



MEMORANDUM

To: MCWD Board of Managers
From: Anna Brown
Date: February 5, 2018
Re: East Auburn Stormwater Pond Update

Purpose:

As a follow up to the December 21, 2017 Board Meeting, staff is providing this project update to the Board of Managers on the East Auburn Stormwater Ponds in Downtown Victoria.

Background:

At the October 27, 2016 Board Meeting, the Board of Managers approved resolution 16-078, a cooperative agreement with the City of Victoria to upgrade two existing stormwater ponds for the treatment of 22 acres of downtown Victoria and enhanced treatment of the outflow from Church Lake (Attachment 1). The agreement constituted a regional stormwater management plan pursuant to the District's stormwater management rule.

The facilities had first been constructed to specifications outlined in a 2003 District approved regional stormwater plan for downtown Victoria. In 2011, the District's stormwater rules were revised and the regional facilities no longer provided for compliance with District phosphorus or volume control requirements.

In order to accommodate anticipated development in downtown Victoria, the City and District coordinated to evaluate the feasibility of retrofitting the existing facilities to provide the level of capacity needed to meet the current District rules for rate, phosphorus, and volume control for the catchment. The proposed retrofit will incorporate filtration benches into both of the existing ponds and provide some modification to the facility footprint to meet standard design specification for these filtration retrofits. The facilities are designed for treatment of up to 9.3 acres of downtown impervious surface. This design is based on the City's evaluation of current build-out scenarios of the downtown area, thus creating treatment for all anticipated future development and redevelopment in accordance with the District's rules. Further, the outflow from Church Lake will be directed to the regional facility for additional water quality benefit before discharging into East Auburn Lake.

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Clean Water Grant

Concurrent with the execution of the cooperative agreement between the City and District outlined above (Attachment 1), the District applied for Clean Water Grant funds through the Board of Soil and Water Resources. The grant funds were awarded, effective April 14, 2017.

The cooperative agreement anticipated that, in the event that Clean Water Funds were awarded for the project, the City would maintain responsibility for project design, bidding and contractor selection; project costs including matching funds and project overages; and construction oversight.

The District would, in that event, maintain limited oversight of design through 90% plan review and concurrence; be notified of, and have opportunity to comment on, proposed construction contract award; and administer grant funds to the City on a reimbursement basis, based upon project milestones and Clean Water Grant fund availability.

In advance of executing the Grant Agreement, a second, subsidiary agreement was approved by the Board of Managers further specifying responsibilities and obligations of each party under the grant agreement (Attachment 2).

Project Update

On December 21, 2017, staff presented the 90% design plans to the Board of Managers. Without substantive questions or concerns from the Board, staff notified the design engineers, Wenck Associates, of their concurrence with design. Staff further committed to notifying the Board of bid opening.

A Request for Bids was published electronically on QuestCDN.com on January 25, 2018 and published in the Chanhassen Villager, the City's official newspaper, on February 1, 2018. The request was developed consistent with Clean Water Grant requirements, including prevailing wage requirements.

A mandatory pre-bid meeting will be held on Wednesday, February 7, 2018 and proposals are due on February 15, 2018. Awards will be based on best value procurement.

At the recommendation of the design engineers, Wenck Associates, the construction schedule for the awarded contract will be flexible within 2018 to allow the City to get the most competitive costs, with construction likely commencing in the fall of 2018.

Grant Administration

On Friday, February 2, 2018 staff submitted a project progress report to BWSR in accordance with the annual reporting schedule. With the first project milestone – design and contractor

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selection – nearing completion and the BWSR progress report pending review and approval, District staff will soon consider the first reimbursement request from the City of Victoria. All reimbursements to the City will use grant funds already disbursed to the District from BWSR, so will not exceed project funds available.

Next Steps:

The Board will be notified when a contractor selection has been made, likely occurring before the end of February.

If there are questions in advance of the meeting, please contact Anna Brown (abrown@minnehahacreek.org or 952-641-4522). Please note that Mrs. Brown will not be present at the February 8 meeting.

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PROJECT AGREEMENT
City of Victoria and Minnehaha Creek Watershed District

CITY of VICTORIA BASIN ENHANCEMENT PROJECT

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

Recitals

A. The City owns and maintains two linked stormwater basins located in Salter Park, west of downtown, to provide stormwater retention and water quality treatment for a catchment of about 22 acres within the downtown area that flows ultimately to East Auburn Lake, an impaired water. The City constructed the basins pursuant to a 2003 Downtown Redevelopment plan.

