



Title:	Approval of cross-easement for Cottageville Park Phase II
Resolution number:	23-053
Prepared by:	Michael Hayman (952) 471-8226 mhayman@minnehahacreek.org
Reviewed by:	Gabe Sherman, Planner-Project Manager; Chuck Holtman, Smith Partners (easement)
Recommended action:	Board approval of a cross-easement with the city of Hopkins to construct the gateway and nature play components of the Cottageville Park Phase II design. The purpose of this easement is to allow for construction and access of the future park improvements across four parcels, three of which are owned by MCWD and one of which is owned by Hopkins.
Schedule:	May 2023 –Approval of Project Agreement for Cottageville Park Improvement and Maintenance and approval of final design of 325 Blake Road Regional Stormwater and Greenway Project Winter 2023-2024 – bid 325 Blake Road Regional Stormwater and Greenway Project 2024-2025 – construction of regional facility, greenway, and park improvements
Budget considerations:	Fund name and code: Cottageville Park Phase II Improvements (3146) 2023 fund budget: \$650,000 2023 projected expenditures: \$15,000 (final design and agreements) Requested amount of funding: N/A
Past Board action*:	Res # 10-058 Approval of Cooperative Agreement between MCWD and City of Hopkins Res # 14-027 Approval of Cooperative Agreement amendment, approval of BWSR grant agreement, and authorization of design contracts Res # 14-101 Approval of final design and authorization to solicit bids for Cottageville Park Phase 1 Res # 20-066 Authorization to Execute a Cooperative Agreement with the City of Hopkins for Coordinated Planning, Improvements and Development for 325 Blake Road Res # 20-067 Authorization to Release the Request for Proposals for Design Services for 325 Blake Road Stormwater Management and Site Restoration Res # 20-091 Authorization to Contract for Design Services for the 325 Blake Road Regional Stormwater and Greenway Project Res # 21-063 Acceptance of 30% Design for 325 Blake Road Restoration and Redevelopment Res # 21-075 Approval of Phase II Design Contract for 325 Blake Road Restoration and Redevelopment Res # 22-010 Approval of 60% Design for 325 Blake Road Restoration and Redevelopment

Aug. 2022	90% design review and feedback at the Operations and Programs Committee meeting
Dec. 2022	Final design status briefing at the Policy and Planning Committee meeting
Res # 23-026	Approval of Final Design for 325 Blake Road Regional Stormwater and Greenway Project
Res # 23-027	Approval of the Project Agreement for Cottageville Park Improvement and Maintenance

*The Resolutions listed above are specific to the Cottageville Park cooperative agreement and recent design process. A full history of Board decisions related to the project is available.

Summary:

Dating back to 2010, the city of Hopkins and MCWD entered into a cooperative agreement to expand and develop Cottageville Park in a way that would improve and integrate community park amenities with the riparian system for public recreation and education purposes, while naturalizing and stabilizing the creek channel and providing regional stormwater treatment. The Cottageville Park Agreement, and subsequent amendments, defined the partnership roles and responsibilities around land acquisition, design, construction, and long-term maintenance of the constructed amenities at Cottageville Park. Further, the second amendment to the cooperative agreement, executed October 2014, defined two phases of the park improvement effort; Phase 1 consisting of the expansion of Cottageville Park on the north and east side of Minnehaha Creek, and Phase 2 consisting of future improvements on 415 Blake Road (known as the “Gateway” parcel) and three Lake Street parcels adjacent to the park (known as the “Nature Play” area).

Following construction of the Cottageville Park Stormwater Management and Park Improvement Project in 2016 (Phase 1), and pursuant to the agreement, the City maintains its own park property as well as the stormwater management facilities located on MCWD land, and MCWD maintains the native vegetation, riparian buffer zone improvements and signage on its own land.

In August 2020, MCWD and the city of Hopkins entered into a second cooperative agreement, this time for the “Coordinated Planning, Improvements and Development for 325 Blake Road,” which included design efforts for Phase 2 of the Cottageville Park improvements. Subsequently, in December 2020, MCWD contracted with HDR to provide design and engineering services to advance its stormwater and greenway project at 325 Blake Road and adjacent Cottageville Park properties in Hopkins. The design process has been phased, starting with schematic design in early 2021, and proceeding through final design and construction ready documents, which was approved by the Board of Managers and Hopkins City Council in May 2023.

Also approved by the partners in May 2023 was the “Project Agreement for Cottageville Park Improvement and Maintenance,” which was drafted to consolidate all arrangements for the parties’ cooperative management of Cottageville Park into one document. This agreement supersedes the 2014 Cottageville Park Agreement and includes the incorporation of site plans, an approved operations and maintenance plan, and perpetual cross-easements for the parties to access the land to conduct inspections and maintenance activities.

The perpetual cross-easement contemplated in the project agreement was in draft form at the time of approval and has now been finalized (attached). This cross-easement with the city of Hopkins will allow for construction, inspection, maintenance and replacement of the future Cottageville Phase II Park improvements – the Gateway and Nature Play Area – across four parcels, three of which are owned by MCWD and one of which is owned by Hopkins.

