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**Title:** Approving Funding Agreement with City of Plymouth and 2022 Budget Amendment for the Maple Creek Pond Improvement Project

**Resolution number:** 21-080 and 21-081

**Prepared by:** Name: Kate Moran  
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**Reviewed by:** Name/Title: Becky Christopher, Policy Planning Manager

**Recommended action:** Approve funding agreement with the City of Plymouth and 2022 budget amendment for the Maple Creek Pond Improvement Project

**Schedule:** Early 2022: Anticipated construction commencement by City of Plymouth

**Budget considerations:** Fund name and code: Responsive CIP, 3500  
2022 fund budget: \$0 with \$250,000 held assigned (requires budget amendment)  
Expenditures to date: \$0  
Requested amount of funding: NTE \$100,000

**Past Board action:** Res # 21-053: Concurrence with Staff Recommendations for Project Opportunities Reviewed through Pilot Responsive Program  
Res # 21-059 and 21-060: Adoption of 2022 Budget and Certification of Levy  
Res # 21-064: Directing Notice of Public Hearing to Consider Ordering the Maple Creek Drainage Improvement Project  
Res # 21-069: Ordering of Maple Creek Pond Improvement Project

**Summary:**

Background

The Minnehaha Creek Watershed District (District or MCWD) seeks to leverage opportunities created through land-use change and partner projects to make measurable progress toward District goals, such as addressing water quality impairments. The District's 2017 Watershed Management Plan (WMP) identifies opportunity-based stormwater management projects in the Capital Improvement Plan (CIP), including for the Gleason Lake subwatershed, with the purpose of reducing stormwater volume and nutrient loads to impaired waters.

*Pilot Phase of Responsive Program*

The District is developing the Responsive Program to guide the District's process for identifying, evaluating and responding to opportunity-based stormwater management projects as identified in the 2017 WMP. The purpose of this program is to provide support for public and private projects that are well-coordinated and align with the District's goals and priorities. The District aims to carry out this approach in a way that provides value to its communities while making efficient use of District resources to allow the District to maintain focus on its highest priority projects and initiatives.

Staff have been operating the Responsive Program in a pilot phase while continuing to develop supporting materials and refine the program recommendations before vetting the program with external stakeholders in early 2022 and then seeking Board adoption. Under this pilot phase, the City of Plymouth coordinated with the District to identify

opportunities in the City's CIP to integrate water quality improvements to benefit impaired Gleason Lake. Based on this coordination, the District received a request from the City for funding assistance for the Maple Creek Drainage Improvement Project on June 30, 2021.

#### *Project Overview*

The project was evaluated under the pilot phase of the Responsive Program. Based on the review of staff and the District Engineer, staff recommended that the District provide funding support for the northern project component, referred to as the Maple Creek Pond Improvement Project (Project). The Project includes construction of an iron-enhanced sand filtration system that will reduce phosphorus loading to downstream Gleason Lake by 19 lbs/yr. The total Project cost is \$241,000, with proposed District funding of 50 percent of project design and construction costs, not to exceed \$100,000.

Following a duly noticed public hearing, on October 21, 2021, the Board of Managers ordered the Project under [Resolution 21-069](#). Under this resolution, District funding is contingent on the Board's approval of a Funding Agreement with the City establishing terms and conditions for use of funds.

#### Funding Agreement

The Funding Agreement sets forth the terms and requirements for funding between MCWD and City (see Attachment 1). The agreement was developed in coordination with City staff, District Engineer, and Legal Counsel and is consistent with the maintenance terms of the MCWD's recently-approved Programmatic Maintenance Agreement (PMA) with the City of Plymouth ([Resolution 21-078](#)).

#### 2022 Budget Amendment

On September 9, 2021, the Board of Managers approved the 2022 budget of \$15,027,532 and certified a tax levy of \$9,675,993. The 2022 budget for the Responsive CIP fund (3500) is \$0 with \$250,000 held assigned within this fund to provide the District with the flexibility to respond to faster-moving project opportunities. As the final feasibility information was not provided in time for the Project to be included in the 2022 budget, it was discussed at the time of project ordering that a budget amendment would be required. The Responsive Program is being designed to include submittal deadlines that will allow future project funding requests to be reviewed in time to integrate them into the District's CIP and budget approval process.