B. Pursuant to Minnesota Statutes §103B.231, the District has adopted, and implements, a watershed management plan. Pursuant to Minnesota Statutes §103D.341, the District has adopted, and implements, permitting rules including a rule requiring facilities to provide permanent water quality treatment of stormwater runoff resulting from development and redevelopment.

C. Not all impervious surface within the Project catchment was constructed subject to District stormwater management requirements and the basins do not provide sufficient treatment capacity for that total surface to meet the standards of the present District stormwater management rule. Further, the City anticipates redevelopment of properties within the catchment in the short and longer term. Accordingly, the City wishes to expand and enhance the treatment capacity of the basins both to improve the level of treatment of present development and to assist future redevelopment in meeting the water quality requirements of the District's stormwater management rules.

D. The District engineer has performed conceptual design work to identify cost-effective options to improve water quality treatment for the catchment. The District engineer has concluded that a cost-effective option is to install a filtration bench in the upgradient basin and an iron-enhanced filtration bench in the downgradient basin, and to direct the outflow from Church Lake, south of the downgradient basin, to that basin for additional water quality benefit for East Auburn Lake and further downstream for Halsted Bay of Lake Minnetonka (the "Project").

THEREFORE the City and the District agree as follows:

ARTICLE 1 - DESIGN

1.01 The City will retain an engineering consultant to perform remaining feasibility work as it considers warranted, which may include soil analysis, review of utility plans and locations, and updated hydrologic/hydraulic modeling to determine relevant water elevations. The

District will provide to the City all feasibility and concept work that it and its consultants have produced to date, and facilitate the City consultant's use of District models subject to the District's standard licensing terms. Any materials or models provided are for the information of the City's consultant only; neither the District nor its engineer makes any representation or warranty as to accuracy, completeness or fitness for a particular purpose.

1.02 The City, through its consultant, will prepare the Project design and obtain applicable permits, including a District permit as required. At the City's request, the District will consult with the City during design preparation. The District will efficiently review and act on a permit application submitted by the City under its applicable rules and will not charge a permit fee. The City will provide the 90 percent design to the District for review and concurrence, and will prepare final plans consistent therewith. During construction, the City will notify the District of any change from the final plans before it is approved by the City, except for field changes, of which the District may be notified promptly after approval. The District may account for any plan changes in determining capacities under paragraph 6.01, below.

1.03 It is not expected that any additional easement or other land rights will be needed to construct and maintain the Project. However, to the extent any such rights must be acquired, the City will be responsible to do so at its cost.

1.04 The District and City will cooperate to develop planting specifications and specifications for information signage, for incorporation into the design plans. If City construction cost is not defrayed by grant funding, the City may elect, in lieu of the planting specifications, to proceed with more simple plans to provide for vegetation coverage and soil stability.

ARTICLE 2 - FUNDING

2.01 In cooperation with the City, the District has applied for a State of Minnesota Clean Water Fund (CWF) grant through the Minnesota Board of Water and Soil Resources (BWSR). If a grant is awarded, the District will serve formally as grantee and will receive and disburse funds to the City. As a prerequisite to the District's signing the grant agreement, the City and the District will enter into a subsidiary agreement under which, the City and District anticipate:

- (a) the City and District will cooperate to determine which grant agreement obligations the City may assume directly;
- (b) the City will assume responsibility to ensure that all grant agreement obligations are met, except for obligations regarding the management and disbursement of funds that will remain with the District; and
- (c) the City will indemnify the District, and hold it harmless, regarding any loss of grant funds or other costs or damages incurred either as a result of grant agreement non-compliance or pursuant to the terms of the grant agreement, except for loss, cost or damages that result from the negligent or willful act of the District with respect to its obligations regarding the management and disbursement of funds.

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- (c) the City will indemnify the District, and hold it harmless, regarding any loss of grant funds or other costs or damages incurred either as a result of grant agreement non-compliance or pursuant to the terms of the grant agreement, except for loss, cost or damages that result from the negligent or willful act of the District with respect to its obligations regarding the management and disbursement of funds.

2.02 If a CWF grant is awarded, the City and District will establish a schedule for the City to document expenses and be disbursed grant funds by the District. The schedule will account for the requirements of the City's construction contract and the terms of grant fund availability under the grant agreement.

