

**MEETING DATE:** January 28, 2016

**TITLE:** Authorization to Enter into an Agreement for Easement Conveyance and Culvert Replacement on Painter Creek and Authorization to Enter into a Construction Contract for Culvert Replacement at 4650 & 4680 Creekwood Trail, Orono

**RESOLUTION NUMBER:** 16-008

**PREPARED BY:** Tiffany Schaufler

**E-MAIL:** tschaufler@minnehahacreek.org

**TELEPHONE:** 952-641-4513

**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): Not Reviewed at Workshop. Seeking approval at January 28, 2016 Board Meeting.	

**PURPOSE or ACTION REQUESTED:**

Authorization to enter into an agreement for the conveyance of easements from nine land owners (as well as private road easements for access) to the District in exchange for the District replacing culverts at 4650 and 4680 Creekwood Trail in Orono.

Authorization to enter into a contract with Minnesota Dirt Works, Inc. for culvert replacement at 4650 and 4680 Creekwood Trail in Orono in the amount of \$43,437 and establish a not-to-exceed budget of \$47,780.70.

**PROJECT/PROGRAM LOCATION:**

South Katrina Marsh, Orono—see map in Attachment 1

**PROJECT TIMELINE:**

March-August 2015: Negotiated easements terms  
August 25, 2015: Community meeting  
September 15, 2015: Community meeting  
October 2015: Executed Letters of Intent  
December 2015-January 2016: Develop partnership Agreement and finalized easement documents  
February-March 2016: Execute Agreement and easements with landowners  
April-June 2016: Replace culverts

**PROJECT/PROGRAM COST:**

Fund name and number: Land Conservation, 2004

Current budget: \$3,018,369

Expenditures to date: \$0

Requested amount of funding: \$53,000

**PAST BOARD ACTIONS:**

- February 19, 2009, RES 09-024: Resolution of Support for USACE Painter Creek Feasibility Study
- June 26, 2014: Staff provided the Board an update on the 2014 flooding and noted flooding that was occurring on South Katrina Marsh due to two potentially undersized private driveway culverts
- July 9, 2015, RES 15-061: Authorization to submit a Letter of Intent to the U.S. Army Corps of Engineers for Painter Creek Section 206 Funding

**BACKGROUND:**

In the spring of 2014, the District was contacted by the Huntington Farm Homeowners Association (HFHOA) regarding flooding that was occurring on Hunt Farm Road due to high water in South Katrina Marsh. Around the same time, the District was contacted by the City of Medina about flooding on Starkey Road. The HFHOA requested that the District investigate what was causing the flooding. After the flood water receded in the fall of 2014, the District performed an investigation along Painter Creek and found two private driveway culverts, located at 4650 & 4680 Creekwood Trail in Orono, that were undersized and therefore contributing to the flooding that occurred upstream (see Attachment 2 for Wenck's Technical Memo). The District determined that it does not have a responsibility for the culvert design in relation to any District project and that the culverts apparently were installed in the late 1980s or the early 1990s without a District permit or maintenance obligation that the District could enforce. This reach of Painter Creek is a part of County Ditch 10 and, as drainage authority, the District could initiate statutory procedures to determine whether the culverts constitute an obstruction as defined under the drainage law, and if so could order that they be replaced.

Instead of proceeding in this way, staff considered how it could play a useful role in bringing together the affected homeowners and assist in identifying a solution to reduce the flood risk in the future while advancing the District's public goals with respect to Painter Creek and South Katrina Marsh, which are identified in the District's watershed management plan (WMP) as a Key Conservation Area/Priority Area. Following the identification of this issue, at the March 19, 2015 Policy and Planning Committee (PPC) meeting, staff facilitated a discussion regarding the potential opportunity to work with the affected landowners to replace the culverts creating the hydraulic constriction, at public cost, if in exchange the landowners would grant easements to the District over portions of South Katrina Marsh and Painter Creek.