Staff recommends a 2022 budget amendment to add \$100,000 to the budget for the Responsive CIP fund (3500). The \$100,000 would be taken from the \$250,000 that is held assigned within this fund, so it will have no effect on the levy. The amended 2022 budget would be \$15,127,532.

#### **Supporting Documents:**

Attachment 1: Funding Agreement for the Maple Creek Pond Project between MCWD and City of Plymouth



## RESOLUTION

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**Resolution number:** 21-080

**Title:** Approving Funding Agreement with City of Plymouth for the Maple Creek Pond Improvement Project

- WHEREAS, the Minnehaha Creek Watershed District (District) 2017 Watershed Management Plan (WMP) outlines the District's intention to remain responsive to opportunities created through land use change and includes opportunity-based projects in the capital improvement plan that target reduction of stormwater volume and nutrient loads to impaired waters; and
- WHEREAS, District staff are in the process of developing formal policy for Board adoption that will guide how the District identifies, evaluates, and responds to project opportunities, referred to as the Responsive Program; and
- WHEREAS, in the interim, staff have been operating this approach in a pilot phase and evaluating project opportunities using four criteria categories: resource need and priority, project benefits, cost-effectiveness, and partnership/coordination; and
- WHEREAS, the City of Plymouth (City) requested financial assistance from the District to support implementation of the Maple Creek Drainage Improvement Project to reduce total phosphorus (TP) loads to Gleason Lake, a waterbody designated as impaired pursuant to state law; and
- WHEREAS, the project is consistent with the goals and priorities of the WMP and described therein under the Stormwater Volume and Pollutant Load Reduction project prescribed in the capital improvement program for the Gleason Lake subwatershed; and
- WHEREAS, on June 30, 2021, the City submitted a funding request and preliminary cost-benefit information for the project; and
- WHEREAS, at the District's request, additional feasibility information and refined project benefit estimates were provided on August 9 and August 30, 2021, concluding that the project will achieve a TP reduction of about 19 lbs/yr; and
- WHEREAS, the District engineer reviewed the water quality calculations and cost estimates provided by the City and verified that the estimate is reasonable; and
- WHEREAS, District staff evaluated the City's request using the aforementioned criteria and recommended that the District contribute funding for the Maple Creek Pond component, referred to as the Maple Creek Pond Improvement Project (Project), in an amount of 50 percent of project design and construction, not to exceed \$100,000; and
- WHEREAS, on September 23, 2021, the District Board of Managers (Board) directed that the Project be considered for project ordering; and
- WHEREAS, in accordance with Minnesota Statutes §103B.251, subdivision 3, the District held a duly noticed public hearing on ordering of the Project on October 21, 2021, at which time all interested parties had the opportunity to address the Board; and

WHEREAS, in accordance with Minnesota Statutes §103B.251 and the WMP, the Board ordered the Project and directed that staff develop a funding agreement for Board consideration; and

WHEREAS, District staff, in coordination with City staff, have developed a proposed Funding Agreement, providing for District funding support for the Project in an amount of up to \$100,000 and subject to other terms and requirements, and the Board has reviewed the agreement and finds that it fulfills the Board's direction and is otherwise reasonable;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the District Administrator to execute the Project Funding Agreement, with non-material changes and on advice of counsel.

Resolution Number 21-080 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 12/2/2021

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



**RESOLUTION**

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**Resolution number:** 21-081

**Title:** Authorization of 2022 Budget Amendment for the Maple Creek Pond Improvement Project

- WHEREAS, on September 9, 2021, the Minnehaha Creek Watershed District (District) Board of Managers approved Resolution 21-059 and 21-060, adopting the 2022 Budget and Workplan, and certifying the 2021 tax levy; and
- WHEREAS, the Board of Managers may amend its budget at any time, and may decrease, but not increase the tax levy; and
- WHEREAS, the City of Plymouth (City) requested financial assistance from the District to support implementation of the Maple Creek Drainage Improvement Project to reduce total phosphorus loads to Gleason Lake, a waterbody designated as impaired pursuant to state law; and
- WHEREAS, staff reviewed the project under the pilot phase of the Responsive Program and recommended that the District provide funding support for the Maple Creek Pond component, referred to as the Maple Creek Pond Improvement Project (Project), in an amount not to exceed \$100,000; and
- WHEREAS, in accordance with Minnesota Statutes §103B.251 and the WMP, the Board of Managers ordered the Project on October 21, 2021; and
- WHEREAS, there is \$250,000 held assigned within the Responsive CIP fund (3500) for the purpose of allowing the District to respond to faster-moving project opportunities; and
- WHEREAS, staff recommends a 2022 budget amendment to increase the Responsive CIP (fund 3500) budget by \$100,000 by drawing from the \$250,000 in assigned funds; and
- WHEREAS, this amendment would result in a total budget increase of \$100,000 for a total 2022 budget of \$15,127,532; and
- WHEREAS, no change to the 2022 tax levy is proposed;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby amends the 2022 budget as recommended by staff for a total 2022 budget of \$15,127,532.