2.03 The City will bear the cost of Project construction. The City's cost will be defrayed by any grant funds awarded for the Project. The City may use stormwater charges or any other means within its authority, as it chooses, to finance and fund the Project.

2.04 Notwithstanding paragraph 2.03, the City and District will share evenly the contract cost to design, produce and install informational signage and any other external costs associated with public information efforts under Article 4, below.

2.05 The City will bear the cost of Project monitoring and maintenance, including signage maintenance, as may be required by this Agreement or any permit for the Project, including any District permit, and will bear the cost of its actions prompted by monitoring under paragraphs 5.02 and 5.03, below. The District will bear the cost of any performance monitoring it elects to perform beyond the monitoring to which the City is obligated.

2.06 Each party will bear its own internal and administrative costs for any task it performs under this Agreement.

ARTICLE 3 - CONSTRUCTION

3.01 The City will retain one or more contractors to construct the Project. Construction will be under the oversight of the City and of a registered professional engineer on behalf of the City. The City will conduct the procurement process and select the contractor(s) in accordance with its own prerogative, but will include in the contract such reasonable technical specifications as the District requests and, to the extent allowed by law, reasonable contractor experience requirements requested by the District, so that the contractor(s) chosen have the experience and competence to properly construct the specialized elements of the Project.

3.02 Within seven days of opening bids for the construction contract, the City will submit to the District project representative an abstract of bids. The District may comment on the proposed award but the City will retain its prerogative to select the contractor.

3.03 The basins being retrofitted may be drawn down as necessary during construction of the Project, but the basins and their appurtenances will remain functional during the work so as to provide treatment for existing impervious surface that is using the basins for stormwater management compliance under District permits.

3.04 In awarding and administering the construction contract and performing construction, the City will comply and cause its contractor to comply with all federal, state and local laws, and all applicable ordinances and regulations.

3.05 The Project will be substantially complete, and in accordance with the design as approved by the District or thereafter modified under paragraph 1.02, above, by October 13, 2017. The City's engineer will certify the Project as complete by November 1, 2017. The District will confirm completion within 15 days of receiving the City engineer's certification. The City may extend a contract completion date for unavoidable delays encountered in performance, with written concurrence of the appropriate City official and subject to the terms of any District permits issued under paragraph 6.04, below.

3.06 During and following construction, the District has the right to observe construction and inspect the Project, and will do so within 10 calendar days of written notice of substantial completion. The City engineer or its consulting engineer will certify completion and supply a copy of signed as-built drawings to the District. The District must confirm completion as a prerequisite for regulatory credit for the Project under paragraph 6.01, below.

ARTICLE 4 - PUBLIC INFORMATION

4.01 The City and District will cooperate to define and implement a signage plan for the Project and other public information efforts, both during construction and with respect to the completed project.

ARTICLE 5 - MAINTENANCE

5.01 The City will maintain the Project in accordance with the terms of the Programmatic Maintenance Agreement between the parties dated January 29, 2014, Attachment A hereto, incorporated herein, and additional maintenance terms particular to the Project as set forth in Attachment B hereto, incorporated herein. This maintenance obligation will extend for five years from the date of this Agreement, and will renew automatically for successive five-year terms unless and until terminated or otherwise modified by the written agreement of the parties.

5.02 The City will conduct performance monitoring as set forth in Attachment C hereto, incorporated herein, and will coordinate with the District on further details as to the implementation of the monitoring program. If monitoring fails to meet the performance standard stated in Attachment C, the City, in consultation with the District, will perform reasonable investigation to determine the cause of the failure and take feasible actions to meet the performance standard or otherwise improve performance. A feasible action is one that is technically attainable at a cost not grossly disproportionate to the performance benefit it is capable of achieving.

5.03 If the cause of a failure to meet the performance standard, or reasonable steps to correct performance, cannot be identified, the City and District will cooperate to determine what, if anything, the CWF grant agreement requires, and the City will be responsible to take such steps.

5.04 The City and District will cooperate to determine actions, responsibilities and funding allocation for any appropriate Project modifications to improve performance beyond what the grant agreement requires. The District, in its discretion and within its legal authority, may

fund any costs it assumes by means within its authority, including stormwater charges or another mechanism that draws revenue from the affected geographic area.

ARTICLE 6 - PROJECT USE for REGULATORY COMPLIANCE

6.01 On the basis of as-builts and technical specifications, the City will quantify the phosphorus, rate and volume control capacities of the Project for District concurrence. A record of the capacities as determined will be maintained by each party.