The District's interest in acquiring easements over South Katrina Marsh also relate to the Board's recent action to send a letter of intent to the U.S. Army Corps of Engineers (USACE) for a Painter Creek Section 206 project. Obtaining easements over South Katrina Marsh would provide the District the legal right to manage hydrology and vegetation in the marsh, which could constitute or contribute to the District's "local sponsor" match for a potential Section 206 funded capital improvement project for marsh habitat restoration in partnership with the USACE. Following discussion at the March 19, 2015 PPC meeting, the PPC members expressed support for the culvert replacement and easement acquisition partnership being advanced.

Subsequently staff continued to coordinate with the landowners to advance the potential partnership. Progress was discussed at the September 17, 2015 PPC meeting, where staff informed the Committee that District-landowner discussions were advancing and that staff would next work on securing letters of intent from the

landowners in the area. Following discussion the Committee expressed continued support for the direction being pursued.

At the October 15, 2015 PPC meeting, staff noted that the District had received nine letters of intent from nine landowners. Through those nine letters of intent the District was in a position to acquire approximately 97 acres in conservation easements over South Katrina Marsh and along Painter Creek, in exchange for the District designing and constructing the two culvert replacements along Painter Creek. Staff noted that the cost of the culvert replacement would be funded through the Land Conservation program, as the District would essentially be paying for the acquisition of the easements through the cost of the culvert design and replacement. Following discussion the Committee voted to recommend to the Board of Managers that staff move forward with the partnership framework as proposed and begin the Land Conservation acquisition process for the easements.

#### **AGREEMENT & EASEMENTS:**

The enclosed Agreement for Easement Conveyance and Culvert Replacement (“Agreement”) lays out the terms between the District and the nine landowners for the easement conveyance and culvert replacement (see Attachment 3). Through the Agreement, the nine landowners agree to convey approximately 97 acres of conservation easements to the District in exchange for the District replacing the culverts at 4650 & 4680 Creekwood Trail in Orono. After the District certifies completion of the culvert replacements, the landowners at 4650 & 4680 Creekwood will assume culvert ownership and responsibility to maintain the hydraulic capacity of the culverts as required by the District permit. The nine easement documents can be viewed as Attachments A-I to the Agreement. The Painter Creek easements will allow the District to undertake planting and bioengineering in the future for stabilization and habitat enhancement purposes, while the easements on South Katrina Marsh will allow the District to alter and manage hydrology and vegetation for flood management, habitat enhancement and other public purposes, alone or in partnership with the USACE.

District staff has coordinated with City of Orono on the proposed easements, culvert replacements, and potential South Katrina Marsh restoration project. A large portion of the marsh that would be encumbered by District easements already is subject to covenants or conservation easements conveyed to the City of Orono during development that prohibit disturbance. The City of Orono Administrator and Senior Planner have indicated support for City easement subordination to the proposed District’s easements where applicable, support for the culvert replacement project, and support for a potential South Katrina Marsh restoration project. District staff will be attending the City of Orono City Council meeting on February 8, 2016 to discuss these items with City Council and seek authorization on City subordination of easements and covenants to the District’s easements and a letter of support for the culvert replacement project and potential South Katrina Marsh restoration project.

A number of the parcels also are subject to mortgages, and landowners are in the process of obtaining from lenders consent to the easements and to their survival in the event that the lender should exercise a foreclosure remedy. The delegation to the District Administrator that is being requested would include the discretion to negotiate final terms of lender consent and, with advice of counsel, to make risk judgments in the event that full lender consent cannot be obtained for all parcels at this time.

In accordance with procedures set forth in the WMP for acquiring real property interests, the District’s Land Conservation Technical Advisory Team (TAT) met on January 19, 2016 to discuss the proposed culvert replacement and easement conveyance partnership. After discussion with the TAT, the TAT voted to support moving forward with the partnership and pursuing acquisition of easements around South Katrina Marsh and Painter Creek.

Resolution 050-05, adopting District appraisal policy for the acquisition of interests in land, stipulates that the District will obtain an appraisal for any acquisition that requires an expenditure of District funds. The policy

recognizes several exceptions, including “where the Board determines that the acquisition price is so clearly below the fair market value that an appraisal would be an unnecessary expense and effort. Such determinations shall be made on a case-by-case basis and based on a review of sufficient information for the Board to make such a determination.” Here, the total cost of acquiring the easements is the cost to design and replace the culverts, which is approximately \$53,000. The District has not obtained appraisals for the easements to be conveyed. At the meeting, staff will review the basis for its judgment that the proposed acquisitions meet this policy exception, particularly when the cost of multiple appraisals is considered.

