

MEETING DATE: February 14, 2018

TITLE: Authorization to Execute Easement for Carp Barrier Construction

RES. NUMBER: 19-017

PREPARED BY: Anna Brown

E-MAIL: abrown@minnehahacreek.org

TELEPHONE: 952-641-4522

REVIEWED BY: Administrator Counsel Program Mgr. (Name): _____
 Board Committee Engineer Other

WORKSHOP ACTION:

<input type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input checked="" type="checkbox"/> Other (specify): Final Action on February 14, 2019	

PURPOSE or ACTION REQUESTED:

Authorization to execute an easement with Crown College for carp barrier construction

PROJECT/PROGRAM LOCATION:

Crown College, St. Bonifacius, MN

PROJECT TIMELINE:

March 15, 2019 Construction completion

PROJECT/PROGRAM COST:

Fund name and number: 500-5007 SMCHB Carp Management

Current Budget: \$567,000

Requested amount of funding: \$0

PAST BOARD ACTION:

May 11, 2017 Authorization to request funding from Lessard Sams Outdoor Heritage Council (17-036)

March 8, 2018 Award contract for carp barrier design (18-021)

Sept. 27, 2018 Approval of plans and specifications for carp barriers (18-103)

Oct. 25, 2018 Authorization to execute easements for Wassermann and Highland Road barriers (18-109)

SUMMARY:

The Minnehaha Creek Watershed District is working with the Lessard Sams Outdoor Heritage Council to implement a 2,488 acre restoration of deep and shallow lake habitat through the management of invasive common carp. The strategy for reducing carp concentrations below the threshold where they damage ecosystems is three-fold:

- Adult biomass removal
- Aeration of shallow lakes to prevent successful carp reproduction
- Barriers to prevent carp movement between waterbodies and to assist with removal

On September 27, 2018, the MCWD Board of Managers approved the plans and specifications for three barriers in the Six Mile Creek-Halsted Bay Subwatershed located on Crown College Campus in St. Bonifacius, at the outlet of Wassermann Lake in Victoria, and at Highland Road in Minnetrista. The construction contract for these barriers was awarded at the October 25, 2018 Board Meeting.

Also at the October 25 2018 Board Meeting, the MCWD Board of Managers authorized the execution of two easements to establish the land rights necessary to install the barriers at the Wassermann outlet and at Highland Road. At that time, the Crown College easement was still being developed.

Crown College Barrier

The Crown College barrier will be located in a private ditch on Crown College campus that connects a series of open water wetlands to Parley Lake. The open water areas of the wetlands are identified carp nurseries which frequently winter kill. The barrier will prevent adult carp from migrating from Parley Lake to spawn, limiting successful recruitment in the Parley-Mud management unit.

The easement is structured as an automatically renewing, 10-year term easement, where after the first 10 year period the College can request a termination of the easement with a years' notice. In addition to the termination clause, the easement provides the College the ability to request a relocation of the structure to an equally effective areas of the stream channel after the first three years of the structure being in place. This provision provides design flexibility in the case that they contemplate a site improvement that may conflict with the barrier location. The barrier relocation would be at the District's expense.

Staff recommends the District Board of Managers authorize the execution of the easement with Crown College for carp barrier construction.

Attachments

- Crown College Easement

RESOLUTION

RESOLUTION NUMBER: 19-017

TITLE: Authorization to Execute an Easement for Carp Barrier Construction

WHEREAS, pursuant to Resolution 14-047 the MCWD Board of Managers has identified the Six Mile Creek-Halsted Bay (SMCHB) Subwatershed as a priority area for focusing District planning activities and coordination efforts with subwatershed partners; and

WHEREAS, beginning in 2016, MCWD led in the development of a comprehensive restoration strategy for the SMCHB subwatershed to achieve the District's goals of protecting and improving water quality, water quantity, ecological integrity, and thriving communities through land use and water integration, and includes rough fish management as a principle strategy for restoration;

WHEREAS, in September of 2017, the Lessard Sams Outdoor Heritage Council recommended the SMCHB Habitat Restoration project for \$567,000 in funding, and the funding was approved by the MN Legislature in May of 2018;

WHEREAS, in September of 2018, the Board approved the design of four barriers in the SMCHB subwatershed, including one to be located adjacent to Highland Road in Minnetrista between Mud Lake and Halsted Bay (Highland Road Barrier), and one at the outlet of Lake Wassermann in Victoria (Lake Wassermann Barrier);

WHEREAS, staff have negotiated agreements to secure land rights for the barrier located on Crown College campus in St. Bonifacius, Minnesota;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize the Board President to execute, on advice and consent of counsel, and with any non-substantial adjustments, an easement with Crown College.