6.02 At any time, the City may reserve any remaining phosphorus control capacity for Total Maximum Daily Load or anti-degradation compliance, prospective City projects, or any other purpose. The parties will memorialize this decision in writing, and the dedicated capacity no longer will be available under paragraph 6.03, below.

6.03 This Agreement constitutes a regional stormwater management plan pursuant to section 7 of the District's stormwater management rule, with the following stipulations:

- a. The Project may be used as a regional facility for any creation or replacement of hard surface within the catchment as delineated on Attachment D hereto, incorporated herein.
- b. Except as further provided herein, use of the regional facility will serve to meet phosphorus, rate and volume control requirements under the District's stormwater rule for all development and redevelopment within the defined catchment, up to a total of 9.3 acres of existing and new hard surface. The City and District will maintain and share an accounting of the use of Project capacity.
- c. If the District stormwater rule is revised at any future time to impose a stricter phosphorus, rate or volume control requirement, at the time of any permitting within the catchment the District will convert this stricter standard into an acreage equivalent for deduction from the 9.3-acre capacity.
- d. Individual project sites must incorporate Best Management Practices on the site in accordance with paragraph 7(c) of the rule, as amended.
- e. Any applicant seeking to use Project capacity will be required to document that the City has authorized use of the Project and that the Project is in maintained condition.
- f. The District stormwater management rule requires that stormwater management facilities be operational concurrent with the creation or replacement of impervious surface for which they are to provide treatment. The District variance rules also allow for the District Board of Managers ("Board") to grant an exception to any rule requirement if the applicant proposes an alternative means of compliance that the Board finds will achieve a greater degree of water resource protection than would strict compliance with the requirement. In approving this Agreement as a regional stormwater management plan, the Board finds that the exception provision is

satisfied for any application to create or replace impervious surface that comes before the Board proposing to use the Project for compliance purposes, but where the Project will not be operational concurrent with the proposed work, provided the Project is completed within the deadlines set forth in this Agreement. The rationale for the exception is that the Project will provide for enhanced treatment for the catchment in advance of full redevelopment and further will provide treatment for Church Lake outlet flows, which the District engineer has determined together will substantially exceed the loss of treatment during the time between redevelopment and when the Project becomes operational.

Except as specifically stated in this Agreement, District rules and regulatory procedures will apply as of the time an application is considered.

6.04 If at a future time the City is exercising sole authority for stormwater management permitting pursuant to District approval of the City's local water plan under Minnesota Statutes §103B.235, as amended, the parties will cooperate so that the District may confirm that permitting accords with the terms of this section 6.

ARTICLE 7 - GENERAL

7.01 Each party is responsible for its own employees for any claims arising under the Workers Compensation Act. Each party is responsible for its own acts, omissions and the results thereof to the extent authorized by law and will not be responsible for the acts and omissions of the other party or the results thereof. Minnesota Statutes chapter 466 and other applicable law govern liability of the City and the District. This Agreement creates no rights in and waives no immunity, defense or liability limit with respect to any third party or the other party to this Agreement. Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement.

7.02 The District's role under this Agreement is solely to support the City's implementation of innovative stormwater management approaches and the City's investment in the Project by establishing terms under which the Project may be used to comply with District regulatory requirements. The District has no authority to select, or role in selecting, the design, means, method or manner of performing any part of the Project or the person or firm who will perform the work. Any District approval or concurrence in plans and specifications or any other aspect of Project construction is solely for the District's own accounting of its funds spent hereunder and its tracking of Project outcomes for regulatory purposes.

7.03 Each notification required by this Agreement must be made to the project representative. The project representatives of the parties are:

Anna Brown, Planner - Project Manager
Minnehaha Creek Watershed District
15320 Minnehaha Boulevard
Minnetonka, MN 55345
(952) 471-0590

Cara Geheren, City Engineer
City of Victoria
1670 Stieger Lake Lane
Victoria, MN 55386
(651) 300-4261

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

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

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

7.06 The above Recitals are incorporated into this Agreement.

7.07 This Agreement is effective when executed by both parties and expires five years thereafter. Paragraphs 2.05, 5.01-5.04, 6.02-6.04 and 7.01-7.02 will survive expiration.