**CULVERT REPLACEMENT:**

The District engineer prepared plans and drawings to replace a single 18-inch reinforced concrete pipe (RCP) beneath each of the two driveways with a single 36-inch RCP (see Attachment J located within Attachment 3). Staff budgeted \$63,000 for the culvert replacement in the 2016 Land Restoration Work Plan. The District sought quotes from five contractors and quotes were received from five contractors and are listed in the table below (see Attachment 4 for a complete quote tabulation). Minnesota Dirt Works, Inc. submitted the lowest quote.

<b>Contractor</b>	<b>Quote Amount</b>
Minnesota Dirt Works, Inc.	\$43,437.00
Blackstone Contractors, LLC	\$66,855.00
Sunram Construction, Inc.	\$68,991.00
G.L. Contracting, Inc.	\$71,252.40
Minger Construction Companies, Inc.	\$79,468.00

The District engineer has examined the quotes and considers the quote of Minnesota Dirt Works, Inc. to be conforming and based on the work described. Staff recommends awarding the contract for the Painter Creek culvert replacement to Minnesota Dirt Works, Inc. for a contract price of \$43,437.

The District engineer, by the District Administrator’s work order, has provided assistance to date in the amount of about \$4,800 to prepare construction plans and solicit quotes. Wenck’s proposal for construction oversight and as-built plans is \$4,150 (see Attachment 5). Because the combined amount exceeds \$5,000, staff is seeking Board authorization for the supplemental Wenck proposal.

Staff also requests that the Board authorize a transfer of funds in the amount of \$53,000 from the Land Restoration Fund (2005) to the Land Conservation Fund (2004) for this work, and adjust the budget accordingly.

**ATTACHMENTS:**

- Attachment 1: Proposed South Katrina Marsh/ Painter Creek Easements Map
- Attachment 2: Wenck’s Technical Memo
- Attachment 3: Agreement for Easement Conveyance and Culvert Replacement
  - Attachment A: Huntington Farm Home Owners Association Easement
  - Attachment B: Glen & Michaela Chelberg Easement
  - Attachment C: Catherine Mehaffey Easement
  - Attachment D: David & Kathryn Biek Easement
  - Attachment E: Kevin & Lori Bjork Easement
  - Attachment F: Dale & Jonmari Olsen Easement
  - Attachment G: Jeffery & Tracy Erb Easement
  - Attachment H: Douglas Deakins Easement
  - Attachment I: Richard & Kathleen Rudd Easement
  - Attachment J: Culvert Replacement Plan Sheets
- Attachment 4: Construction Quote Tabulation
- Attachment 5: Wenck’s Proposal for Construction Observation/As-Built Plans

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**DRAFT for discussion purposes only and subject to Board approval and the availability of funds.  
Resolutions are not final until approved by the Board and signed by the Board Secretary.**



## RESOLUTION

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**RESOLUTION NUMBER:**    16-008

**TITLE:**            **Authorization to Enter into an Agreement for Easement Conveyance and Culvert Replacement on Painter Creek and Authorization to Enter into a Construction Contract for Culvert Replacement at 4650 & 4680 Creekwood Trail, Orono**