Resolution Number 21-081 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 12/2/2021

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

**FUNDING AGREEMENT  
MINNEHAHA CREEK WATERSHED DISTRICT and the CITY of PLYMOUTH**

**MAPLE CREEK POND IMPROVEMENT PROJECT  
(PART of the PLYMOUTH MAPLE CREEK DRAINAGE IMPROVEMENT PROJECT NO. WR20001)**

A. THIS FUNDING AGREEMENT ("Agreement") is entered into by and between the Minnehaha Creek Watershed District, a special purpose unit of local government under Minnesota Statutes Chapters 103B and 103D (MCWD), and the City of Plymouth, a home rule charter city of the State of Minnesota ("City").

B. The MCWD's 2017 Watershed Management Plan outlines the MCWD's intention to remain responsive to opportunities created through land use change and includes in its capital improvement program opportunity-based projects that reduce stormwater volume and nutrient loads to impaired waters;

C. The City has requested financial assistance from the MCWD to support implementation of the Maple Creek Pond Improvement Project ("Project"), involving improvements to the Maple Creek Pond by installation of an iron-enhanced sand filter to reduce total phosphorus (TP) load to Gleason Lake, a waterbody designated as impaired pursuant to state law. The City's engineering assessment indicates that the Project will reduce TP load to Gleason Lake by about 19 pounds per year.

D. On October 21, 2021, after public hearing, the MCWD Board of Managers established the Project pursuant to Minnesota Statutes §103B.251, and resolved to provide partial funding for the Project in accordance with a funding agreement between the parties. This Agreement sets forth the terms for that funding.

THEREFORE, based on the foregoing recitals, which are incorporated into this Agreement, the MCWD and the City agree as follows, intending to be legally bound:

**DESIGN**

1. The City will retain a professional engineer to design the Project. The engineer will affirm the prior representation that the design is expected to remove at least 19 pounds per year from TP load to Gleason Lake.
2. The City will provide the 90 percent design to the MCWD for review and concurrence. MCWD concurrence is for its own funding purposes only and does not constitute a professional representation as to the design. The MCWD will review the design promptly and will not unreasonably withhold concurrence.

**CONSTRUCTION**

3. The City will prepare solicitation documents, procure a contractor and construct the Project in accordance with the design in which the MCWD has concurred, and with all applicable laws and requirements.
4. The City must obtain MCWD approval of any work change that could reduce the Project's performance level of annual TP removal. The MCWD will review any such request promptly and will not withhold consent unless it finds that performance may be substantially reduced. The MCWD may not direct the contractor.

5. The City will give two full business days (48 hours) of prior written notice to the MCWD before the iron enhanced sand medium is placed in situ. The contract will require the City's contractor to supply an analysis of the sand medium as placed. The City will consult with the MCWD as to the sampling protocol before sampling occurs, to ensure the MCWD is satisfied that the analysis will accurately reflect the extent to which the iron is properly distributed throughout the medium and the medium otherwise conforms to specification. The City also will give the MCWD written notice of substantial completion and when vegetation has been reestablished after site restoration. The MCWD may inspect the Project at all reasonable times.

6. The City's engineer must certify the Project as substantially complete by May, 2023. The City will confirm completion and transmit as-built drawings to the MCWD by December, 2023. If the project is delayed causing a need to extend the substantial completion date for final as-built drawing transmittal identified in this agreement the City will request such extension to the MCWD 30-days prior to said deadline. The MCWD will review the request promptly and will not unreasonably withhold an extension.

### **MAINTENANCE**

7. After substantial completion, the City will conduct performance testing in accordance with the protocol at Attachment A, incorporated herein. The City will submit annually a brief written report that describes inspection, monitoring and maintenance activities performed, including dates and description of activities.