7.08 This Agreement is entered pursuant to, and shall be governed by, Minnesota law.

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

CITY OF VICTORIA

By Tom Rumpf
Its Mayor

Date: 12/22/16

By Lauri Hokkanen
Its City Manager

Date: 12/16/2016

Approved for form and execution:


MCWD Counsel

MINNEHAHA CREEK WATERSHED DISTRICT

By Sherry Davis White Date: Feb 23, 2017
Its President

ATTACHMENT A

City of Victoria Programmatic Maintenance Agreement

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

Between the Minnehaha Creek Watershed District
and the City of Victoria

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

Recitals and Statement of Purpose

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

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

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

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

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

THEREFORE IT IS AGREED as follows:

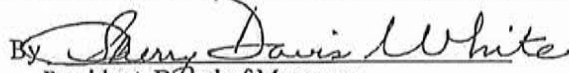
1. All features requiring maintenance under an MCWD permit shall be maintained in perpetuity in accordance with Attachment A, Maintenance Plan & Schedule.
2. MCWD permits for specific projects may contain additional maintenance conditions in accordance with MCWD rules, as they may be amended from time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

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

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

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

MINNEHAHA CREEK WATERSHED DISTRICT


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

APPROVED AS TO FORM and EXECUTION

By:  Date: _____
Its Attorney

CITY OF CITY

By:  Date: _____
Its Mayor

By:  Date: _____
Its Administrator

APPROVED AS TO FORM and EXECUTION

By: _____ Date: _____
City Attorney

ATTACHMENT A

MAINTENANCE PLAN & SCHEDULE

1. WETLAND BUFFER AREAS

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

2. SHORELINE & STREAMBANK STABILIZATIONS

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

3. WATERBODY CROSSINGS & STRUCTURES

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

4. STORMWATER FACILITIES

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

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

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

ATTACHMENT B

Additional Maintenance Terms

The project will periodically require maintenance to retain treatment effectiveness. Occasional removal of accumulated particulate in pond bottoms is necessary to maintain Pool dead volumes needed to effectively settle particles. This normally requires a survey of pond bottom elevations on a 2 to 5 year cycle. When the pool dead volume has diminished to near 50% of the original volume, the accumulated sediment should be removed. The removed sediment should be managed in accordance with current MPCA guidance for storm water ponds.

The project could also require periodic replacement of clogged filter material (sand) and also clogged or depleted iron filter media (sand and iron filings). Annual inspections should be made to assess the degree of clogging of sand filter material. In addition, a composite sample or several discreet samples of the sand-iron media should be collected when the estimated half-life of the iron bonding capacity has been reached. The sample(s) should be analyzed to determine actual remaining bonding capacity and replacement of the sand-iron media should be scheduled on the basis of testing results to maintain continuous treatment effectiveness.

ATTACHMENT C

Monitoring Terms

Sample and measure flow at three locations using standard stream monitoring protocol three times each year during spring and summer. Locations will include:

- Church Lake outflow at culvert under 81st Street
- The outlet of the filtration bench
- The outlet of the iron-enhanced filtration bench

Testing will include:

- Total Suspended Solids (TSS)
- Total Phosphorus (TP)
- Ortho-phosphorus (Ortho-P)

A brief annual report will be written of analytical results and measured flows. Laboratory reports should be attached or made available to MCWD. If the system demonstrates less than 50% removal of Ortho-P load on an annual basis maintenance on the system should be performed.

ATTACHMENT D

Regional Stormwater Catchment Area

Legend

Parcels

Existing BMPs

Study Area to Salter Park

Study Area to Steiger Lake

BMP Improvement	P-Removal (lbs/yr)	TSS-Removal (lbs/yr)	Estimated Cost
1 - Iron-enhance Sand Filtration Bench*	24.7	4,750	\$ 74,000
2 - Filtration Bench	3.1	560	\$ 140,000
3 - Expansion of Pond and Filtration Bench	1.8	350	\$ 215,000
4 - Underground Filtration System	29.7	5,660	\$ 539,000
Total			

*The P-removal calculated for the iron-enhanced filter bench does not include the dissolved or particulate phosphorus reduction from Church Lake



MINNEHAHA CREEK WATERSHED DISTRICT

Downtown Victoria Study Area Map



Respective partner. Exceptional outcomes.

JUL 2016

Figure 1

**MEMORANDUM of AGREEMENT
CITY of VICTORIA and MINNEHAHA CREEK WATERSHED DISTRICT**

SIX MILE CREEK - EAST AUBURN STORMWATER ENHANCEMENT PROJECT

This Memorandum of Agreement (MOA) is entered into between the City of Victoria, a statutory city and political subdivision of the State of Minnesota ("City"), and the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota with powers and purposes set forth at Minnesota Statutes Chapters 103B and 103D ("District") (together, the "Parties").