- WHEREAS, the Minnehaha Creek Watershed District's Comprehensive Water Resources Management Plan (CWRMP) includes a Land Conservation Program; and
- WHEREAS, the CWRMP identifies the Painter Creek subwatershed, and specifically South Katrina Marsh and that part of Painter Creek downgradient from the marsh, as a Key Conservation Area under its Land Conservation Program and a priority area for capital improvements; and
- WHEREAS, the U.S. Army Corps of Engineers (USACE) completed a DRAFT Feasibility Study for the Painter Creek project area and reviewed the DRAFT Feasibility Study findings with the District Board of Managers at its February 19, 2009 Board Meeting; and
- WHEREAS, at the July 9, 2015 Board Meeting the Board passed Resolution 15-061 to submit a letter of intent to the U.S. Army Corps of Engineers for Painter Creek Section 206 funding; and
- WHEREAS, the District was requested to assist in diagnosing and addressing high water concerns affecting properties along Painter Creek and surrounding South Katrina Marsh, as well as local roadways; and
- WHEREAS, the District performed an investigation in the fall of 2014 and determined that two private driveway culverts, located at 4650 & 4680 Creekwood Trail in Orono, were undersized and likely causing the identified high water concerns; and
- WHEREAS, the District does not own or have responsibility for the culverts located at 4650 & 4680 Creekwood Trail in Orono, but has the authority and capacity to perform culvert replacement work cost-effectively in the interest of affected landowners and local units of government; and
- WHEREAS, the District and affected private landowners have worked together to develop a framework under which the District will provide value to the landowners by replacing the culverts creating the hydraulic constriction with District funds and, in exchange, will receive from nine landowners easements, all within the City of Orono, that will allow the District to pursue flood management, habitat restoration and water quality work within South Katrina Marsh and Painter Creek in accordance with CWRMP purposes and priorities; and
- WHEREAS, the District's Land Conservation Technical Advisory Team met on January 19, 2016 and recommended acquisition of the South Katrina Marsh and Painter Creek easements; and
- WHEREAS, District staff have coordinated with Orono staff, who have voiced support for the culvert work and easement conveyances for which Board approval is requested, and for the potential for subsequent District resource enhancement work pursuant to the easements, and the Orono City Council is scheduled to be formally briefed before the culvert replacement work commences; and

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WHEREAS, District staff has solicited quotes for culvert replacements, and has received quotes from five contractors, and Minnesota Dirt Works, Inc. submitted a low quote of \$43,437; and

WHEREAS, in accordance with Resolution 050-05, appraisals of the nine easements are not required because the Board is able to find without benefit of appraisals that the market value of the easement rights to the District, including the appraisal cost, exceeds the District's cost to obtain the design for the culvert replacement and the replacement work;

NOW, THEREFORE, BE IT RESOLVED that the District Administrator is authorized to execute the attached Agreement for Easement Conveyance and Culvert Replacement, and all easements to be conveyed thereunder as attached, with non-material changes and on advice of counsel, as well as any additional access easements required, and to take all steps necessary to provide for the recording or registration of the easements and the District's fulfillment of its obligations under the agreement;

BE IT FURTHER RESOLVED, that the District Administrator is authorized, on advice of counsel, to enter into a contract with Minnesota Dirt Works, Inc. in the amount of \$43,437 for the culvert replacement work; and

BE IT FURTHER RESOLVED that the Board establishes a project construction budget in the not-to-exceed amount of \$47,780.70 and authorizes the District Administrator, in his judgment and on the recommendation of the District engineer, to authorize change orders obligating the District up to that amount; and

BE IT FURTHER RESOLVED that the District Administrator is authorized to issue a supplemental work order to the District engineer for construction oversight, preparation of as-built plans and associated contract management tasks in an amount not to exceed \$4,150; and

