

**MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

**12. FINANCIAL ASSURANCE RULE  
PURSUANT TO MINNESOTA STATUTES §103D.341**

**Adopted XXX  
Effective XXX**

- 1. POLICY.** It is the policy of the Board of Managers to:
  - a. conserve the water resources of the District by assuring compliance with the District's rules in the performance of activities within the watershed; and
  - b. use financial assurances supplied by permittees to limit the District's use of general taxpayer funds to monitor land disturbing activity and provide for compliance with District rules and permits.
  
- 2. FINANCIAL ASSURANCE REQUIREMENT.**
  - a. The District may require a financial assurance instrument (performance bond, letter of credit or cash escrow deposit) as a condition of issuance of a permit under the District rules.
  - b. A financial assurance is required of any agency of the United States or of any governmental unit or political subdivision of the State of Minnesota.
  
- 3. FINANCIAL ASSURANCE CRITERIA.** The required financial assurance amount will be set by the Board of Managers from time to time, by resolution. (The current financial assurance schedule may be obtained from the District office or website: [www.minnehahacreek.org](http://www.minnehahacreek.org).)
  - a. The financial assurance amount will be set to ensure against potential liabilities to the District, including but not limited to:
    1. Application review, field inspection, monitoring, consultant services and related costs authorized under Minnesota Statutes §103D.345;
    2. The cost to implement and maintain protective measures required by the permit, and otherwise to fulfill permit terms; and
    3. The cost to remedy damage from permit noncompliance or for which the permittee otherwise is responsible.
  - b. The financial assurance instrument must be in a form acceptable to the District. A commercial assurance must be issued by a surety licensed to issue such assurances in Minnesota. (Templates may be obtained from the District office or website, [www.minnehahacreek.org](http://www.minnehahacreek.org).)

- c. The financial assurance must be issued in favor of the District and conditioned on the permittee's performance of the activities authorized in compliance with the terms and conditions of the permit and all applicable laws, including the District rules, and payment when due of applicable fees or other charges. If the District makes a claim against a financial assurance, the District may require that the permittee restore the full amount within 45 days.
- d. The financial assurance instrument will state that it will not be canceled without at least thirty (30) days prior written notice to the District by the surety.
- e. Financial assurance submittal is the responsibility of the permittee; however, the surety principal may be the permittee or the entity undertaking the authorized activity on the permittee's behalf.
- f. When the permittee provides a cash escrow to fulfill the financial assurance requirement, it will be accompanied by an executed escrow agreement in a form acceptable to the District. (A template agreement may be obtained from the District office or website, [www.minnehahacreek.org](http://www.minnehahacreek.org).)

#### **4. FINANCIAL ASSURANCE RELEASE.**

- a. On permittee's written notification of project completion, the District may inspect the project. If the authorized activity has been completed in accordance with the terms of the permit and District rules and there is no outstanding balance owed to the District for unpaid permit fees or costs incurred, the District will release the financial assurance. Completion of the authorized activity includes, but is not limited to, site stabilization to prevent erosion and sedimentation and, as applicable, stormwater management features constructed or installed and functioning as designed. If the District does not inspect and determine compliance within 45 days of District receipt of notification, the financial assurance will be deemed released, except that the District, by written notice to the permittee, may postpone the inspection period until seasonal conditions are suitable for inspection.
- b. Notwithstanding paragraph 4(a), the District will retain a multi-project financial assurance until all activities being performed under that assurance have been completed or the permittee has provided a substitute assurance.
- c. The District may reduce an outstanding financial assurance amount if, in its judgment, the entire amount is no longer required in accordance with paragraph 3(a), above.