Resolution Number 19- was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

EASEMENT

On the Property of Crown College Hennepin County, Minnesota

Legal description of subject property:

Government lot eight (8), section 5, township 116 north, range 24, Carver County, Minnesota;

And that part of government lot seven (7), section 5, township 116 north, range 24, Carver County, Minnesota, lying southerly of a like described as beginning at a point on that west line of said government lot, distant 1097.58 feet south, as measured along said west line, from the northwest corner of said section 5; thence easterly parallel with the south line of said government lot 7, a distance of 2650 feet and there terminating;

And, that part of the south half of the northeast quarter, (S ½ of NE ¼) of section 6, township 116 north, range 24 carver county, Minnesota, described as beginning at a point on the east line of said northeast quarter distant 1097.58 feet south, as measured along said east line, from the northeast corner of said section 6; thence westerly parallel with the south line of said northeast quarter a distance of 1508.86 feet to the centerline of CSAR no. 30; thence southwestly along said centerline a distance of 1213.09 feet to the south line of said northeast quarter; thence easterly along said south line a distance of 1871.78 feet to the east line of said northeast quarter; thence northerly along said east line a distance of 1137.06 feet to the point of the beginning. Subject to an easement for roadway purposes over and across the westerly 33 feet thereof.

And, the easterly 380.00 feet of the northerly 480.00 feet of the southeast quarter of section 6, township 116 north, range 24, carver county, Minnesota.

THIS EASEMENT is entered into by Crown College, 8700 College View Drive, St. Bonifacius MN 55375, a private nonprofit corporation (“Grantor”); and the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota with powers set forth at Minnesota Statutes Chapters 103B and 103D (“Grantee”).

RECITALS

A. Grantor is a private institution of higher learning and owns in fee certain real property as legally described above (the “Property”). Surface water features are located on the Property, including a basin that is connected by means of a channel to other surface waters within the Six Mile Creek subwatershed and ultimately to Lake Minnetonka.

B. Grantee is a special purpose unit of government with a statutory mandate to protect and manage water resources for beneficial public use. Grantee has undertaken a multi-year program to improve water quality and habitat within the Six Mile Creek subwatershed by means that include systematic management of rough fish populations within the subwatershed.

C. Through scientific study, Grantee has determined that the above-cited basin on the Property is a spawning site for rough fish that Grantee is managing. The purpose of this Easement is to allow Grantee to maintain facilities in the channel downgradient of the basin to prevent rough fish from migrating into the basin and using it as spawning habitat.

TERMS

For good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, and intending to be legally bound, Grantor conveys to Grantee an easement on the Property for a term of ten years, renewable, as specifically described herein.

1. Easement Description. The Easement is on those parts of the Property delineated and labeled as “Structure Area” and “Construction Area” on the site plan at Attachment A to this Easement, attached hereto and incorporated herein (together, “Easement Areas”).

2. Use of Easement. Grantee may install a barrier to rough fish movement within the Structure Area, as a structure not affixed to any road crossing or other structure of Grantor. Grantee may inspect, maintain, repair, modify, replace,

relocate and remove the barrier, and may harvest and otherwise manage fish from the channel adjacent to the barrier. For these purposes, Grantee may occupy the Easement Areas and may stage light vehicles and equipment within the Easement Areas, but Grantee will stage or stockpile vehicles, equipment or material within the Easement Areas only during active work. Grantee's installation as installed will not: (a) extend vertically above adjacent road surface elevation; or (b) increase the 100-year water elevation within the channel or basin.