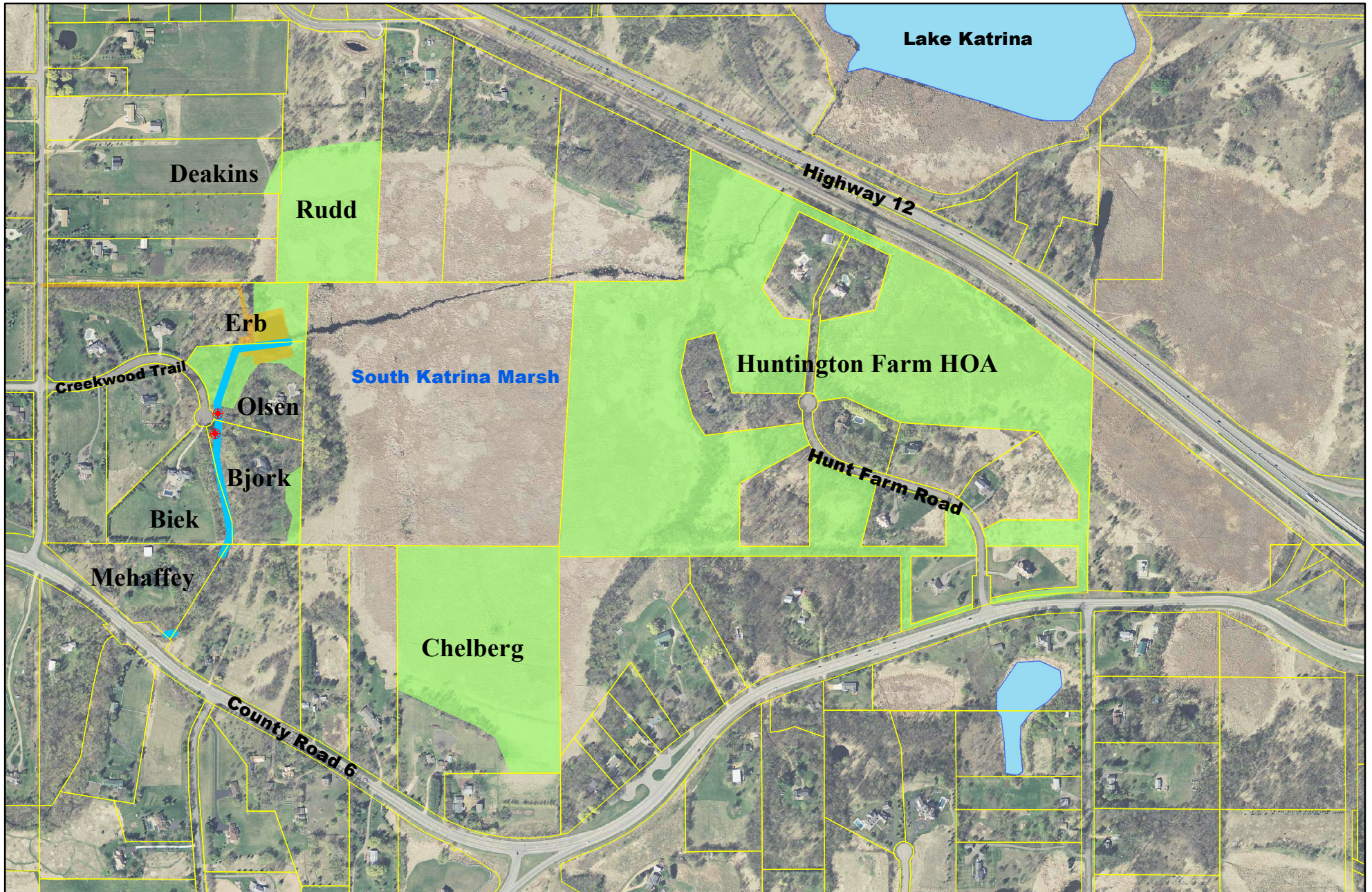
BE IT FINALLY RESOLVED that the amount of \$53,000 is transferred from the Land Restoration Fund (2005) to the Land Conservation Fund (2004) for the purpose of funding the work described, and the District budget is adjusted accordingly.

Resolution Number 16-008 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.






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

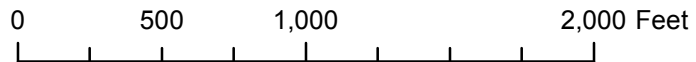


# Proposed South Katrina Marsh/Painter Creek Easements



**Legend**

-  Proposed Painter Creek Easement
-  Proposed Wetland Easement
-  Existing MCWD Access Easement
-  Parcels
-  Undersized Culvert







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## TECHNICAL MEMORANDUM

**TO:** Tiffany Schaufler, Project and Land Manager, MCWD

**FROM:** Chris Meehan, Wenck Associates, Inc.  
 Erik Megow, Wenck Associates, Inc.

**DATE:** January 25, 2016

**SUBJECT:** Painter Creek culvert modeling between County Road 6 and US Highway 12

During June 2014, the Minnehaha Creek Watershed District received record rainfalls that led to flooding throughout the District. One area where flooding occurred was along Painter Creek between United States Highway 12 and County Road 6. In this reach of the stream, Painter Creek flows through two 18-inch RCP culverts under two private driveways. This memo outlines the results from an XPSWMM hydrologic and hydraulic model for two driveway culverts to determine if the culverts are properly sized and what effect larger culverts would have on future flooding events. Figure 1 shows the location of the two 18-inch RCP culverts along Painter Creek.