Recitals

A. At the request of the City, the District applied to the Minnesota Board of Water and Soil Resources (BWSR) for a Clean Water Fund/Competitive Grants Program (CWF/CGP) grant to provide partial funding for a City project to expand and enhance two stormwater basins and associated appurtenances (the "Project"). The Project will provide water quality treatment for a defined area of developed, downtown Victoria and for discharge from Church Lake before these waters flow into East Auburn Lake, a waterbody presently designated as "impaired" due to excessive phosphorus levels.

B. The District and City have entered a Project Agreement dated February 23, 2017 ("Project Agreement"), which establishes terms and conditions under which the City and District will complete and maintain the Project. The Project Agreement contemplates that the parties will enter this MOA as a condition of the District executing the grant agreement, defined below.

C. The District has been awarded a CWF/CGP grant in the amount of \$262,520 for the Project, identified as Grant Program C17-3907. As grantee, the District will be the grant agreement signatory and assume obligations to BWSR under that agreement.

D. The City will design, construct, maintain and bear all non-grant funded costs of the Project. The District has agreed to serve as grantee to facilitate the City's access to the grant funds and on the condition that the City will be responsible to the District for all grant requirements other than basic administrative and reporting obligations.

Terms

1. Attachment A to this MOA, and incorporated herein, is the Project grant agreement including work plan and project budget (together, "Grant Agreement"). On full execution of this MOA, the District will sign the Grant Agreement.

2. The District, on signing the Grant Agreement, will assume obligations to BWSR as set forth in the Grant Agreement. The City recognizes that as the party benefitting from the grant funds, it is responsible to facilitate the District's compliance with all Grant Agreement obligations.

3. The City is responsible to conform to the Grant Agreement as to those obligations within its control. The City will cooperate in a timely way with the District with respect to any City communications, documentation or other support that the District requires in order to meet its obligations as grantee. Specifically, but not exclusively, the City will do the following in accordance with the Grant Agreement:

a. Design, construct, provide signage for, own and maintain the Project in accordance with the Grant Agreement and any applicable deadlines therein. The City represents that it owns or has access rights to all elements of the Project to which access is required for maintenance.

b. Provide all matching funds.

c. Comply with all contracting and bidding requirements, including prevailing wage requirements.

d. Maintain and retain all books, records, documents and accounting procedures and practices for the period specified, make available for inspection, and perform required audits.

e. Conform to publicity and intellectual property requirements.

4. The Parties will communicate promptly with each other to facilitate timely compliance with Grant Agreement requirements. The District will promptly disburse grant funds to the City on recognition of receipt from BWSR in the District's depository account.

5. The following terms apply and reflect the District's limited role as formal grantee:

a. The Parties will cooperate to ensure that: (a) the terms of the Grant Agreement are met; and (b) the administrative costs and resource burdens incurred by the District as grantee are minimized.

b. As between the City and the District, the City will fully bear: (i) Project cost increases; (ii) the risk that, for any reason, BWSR does not provide the full grant amount; and (iii) the obligation to return or repay any grant amount, as either may arise under the Grant Agreement.

c. The City will hold the District harmless with respect to any claim, proceeding, cost, liability or damage the City incurs arising out of the Grant Agreement or the District's role as grantee thereunder. The City will indemnify the District with respect to any claim, proceeding, cost, damage or District liability (including reasonable attorney fees) arising out of the Grant Agreement or the District's role as grantee thereunder, including but not limited to any District cost or liability arising out of its obligation to defend, hold harmless and indemnify the State, its agents and employees.

d. Notwithstanding subsection 5.c, the City's obligations to hold the District harmless and indemnify it do not apply to that portion of any loss, cost or damages resulting from the District's negligent or willful act with regard to its obligations regarding its management or disbursement of grant funds.

e. In any proceeding arising under the Grant Agreement, the Parties will cooperate to substitute or add the City as party in interest, both to minimize District cost and to allow the City to fully protect its interests.

f. Notwithstanding any other term of this MOA, nothing herein creates a right in any third party or waives an immunity, defense or liability limit of a party hereto with respect to any third party.

As between the Parties, only contractual remedies are available for a party's failure to fulfill the terms of this MOA.

g. This MOA is not a joint powers agreement under Minnesota Statutes §471.59 and nothing herein constitutes either party's agreement to be responsible for the acts or omissions of the other party pursuant to subdivision 1(a) of that statute.