8. If initial or periodic performance testing indicates that the Project is not performing as intended, after consulting with the MCWD the City will take feasible actions to improve project 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. Replacing the filter medium is considered feasible.

9. The City, at its cost, will operate and maintain the Project for 20 years after Project completion, in accordance with the terms of maintenance set forth in Attachment B, incorporated herein. If the City conveys ownership of the property underlying the Project during the maintenance period, it will reserve a right of access for maintenance purposes or assign its maintenance obligations under this Agreement to the new owner, in either case on terms subject to prior review by and acceptable to the MCWD.

### **FUNDING**

10. The MCWD will contribute to Project funding in the amount of 50 percent of contracted design and construction cost, not to exceed \$100,000. All remaining Project costs are the responsibility of the City. The MCWD contribution is conditioned on Project construction in accordance with the design in which the MCWD has concurred under paragraph 2, and any work changes to which it has consented under paragraph 4, above.

11. The MCWD will disburse 90 percent of the funded amount when the City submits the certification of substantial completion and invoices for qualifying design and construction contracts. It will disburse the remaining 10 percent when the Project has been completed, as-builts have been submitted, and site vegetation has been reestablished.

### **EDUCATION and PUBLIC COMMUNICATIONS**

12. The MCWD and the City will coordinate to implement education and communications for the Project.

**GENERAL TERMS**

13. The City will defend MCWD, its board members, employees and agents, indemnify them, and hold them harmless, from any and all actions, costs, damages and liabilities of any nature arising from the Project, except to the extent due to a negligent or willful act or omission of the MCWD, or its board member, employee or agent. Nothing in this Agreement 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. City remedies for any MCWD failure to conform to this Agreement lie in breach of contract only.

14. This Agreement is not a joint powers agreement under Minnesota Statutes §471.59. Nothing herein constitutes one party’s agreement to be responsible for the acts or omissions of another party pursuant to subdivision 1(a) of that statute.

15. The parties will comply with all applicable laws and regulations in performing their obligations under this Agreement. The Agreement will be construed and enforced according to the laws of Minnesota.

16. The following will be used for any communication under this Agreement:

City: City of Plymouth  
3400 Plymouth Boulevard  
Plymouth, MN 55447  
ATTN: City Engineer  
engineering@plymouthmn.gov

MCWD: Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka, MN 55345  
ATTN: Kate Moran, Policy Planning Coordinator  
kmoran@minnehahacreek.org

or at such other address of which a party may, from time to time, notify the other party in writing.

17. This Agreement, including Attachments A and B, constitutes the entire agreement among the parties relating to the subject matter addressed herein. An amendment to this Agreement is valid only when reduced to writing and duly signed by the parties.

18. This Agreement is effective on execution by the parties and terminates when the City's maintenance obligation under paragraph 9 is completed.

**CITY OF PLYMOUTH**

**MINNEHAHA CREEK WATERSHED DISTRICT**

BY: \_\_\_\_\_

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Jeffry Wosje, Mayor

James Wisker, Administrator

AND \_\_\_\_\_

*Approved for form and execution*

Dave Callister, City Manager

\_\_\_\_\_  
*MCWD Counsel*

**ATTACHMENT A**  
**PERFORMANCE TESTING**

1. The City will sample and analyze the facility outlet discharge in the first year of operation to ensure the facility is functioning.
2. The City will sample and analyze the facility outlet discharge each third calendar year thereafter.
3. At least three samples will be analyzed in each sample year, taken from the outlet of the filter within 12 hours after a storm event.
4. If average TP exceeds 70 micrograms/liter, the City will test the filter medium for total phosphorus and total iron. This will include at least two samples at different locations within the filter. If the average ratio exceeds five milligrams of phosphorus per gram of elemental iron, the medium will be replaced.
5. The City may propose revisions to this protocol, which will be subject to MCWD approval in its discretion.

## ATTACHMENT B

### MAINTENANCE TERMS

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. **Iron-enhanced sand filters.** Iron-enhanced sand media must be inspected every three years to determine if the iron's binding capacity has been reached. The phosphorus binding capacity of the iron-sand bed is exhausted and must be replaced to the original specifications when the total-phosphorus-to-total-iron ratio exceeds 5 milligrams of phosphorus per 1 gram of elemental iron or when the total phosphorus at the outlet of the iron-sand filter consistently exceeds 70 micrograms per liter.