**Figure 1:** Painter Creek between US Highway 12 and Count Road 6

**Technical Memo**

Painter Creek culvert modeling

MCWD

January 25, 2016

The XPSWMM model that was constructed for this analysis was taken from the Watershed District's FEMA-approved XPSWMM model and was refined with data collected during an October 2014 survey (Appendix A) of the driveway culverts and the County Road 6 culvert. With the constructed model, a set of runs were analyzed to estimate the upstream (US) water level and downstream (DS) effects of different sized driveway culverts. Table 1 shows the sizes and elevations of the culverts analyzed.

*Table 1. XPSWMM Inputs for culverts along Painter Creek*

Existing							
Culvert	Description	Type	Dia. (in)	Length	US Elev.	DS Elev.	Driveway Elev.
PC-8 Bike	Bike path culvert, N. of US 12	RCP-Arch	30*	48*	959.2*	959.14*	N/A
PC-9 PD2	North Driveway culvert	RCP	18^	26*	956.721^	956.427^	964.7*
PC-9 PD1	South Driveway Culvert	RCP	18^	62*	956.064^	955.655^	967.04^
PC-10 CR6	CR 6 Culvert	RCP-Arch	54-A*	191*	955.536^	955.429^	N/A

\*From FEMA XPSWMM Model

^From Survey

Table 2 shows the estimated water levels upstream of the driveway culverts, the flow rate through the culverts, and the water levels and flows through the County Road 6 culvert for different size culverts beneath the driveways for an Atlas 14, 100-year rainfall event.

*Table 2. XPSWMM Modeling Results for various size driveway culverts*

Culvert	Results for the 100-year Rainfall Event for various sized Driveway Culverts									
	18" RCP		24" RCP		36" RCP		42" RCP		No Culverts	
	HWL (ft)	Flow (cfs)	HWL (ft)	Flow (cfs)	HWL (ft)	Flow (cfs)	HWL (ft)	Flow (cfs)	HWL (ft)	Flow (cfs)
Bike Trail (PC-8)	963.5	24.8	963.5	39.8	963.4	57.8	963.4	63.0	963.3	62.5
Driveway 1 (PC-9)	963.2	16.6	962.8	27.6	962.5	59.7	962.3	78.0	961.5	196.5
Driveway 2 (PC-9)	960.8	16.6	960.7	27.6	960.8	59.7	960.9	78.0	961.5	196.5
CR6 (PC-10)	959.4	142.5	959.5	147.4	959.7	159.9	959.9	165.8	960.9	208.9

Color Key:	Unstable Flow Hydrograph	Increase Compared to 18" RCP	Decrease Compared to 18" RCP
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Table 2 shows that by increasing the driveway culverts from 18 inches in diameter to 36 inches in diameter, the HWL upstream of the culverts would drop approximately 8 inches from an elevation of 963.2 to 962.5. Also, by using 42-inch culverts or with no culverts, the upstream HWL would drop to 962.3 and 961.5, respectively. However, the no culvert option significantly increases the HWL upstream of CR 6 (18 inches for no culverts).