6. As between the Parties, the results of the Project, the reports submitted under the Grant Agreement, and any new information or technology developed with the assistance of the grant are in the public domain and may not be copyrighted, patented, trademarked or designated as trade secret by either party. The intellectual property rights of the Parties are subject to the Grant Agreement.

7. Each communication under this MOA will be made to the following representatives:

District:

Administrator
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka MN 55345

Re: Six Mile Creek - East Auburn Stormwater Enhancement Project

City:

City Engineer
City of Victoria
1670 Stieger Lake Lane
Victoria MN 55386

Contact information will be kept current. A party may change its contact by written notice to the other.

8. Miscellaneous terms:

a. This MOA is effective on execution by the Parties and will remain in effect until the Grant Agreement terminates. An obligation of a party under this MOA that by its nature continues beyond Grant Agreement termination will survive the expiration of this MOA.

b. This MOA may not be amended, assigned or transferred except in a writing executed by the duly authorized representatives of the Parties.

c. A party's failure to enforce a term of this MOA does not waive that party's right to enforce it subsequently.

d. The above Recitals are incorporated into this MOA.

e. To the extent any term or condition in this MOA is inconsistent with, or differs from, any term or condition in the Project Agreement, this MOA amends and supersedes such provision in the Project Agreement.

IN WITNESS WHEREOF, the Parties execute this MOA by their authorized officers, intending it to be legally binding.

CITY OF VICTORIA

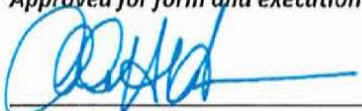
By 
Its Mayor

Date: 4/14/2017

By Laurie Hokkanen
Its City Manager

Date: 4/14/2017

Approved for form and execution:


MCWD Counsel

MINNEHAHA CREEK WATERSHED DISTRICT

By Sherry Davis White
Its President

Date: 7/6/2017

ATTACHMENT A:

Board of Water and Soil Resources Competitive Grants Program Grant Agreement

- 1.2. **Expiration date:** December 31, 2019, or until all obligations have been satisfactorily fulfilled, whichever comes first.
- 1.3. **Survival of Terms:** The following clauses survive the expiration or cancellation of this Agreement: 7. Liability; 8. State Audits; 9. Government Data Practices; 11. Publicity and Endorsement; 12. Governing Law, Jurisdiction, and Venue; 14. Data Disclosure; and 18. Intellectual Property Rights.

2. Grantee's Duties

The Grantee will comply with required grants management policies and procedures set forth through Minn. Stat. § 16B.97, Subd. 4(a)(1). The Grantee is responsible for the specific duties for the Program as follows:

- 2.1. **Implementation:** The Grantee will implement their work plan, which is incorporated into this Agreement by reference.
- 2.2. **Reporting:** All data and information provided in a Grantee's report shall be considered public.
 - 2.2.1. The Grantee will submit an annual progress report to the Board by February 1 of each year on the status of program implementation by the Grantee. Information provided must conform to the requirements and formats set by the Board.
 - 2.2.2. The Grantee will display on its website the previous calendar year's detailed information on the expenditure of these State grant funds and measurable outcomes as a result of the expenditure of these State grant funds according to the format specified by the BWSR, by March 15 of each year.
 - 2.2.3. Final Progress Report: The Grantee will submit a final progress report to the Board by February 1, 2020 or within 30 days of completion of the project, whichever occurs sooner. Information provided must conform to the requirements and formats set by the Board.
- 2.3. **Match:** The Grantee will ensure any local match requirement will be provided as stated in Grantee's approved work plan.

