set forth in sections 4 and 8, above. Grantor reserves the right to sell, transfer, lease or encumber all or part of the Burdened Property subject to this Easement. Grantor will inform all others who exercise any right on the Burdened Property, by or through Grantor, of this Easement and the constraints that it imposes.

11. Taxes and Insurance. Grantor will be responsible for and will pay any taxes and assessments levied against the Burdened Property. Each of the parties remains solely responsible to maintain liability and other insurance for its own use of the Burdened Property.

12. Burdened Property Management. Grantee will be responsible for inspection and maintenance of the condition of all improvements it has constructed or installed under this Easement. Grantee holds Grantor harmless, and will defend and

indemnify Grantor, from and against any and all suits, actions, causes of action, proceedings, claims, costs and damages arising out of Grantor's design, construction, operation or maintenance of such improvements, except to the extent resulting from an action or inaction of Grantor for which Grantor independently would be subject to liability. As the fee owner of the Burdened Property and municipal land manager, Grantor will be responsible for day-to-day inspection and maintenance of the Burdened Property, including that portion burdened by this Easement. This responsibility includes, but is not limited to, sanitation; inspection for and addressing obvious hazards resulting from events such as severe weather; inappropriate or unlawful use; and law enforcement. This Easement creates no right in any third party and waives no immunity, defense or liability limit that either party enjoys under law with respect to any third party or the other party including specifically, but not limited to, Minnesota Statutes Chapter 466.

13. Waiver. A decision by a party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

14. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

15. Notices. Any notice or other communication that a party must give to the other will be in writing and delivered to the following address, or other address as the party designates by written notice to the other:

Administrator  
Minnehaha Creek Watershed District  
15320 Minnehaha Boulevard  
Minnetonka, MN 55345  
Re: Wassermann Lake Park

City Manager  
City of Victoria  
P.O. Box 36  
Victoria, MN 55386

Re: Wassermann Lake Park

16. Miscellaneous. The parties may amend this Easement only by a duly executed writing. This Easement and all terms herein bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and run in perpetuity with the Burdened Property. Grantee bears the cost of duly recording or registering this Easement at the Carver County Office of Property Records.

17. Recitations and Attachments Incorporated. All recitations, and Attachments A, B and C, are a part of this Easement.

18. Termination of Grantee Rights in Natural Areas. Notwithstanding section 16, above, sections 5 through 8 of this Easement, and the rights and obligations thereunder, may be terminated after a term of thirty (30) years by written notice by either party to the other. Termination will be effective six months after delivery of notice. On termination, all improvements within the Natural Areas will be considered a part of the Burdened Property and appurtenant to Grantor's fee interest.

**IN WITNESS WHEREOF**, intending to be legally bound, the parties hereto execute and deliver this Easement.

**MINNEHAHA CREEK WATERSHED DISTRICT**

By: \_\_\_\_\_

Its: President

**STATE OF MINNESOTA  
COUNTY OF HENNEPIN**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

**CITY of VICTORIA**



By: \_\_\_\_\_  
Its: Mayor

By: \_\_\_\_\_  
Its: City Clerk

**STATE OF MINNESOTA  
COUNTY OF CARVER**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by Tom Funk and Cindy Patnode as the Mayor and City Clerk, respectively, of the City of Victoria, Minnesota.

\_\_\_\_\_  
Notary Public

Prepared by Smith Partners PLLP  
400 Second Avenue South, Suite 1200  
Minneapolis, MN 55401  
612-344-1400