**Conclusion**

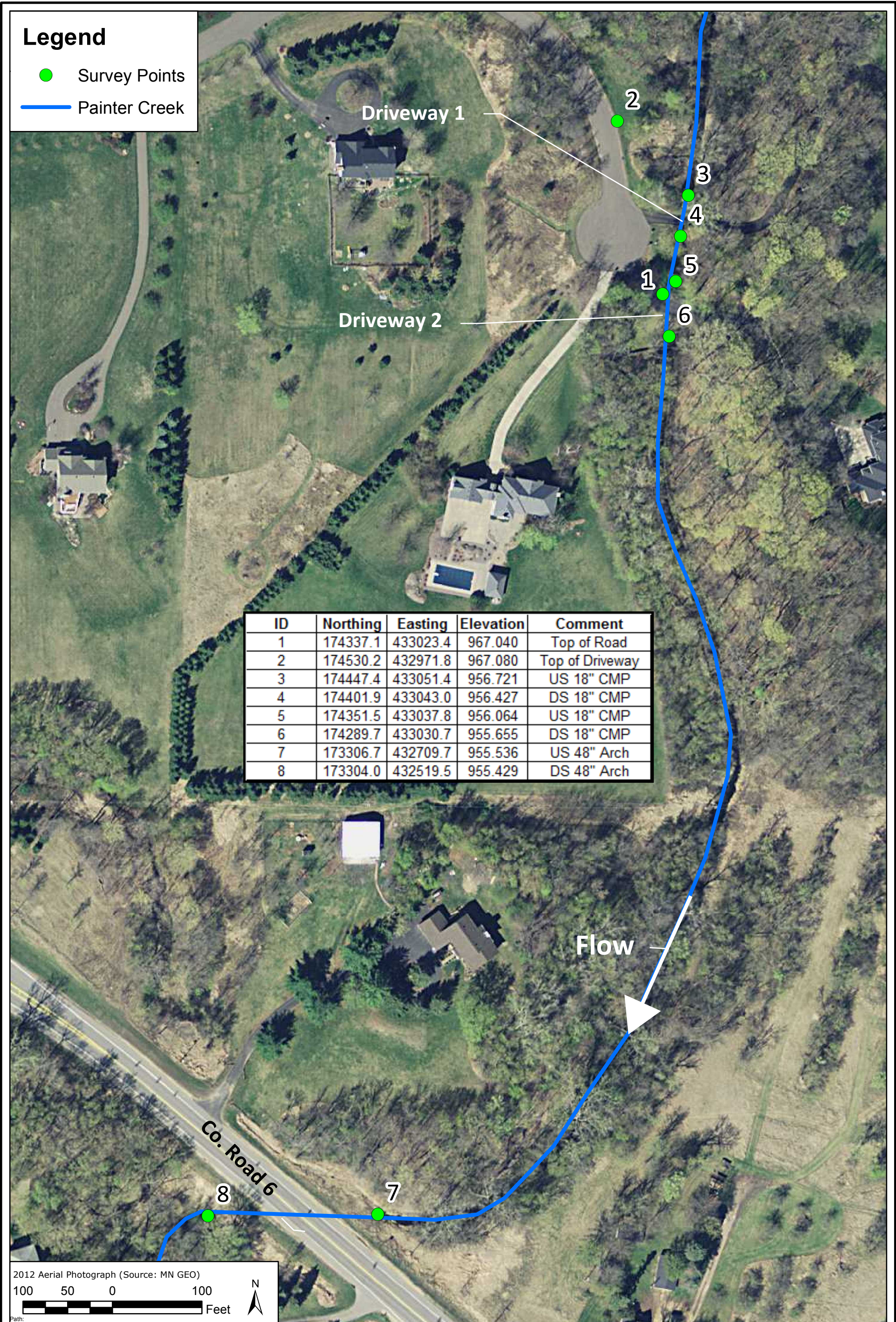
From the analysis, Wenck determined that the 18 inch culverts that were placed under these driveways were undersized based on these results and by looking at the size of the culverts placed upstream and downstream of these culverts. If these culverts are to be replaced, Wenck recommends 36-inch RCP culverts, which are the hydraulic equivalent to the upstream 30-inch arch culvert located north of Highway 12.

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**Appendix A**

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2012 Aerial Photograph (Source: MN GEO)  
 100 50 0 100 Feet  
 Path: Date: 12/18/2014 Time: 10:07:20 AM User: MegER0476



**AGREEMENT for EASEMENT CONVEYANCE and CULVERT REPLACEMENT**

**Minnehaha Creek Watershed District  
Huntington Farm Home Owners Association, Inc.  
David & Kathryn Biek  
Kevin & Lori Bjork  
Glen & Michaela Chelberg  
Douglas Deakins  
Jeffrey & Tracy Erb  
Catherine Mehaffey  
Dale & Jonmari Olsen  
Richard & Kathleen Rudd**

**City of Orono, Hennepin County, Minnesota**

THIS AGREEMENT is entered into by and among the Minnehaha Creek Watershed District, a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D (“District”) and the following property owners: Huntington Farm Home Owners Association, Inc.; David and Kathryn Biek; Kevin and Lori Bjork; Glen and Michaela Chelberg; Douglas Deakins; Jeffrey and Tracy Erb; Catherine Mehaffey; Dale and Jonmari Olsen; and Richard and Kathleen Rudd (“Owners”).