Supporting documents (list attachments):

- Easement: On the property of the Minnehaha Creek Watershed District and the City of Hopkins



RESOLUTION

Resolution number: 23-053

Title: Approval of cross-easement for Cottageville Park Phase II

- WHEREAS the Minnehaha Creek Watershed District (MCWD) acquired 415 Blake Road, 427-429 Blake Road, and 1303 and 1305 Lake Street, all in Hopkins, MN, in 2010 as key parcels in the expansion of Cottageville Park, and subsequently acquired 325 Blake Road, Hopkins in 2011, and 1308 and 1312 Lake Street, Hopkins in 2012 as key pieces of the Minnehaha Creek Greenway in St. Louis Park and Hopkins;
- WHEREAS in September 2010, MCWD and Hopkins entered into a cooperative agreement to design and construct the Cottageville Park Stormwater Management and Park Improvement Project (CPSMPIP);
- WHEREAS pursuant to the cooperative agreement, the First Amendment to Cooperative Agreement, executed April 10, 2014, and the Second Amendment to Cooperative Agreement, executed October 9, 2014 (together, the "Cottageville Park Agreement"), the parties constructed the CPSMPIP in 2016, consisting of park facilities, areas of native vegetation and protected buffer adjacent to Minnehaha Creek, and a subsurface iron-enhanced sand filter to manage and provide water quality treatment for both on- and off-site stormwater flows;
- WHEREAS on August 27, 2020, the MCWD Board of Managers authorized the execution of a Cooperative Agreement with the City of Hopkins for Coordinated Planning, Improvements and Development for 325 Blake Road, which included design efforts for the second phase of CPSMPIP;
- WHEREAS the parties wish to expand Cottageville Park by means of further improvements constructed on four additional parcels of land south of the present park property, with the improvements designated as the "Gateway Element" and "Nature Play Element," with the Gateway Element occupying the MCWD-owned parcel north of the intersection of Blake Road North and Lake Street NE (415 Blake Road) and the Nature Play Element occupying three contiguous parcels south of Lake Street NE and directly east of the Lake Street NE crossing of Minnehaha Creek (1308 and 1312 Lake Street and a City outlot);
- WHEREAS on August 27, 2020, the MCWD Board of Managers approved the release of a Request for Proposals for Design Services for 325 Blake Road Stormwater Management and Site Restoration, which sought landscape architecture and engineering services to complete integrated stormwater management, ecological restoration, and public open space improvements at 325 Blake Road and accompanying Gateway Element and Nature Play Element as part of Cottageville Park; and HDR, Inc. was subsequently selected and retained as the design engineer for the 325 Blake Road Regional Stormwater and Greenway Project;
- WHEREAS the MCWD Board of Managers accepted the 30% design memorandum and schematic design for 325 Blake Road Regional Stormwater and Greenway Project on September 23, 2021 upon finding that HDR had satisfactorily completed the tasks and produced the deliverables included in the contract authorized by the MCWD Board of Managers; and found that the schematic design satisfied all major project needs and accurately reflected the project goals defined in the Cooperative Agreement with the City of Hopkins for Coordinated Planning, Improvements and Development for 325 Blake Road;

WHEREAS on May 11, 2023, following extensive engagement with the City of Hopkins, the Hopkins Park and Recreation Board, the local community, and MCWD staff and advisors, the Board of Managers approved the final design and bid package for the 325 Blake Road Stormwater Management and Site Restoration, including the Cottageville Park Gateway and Nature Play improvements;

WHEREAS on May 11, 2023 the Board of Managers approved the Project Agreement for Cottageville Park Improvements and Maintenance, which consolidated all arrangements for the parties' cooperative management of Cottageville Park into one document and includes the incorporation of site plans, an approved operations and maintenance plan, and perpetual cross-easements for the parties to access the land to conduct inspections and maintenance activities;

WHEREAS the perpetual cross-easement contemplated in the project agreement was in draft form at the time of approval and has now been finalized, allowing for construction, inspection, maintenance and replacement of the future Cottageville Phase II Park improvements – the Gateway and Nature Play Area – across four parcels, three which are owned by MCWD and one of which is owned by the city of Hopkins.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers approves the Easement on the Property of the Minnehaha Creek Watershed District and the City of Hopkins, and authorizes the Board President to execute the easement, with any non-substantive changes on advice of counsel.

Resolution Number 23-053 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: September 28, 2023.

Secretary Date: _____

EASEMENT

On the Property of the Minnehaha Creek Watershed District and the City of Hopkins Hennepin County, Minnesota

Legal description of Burdened Parcels:

See Attachment A

THIS EASEMENT is entered into between the Minnehaha Creek Watershed District, a special-purpose governmental body with authorities specified at Minnesota Statutes Chapters 103B and 103D (“District”), and the City of Hopkins, a home rule charter city of the State of Minnesota (“City”) (together, the “Parties”).

RECITALS

A. District owns in fee those Burdened Parcels designated in Attachment A as Parcels A, B and C (“District Parcels”). City owns in fee that Burdened Parcel designated in Attachment A as Parcel D (“City Parcel”). The Parties have partnered to design, construct and maintain public park improvements on the four Burdened Parcels (the “Improvements”). The four Burdened Parcels are contiguous or proximate to what is presently designated as Cottageville Park. The Improvements are intended to expand the park on either side of Minnehaha Creek, which bounds the park to the south.