**ATTACHMENT A**

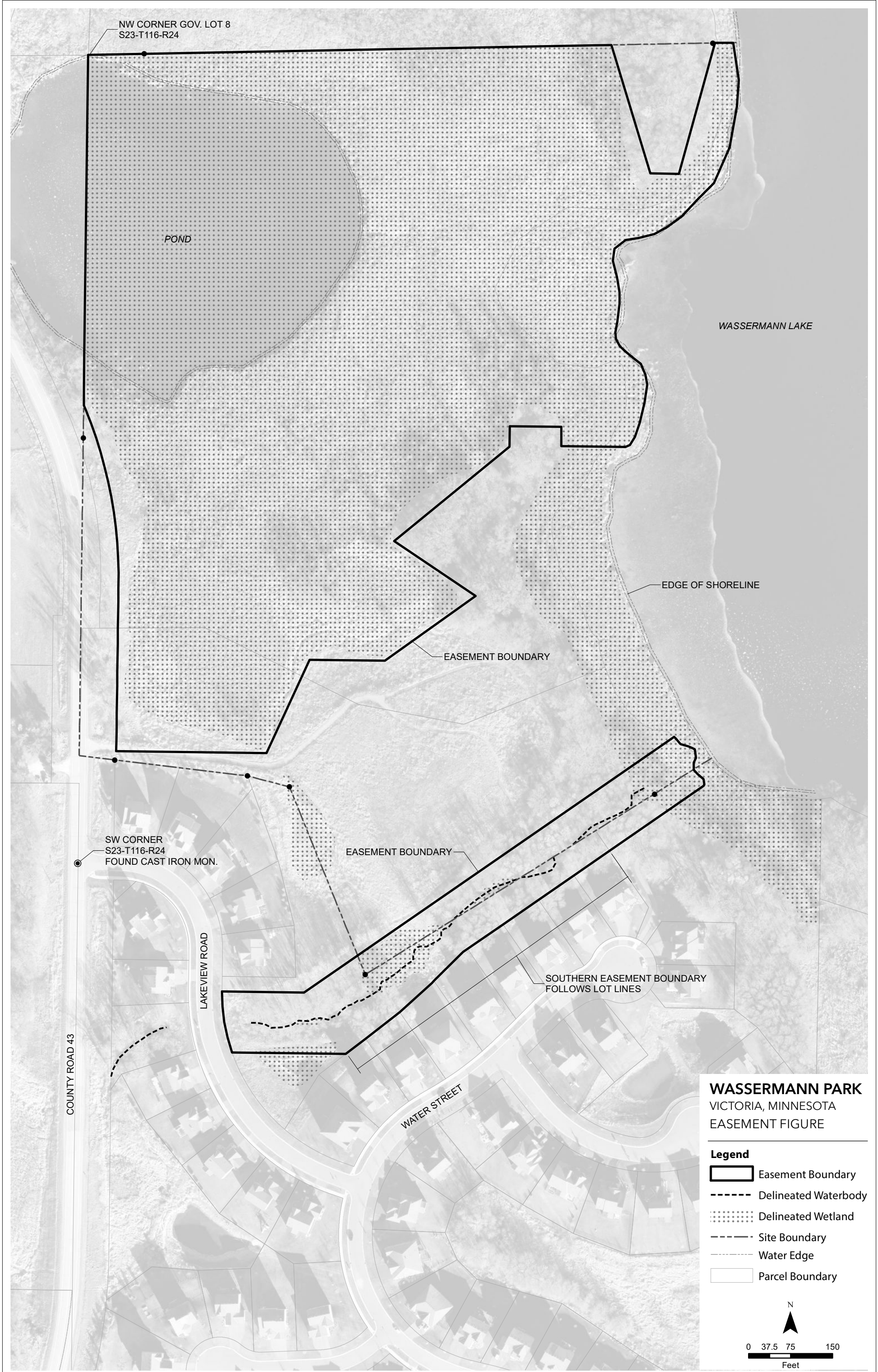
**LEGAL DESCRIPTION: BURDENED PROPERTY**

**ATTACHMENT B**

**SITE PLAN and LEGAL DESCRIPTION: EASEMENT AREA**

**ATTACHMENT C**

**SITE PLAN and DELINEATION: NATURAL AREAS**



NW CORNER GOV. LOT 8  
S23-T116-R24

POND

WASSERMANN LAKE

EDGE OF SHORELINE

EASEMENT BOUNDARY

EASEMENT BOUNDARY

SW CORNER  
S23-T116-R24  
FOUND CAST IRON MON.







LAKEVIEW ROAD

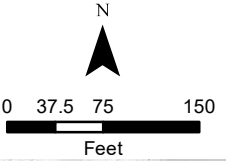
SOUTHERN EASEMENT BOUNDARY  
FOLLOWS LOT LINES