3. Time

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

4. Terms of Payment

- 4.1. Grant funds will be distributed in three installments: 1) The first payment of 50% will be distributed after the execution of the Grant Agreement. 2) The second payment of 40% will be distributed after the first payment of 50% has been expended and reporting requirements have been met. An eLINK Interim Financial Report that summarizes expenditures of the first 50% must be signed by the Grantee and approved by BWSR. Selected grantees may be required at this point to submit documentation of the expenditures reported on the Interim Financial Report for verification. 3) The third payment of 10% will be distributed after the grant has been fully expended and reporting requirements are met. The final, 10% payment must be requested within 30 days of the expiration date of the Grant Agreement. An eLINK Final Financial Report that summarizes final expenditures for the grant must be signed by the grantee and approved by BWSR.
- 4.2. All costs must be incurred within the grant period.
- 4.3. All incurred costs must be paid before the amount of unspent grant funds is determined. Unspent grant funds must be returned within 30 days of the expiration date of the Grant Agreement.
- 4.4. The obligation of the State under this Grant Agreement will not exceed the amount stated above.
- 4.5. This grant includes an advance payment of 50 percent of the grant's total amount. Advance payments allow the grantee to have adequate operating capital for start-up costs, ensure their financial commitment to landowners and contractors, and to better schedule work into the future.
- 4.6. Contracting and Bidding Requirements per Minn. Stat. §471.345, Grantees that are municipalities as defined in Subd. 1 must do the following if contracting funds from this grant contract agreement for any supplies, materials, equipment or the rental thereof, or the construction, alteration, repair or maintenance of real or personal property.
 - 4.6.1. If the amount of the contract is estimated to exceed \$100,000, a formal notice and bidding process must be conducted in which sealed bids shall be solicited by public notice. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
 - 4.6.2. If the amount of the contract is estimated to exceed \$25,000 but not \$100,000, the contract may be made either upon sealed bids or by direct negotiation, by obtaining two or more quotations for the purchase or sale when possible, and without advertising for bids or otherwise complying with the requirements of competitive bidding. All quotations obtained shall be kept on file for a period of at least one year after receipt thereof. Municipalities may, as a best value alternative, award a contract for construction, alteration, repair, or maintenance work to the

vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2) and paragraph (c).

- 4.6.3. If the amount of the contract is estimated to be \$25,000 or less, the contract may be made either upon quotation or in the open market, in the discretion of the governing body. If the contract is made upon quotation, it shall be based, so far as practicable, on at least two quotations which shall be kept on file for a period of at least one year after their receipt. Alternatively, municipalities may award a contract for construction, alteration, repair, or maintenance work to the vendor or contractor offering the best value under a request for proposals as described in Minn. Stat. §16C.28, Subd. 1, paragraph (a), clause (2).
- 4.6.4. Support documentation of the bidding process utilized to contract services must be included in the Grantee's financial records, including support documentation justifying a single/sole source bid, if applicable.
- 4.6.5. For projects that include construction work of \$25,000 or more, prevailing wage rules apply per Minn. Stat. §§177.41 through 177.44. Consequently, the bid request must state the project is subject to prevailing wage. These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole. A prevailing wage form should accompany these bid submittals.

5. Conditions of Payment

All services provided by the Grantee under this Grant Agreement must be performed to the State's satisfaction, as set forth in this Agreement and in the BWSR approved work plan for this program. Compliance will be determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, State, and local laws, policies, ordinances, rules, FY 2017 Clean Water Fund Competitive Grants Policy, and regulations. All Grantees must follow the Grants Administration manual policy. Minnesota Statutes §103C.401 (2014) establishes BWSR's obligation to assure program compliance. If the noncompliance is severe, or if work under the grant agreement is found by BWSR to be unsatisfactory or performed in violation of federal, state, or local law, BWSR has the authority to require the repayment of grant funds, or an additional penalty. Penalties can be assessed at a rate up to 150% of the grant agreement.

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

6. Assignment, Amendments, and Waiver

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

7. Liability

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

8. State Audits

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

- 8.1. The books, records, documents, accounting procedures and practices of the Grantee and its designated local units of government and contractors relevant to this grant, may be examined at any time by the Board or Board's designee and

are subject to verification. The Grantee or delegated local unit of government will maintain records relating to the receipt and expenditure of grant funds.

8.2. The Grantee or designated local unit of government implementing this Agreement will provide for an audit that meets the standards of the Office of State Auditor. The audit must cover the duration of the Agreement Period and be performed within one year after the end of the Agreement Period or when routinely audited, whichever occurs first. Copies of the audit report must be provided to the Board if requested.

9. Government Data Practices

The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this Grant Agreement. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

10. Workers' Compensation

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

11. Publicity and Endorsement

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

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

12. Governing Law, Jurisdiction, and Venue

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

13. Termination

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

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

14. Data Disclosure

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

15. Prevailing Wage

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

16. Constitutional Compliance

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

17. Signage

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

18. Intellectual Property Rights

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

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

Approved:

Minnehaha Creek WD

Board of Water and Soil Resources

By: _____
(print)

By: _____

(signature)

Title: _____

Title: _____

Date: _____

Date: _____