B. Pursuant to the Project Agreement for Cottageville Park Improvement and Maintenance dated May 25, 2023 (“Project Agreement”), the Parties have allocated between each other rights and obligations to construct, inspect, maintain and replace the Improvements. The purpose of this Easement is to afford each Party the right to enter the real property of the other Party in order to exercise its rights and fulfill its obligations under the Project Agreement, as it may be amended from time to time.

C. Accordingly, intending to be legally bound, the Parties enter into this Easement.

TERMS

1. District may enter the City Parcel as follows:

a. On foot, by motorized vehicle and with motorized equipment, to operate and stage equipment, stockpile materials, remove brush and trees, and engage in other acts as necessary or convenient to construct the Improvements on the City Parcel and adjacent District Parcels.

b. On foot and with motorized equipment, to establish native vegetation, and to inspect and manage vegetation, within the delineated "Vegetation Area" on Attachment B, attached hereto and incorporated herein.

c. On foot and with motorized equipment, to replace public signage and informational displays.

2. City may enter the District Parcels as follows:

a. On foot, with motorized equipment, and with self-propelled mowing equipment for ordinary purposes of grounds maintenance, sanitation, hazard inspection and public safety.

b. On foot and with motorized equipment, to inspect and maintain public signage and informational displays.

c. On foot, by motorized vehicle and with motorized equipment, to replace the Improvements.

3. Before a Party enters the property of the other Party by motorized vehicle, and before any activity that will disturb the soil surface, the Parties will consult promptly and the entering Party will conform to reasonable terms stipulated by the other Party for equipment operation and site soil and vegetative restoration. Notwithstanding the foregoing, consultation is not required for City entry with mowing equipment under paragraph 2.a, above, provided the City does not enter the Vegetation Area as delineated on Attachment B.

4. When exercising a right of entry under this Easement, a Party will be responsible for site protection and public safety associated with its activity. The Party will avoid damage to any tree or root system, native vegetation, improvements and signage, except as the Parties agree, and will avoid actions that foster erosion of the creek bank. The Party will remove its trash and debris and will repair any damage to soils, vegetation, paved or installed surfaces or other surface or subsurface improvements resulting from its activity.

5. In consultation under paragraph 3 or 4 above, the City Engineer and the District Administrator are authorized to represent the City and the District, respectively.

6. In exercising its easement rights, a Party acts on its own behalf and not in any respect as agent or representative of the other Party. Each Party remains solely responsible to maintain liability and other insurance as it deems appropriate for its actions on and authority, if any, over the property of the other Party.

7. A Party may not assign this Easement or any right hereunder, but may exercise its easement rights through its own employees, contractors and volunteers.

8. The above Recitals are incorporated into this Easement as terms hereof. The Parties may amend this Easement only by a duly executed writing. This Easement will run with the land in perpetuity and bind and benefit the Parties and their respective representatives and successors, and all others who exercise any right by or through them. Each Party, at its cost, may file and refile this Easement in the Hennepin County land records.

MINNEHAHA CREEK WATERSHED DISTRICT

Sherry Davis White, President

Date:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ____ day of _____, 2023, by
Sherry Davis White as President of the Minnehaha Creek Watershed District.

Notary Public

CITY of HOPKINS

_____ Date:
By: Patrick Hanlon, Mayor

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ___ day of _____, 2023, by
Patrick Hanlon as Mayor, City of Hopkins.

Notary Public

_____ Date:
By: Amy Domeier, Clerk

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ___ day of _____, 2023, by
Amy Domeier as Clerk, City of Hopkins.

Notary Public

This document prepared by:
Smith Partners P.L.L.P.
250 South Marquette Avenue, Suite 250
Minneapolis MN 55401

ATTACHMENT A

Parcel A (PID 19 117 21 11 0079)

That part of Lot 70, Auditor's Subdivision No. 239, Hennepin County, Minnesota, lying Southwesterly of Minnehaha Creek, except that portion conveyed to Hennepin County for highway purposes.

Parcel B (PID 19 117 21 11 0105)

Lot 17, Auditor's Subdivision No. 363.

Parcel C (PID 19 117 21 11 0106)

All that part of Lot 18, Auditor's Subdivision No. 363, Hennepin County, Minnesota, described as follows: Beginning at the Northeast corner of said Lot 18; thence Southwesterly along the Northwesterly line of said Lot 18, a distance of 55.40 feet; thence South, parallel with the East line of said Lot 18; to the South line of said Lot 18; thence Southeasterly along said Southerly line of said Lot 18 to the Southeasterly corner of said Lot 18; thence North along the East line of said Lot 18 to the point of beginning.

Parcel D (PID 19-117-21-11-0107)

That part of lot 18 lying west of a line running south parallel with the east line of said lot from a point in the northerly line thereof distant 55.4 feet southwesterly from the northeast corner of said lot, Auditors Subdivision No. 363.

COTTAGEVILLE PARK VEGETATION AREAS