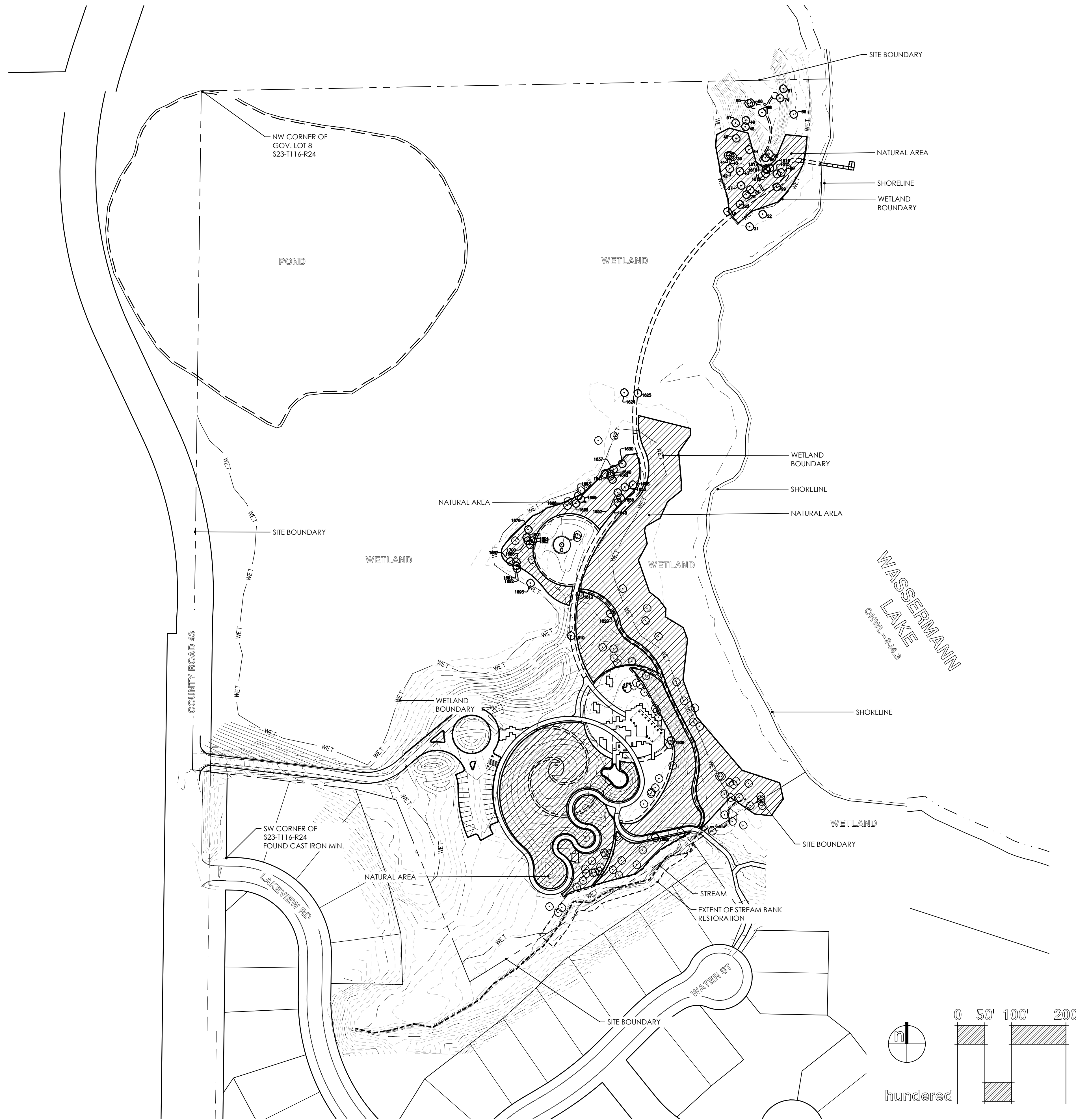
COUNTY ROAD 43

WATER STREET

**WASSERMANN PARK**  
VICTORIA, MINNESOTA  
EASEMENT FIGURE

- Legend**
-  Easement Boundary
  -  Delineated Waterbody
  -  Delineated Wetland
  -  Site Boundary
  -  Water Edge
  -  Parcel Boundary





client

**MINNEHAHA CREEK  
 WATERSHED DISTRICT**

project

**WASSERMANN LAKE  
 PARK**

PID 650230600 &  
 PID 650230700  
 COUNTY ROAD 43  
 VICTORIA, MN 55318

PROJECT NUMBER: 190006

certification

I HEREBY CERTIFY that this plan, specification, or report was prepared by me or under my direct supervision and that I am a duly Licensed Landscape Architect under the laws of the State of Minnesota.

SIGNATURE: \_\_\_\_\_

TYPED OR PRINTED NAME: \_\_\_\_\_

DATE: \_\_\_\_\_ REG. NO.: \_\_\_\_\_

issue / revision

NO	DATE	ISSUE / REVISION

sheet title

**SITE PLAN  
 EASEMENT FIGURE**

THIS SQUARE APPEARS 1/2" x 1/2" ON FULL SIZE SHEETS.

DRAWN BY:  
 CHECKED BY:

**L1.0**