3. Access. Grantee may cross the Property, on foot or by motorized vehicle, on paved ways for ingress to and egress from the Easement Areas.

4. Maintenance. Grantee will perform ordinary maintenance to keep the face of the barrier free of debris that might inhibit its function or obstruct channel flows. Grantee will be responsible for the condition of, and for all maintenance and repair related to, the barrier, and will repair any disturbance to the Property that it causes by its use. Grantee will respond promptly to notice from Grantor that maintenance may be required.

5. Notice. Before it performs work other than inspection, or minor repair or maintenance, Grantee will give three business days' notice to Grantor at the following:

Vice President of Operations
8700 College View Drive
Saint Bonifacius, Minnesota 55375
Phone: 952-446-4210

Grantor may change the notice contact by written direction to Grantee.

6. Grantor's Reserved Rights. Grantor reserves all rights and privileges associated with ownership of the Property except as set forth in this section 6.

a. Grantor will avoid any action that interferes with Grantee's exercise of its rights under this Easement.

b. Until installation is complete or one year after the effective date of this Easement, whichever earlier, Grantor, and those under Grantor's authority or control, may not construct, install or place a building or other structure, or plant trees or shrubs, within the Easement Areas. Thereafter, Grantor may place structures and/or landscaping within the Construction Area, provided that Grantee retains adequate access to the Structure Area to conduct its activities under this Easement.

c. After the Easement has been effective for three years, Grantor may request in writing that Grantee relocate the barrier to another reasonably convenient and effective location within the channel on the Property. Grantee will relocate the barrier within six months after the parties have in writing identified the new location.

d. The Easement will renew automatically for subsequent 10-year terms. However, Grantor may terminate the Easement by written notice to Grantee delivered by certified mail or courier to Grantee's administrative office. Termination will be effective one year from the date notice is delivered, or such earlier time as Grantee has removed improvements and, as necessary, repaired any disturbance to the Property. Grantee will cooperate to provide Grantor evidence of termination for recording on the Property title. Notwithstanding any other term of this paragraph, termination will not be effective before the end of the first 10-year term of this Easement.

7. No Public Access Granted. Nothing in this Easement authorizes any right of access onto the Property by the general public. The right of entry conveyed to Grantee under this Easement applies to and shall be limited to authorized employees, representatives, contractors and subcontractors of Grantee.

8. Liens. Grantee will not allow any lien related to its work to be placed on the Property and will take prompt action to have any such lien removed.

9. Miscellaneous. The parties may amend this Easement only by a duly executed writing meeting all requirements of law. This Easement runs with the land until it terminates, and binds and benefits the parties and their respective representatives, heirs, successors, assigns and all others who exercise any right by or through them. Grantee, at its cost, may file and refile this Easement for recordation or registration in the Hennepin County land records. All recitals are a part of this Easement.

CROWN COLLEGE, Grantor

Joel Wiggins, President

Date:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

This instrument was acknowledged before me this ____ day of _____, 2019, by
Dr. Joel Wiggins as President of Crown College.

Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

Sherry White, President

Date:

STATE OF MINNESOTA
COUNTY OF HENNEPIN

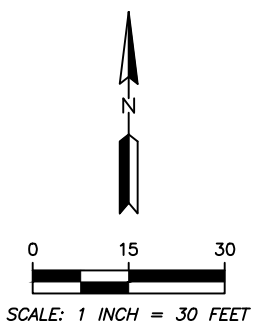
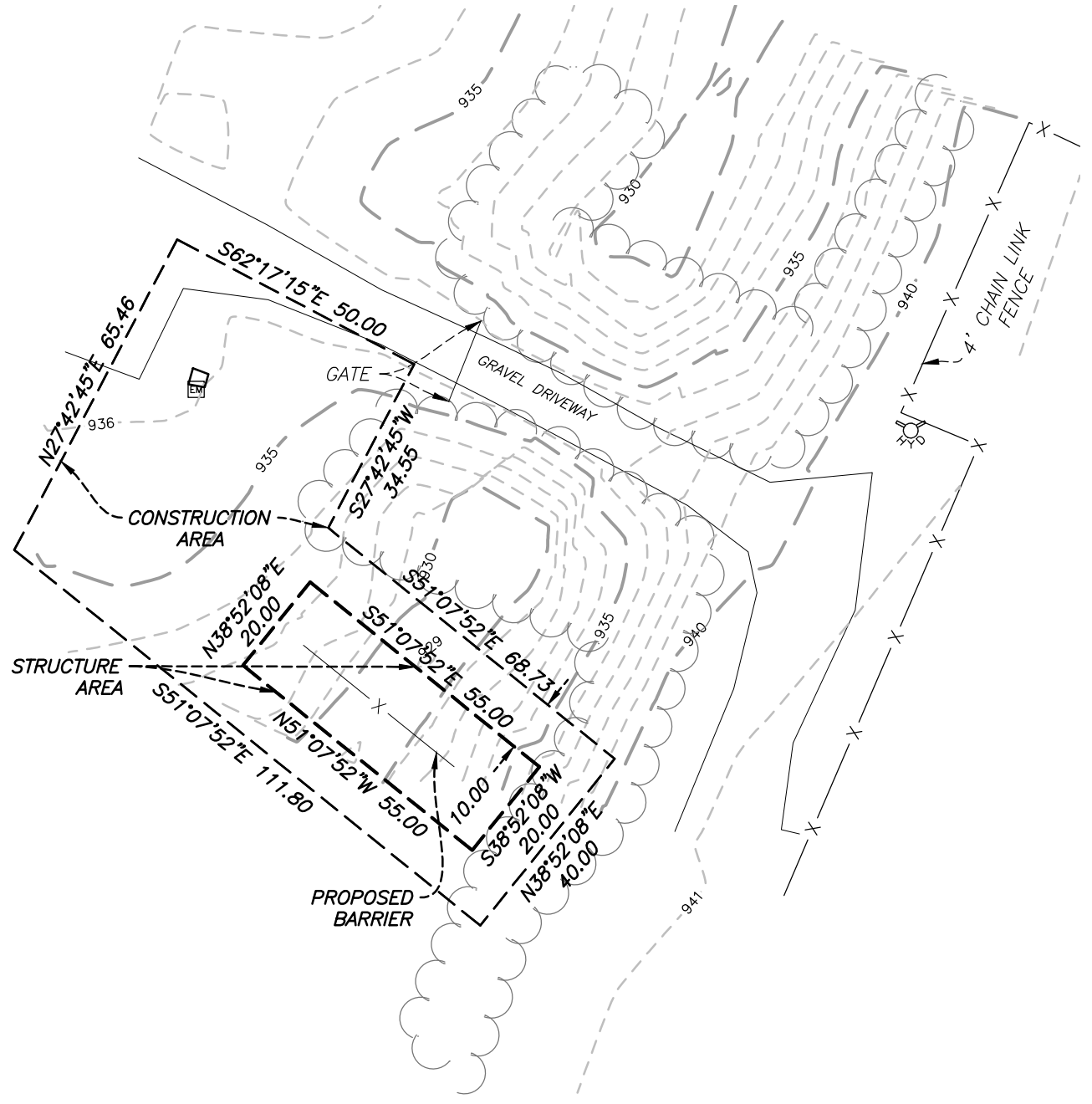
This instrument was acknowledged before me this ____ day of _____, 2019, by
Sherry White as President of the Minnehaha Creek Watershed District.


Notary Public

This document prepared by:
Smith Partners P.L.L.P.
400 Second Avenue South, Suite 1200
Minneapolis MN 55414
(612) 344-1400

EASEMENT EXHIBIT

CROWN COLLEGE CARP BARRIER



		1802 WOODDALE DR. WOODBURY, MN 55125 Ph: 651-395-5212		PROJECT TITLE EASEMENT EXHIBIT	
Responsive partner. Exceptional outcomes.		DWG BY CNA	CHK'D XXX	APP'D XXX	DWG DATE 10-8-18
CLIENT NAME MINNEHAHA CREEK WATERSHED DISTRICT		SCALE 1" = 30'		SHEET NO. 1 OF 1	
PROJECT NO. 0185-0100					