**RECITALS**

A. Each Owner owns in fee simple certain real property located within the City of Orono or Maple Plain, Hennepin County, as follows:

Huntington Farm Home Owners Association, Inc.: address unassigned (PID 3011823440006 and two associated sections of private roadway PID 3011823440007 and 3011823430005)  
Glen & Michaela Chelberg: 4490 Watertown Road (PID 3111823210005)  
Catherine Mehaffey: 4720 Watertown Road (PID 3111823220005)  
David & Kathryn Biek: 4675 Creekwood Trail (PID 3011823330007)  
Kevin & Lori Bjork: 4650 Creekwood Trail (PID 3011823330006)  
Dale & Jonmari Olsen: 4680 Creekwood Trail (PID 3011823330005)  
Jeffrey & Tracy Erb: 4700 Creekwood Trail (PID 3011823330004)  
Douglas Deakins: 1100 Town Line Road (PID 3011823320007)  
Richard & Kathleen Rudd: 4575 Spruce Way (PID 3011823310004)



B. Painter Creek flows for a distance of 6.2 miles through the cities of Medina, Orono, Maple Plain, Independence and Minnetrista. It begins as the outlet of Katrina Lake in Medina and then flows through a large wetland and floodplain area in Orono known as Katrina marsh, before outletting at Jennings Bay in Lake Minnetonka. Each Owner's property lies in part on Katrina marsh or is located downstream of Katrina Marsh on the Painter Creek channel.

C. The Olsen and Bjork properties are located on Painter Creek and are the site of culverted driveway crossings. These culverts affect water elevation of the creek channel and of Katrina marsh upstream. Owners would like to increase the hydraulic capacity of these culverts to protect against property damage during future flood conditions.

D. At this time, the District does not have the authority to regulate the Olsen and Bjork culverts. A new culvert placed within a stream channel must comply with District rules and permit requirements. However, this does not apply to existing culverts. Also, under Minnesota Statutes §103E.075, the District has the authority to order an obstructions to be removed from a public drainage system. Painter Creek is designated as Hennepin County Ditch 10, and is a public drainage system. However, removal of an obstruction may not be ordered until after due process and a hearing. The District has not initiated such a process or made a formal finding of obstruction. Accordingly, the District does not now have authority over, or responsibility for, the Olsen or Bjork culvert or any hydraulic impact it may have. However, the District has the ability to efficiently obtain approvals for culvert replacement and to have such work done. On the basis of its review to date, the District believes that a culvert replacement to achieve Owners' goal can receive applicable permits and approvals.

E. Through its watershed planning procedures, the District has identified Katrina marsh as a potential site for wetland restoration, and has identified Painter Creek downstream of the marsh as a potential site for streambank restoration, all for purposes of ecological and habitat improvement, stream stabilization, flood management and water quality. The District and the U.S. Army Corps of Engineers have identified Katrina marsh as a potential site for cost-shared restoration work under section 206 of the federal Water Resources Development Act. Owners support this potential restoration work and are willing to convey easements to allow such work in exchange for District assistance in replacing the culverts on the Olsen and Bjork properties.

F. Accordingly, the parties enter into this Agreement under which Owners will convey easements to the District in exchange for the District's performance of culvert replacement work, all in accordance with the mutual covenants and conditions set forth herein. This Agreement establishes valuable mutual consideration and is legally binding on all parties according to its terms.

### **AGREEMENT**

1. Attachments A through I, attached hereto and incorporated herein, are easements from each Owner to the District. Within five days after the District and an Owner have executed this Agreement, that Owner will execute and deliver to the District three originals of an easement conforming to the corresponding attachment.
2. The District will sign each easement for acceptance, file it for recording or registration at the Office of the Hennepin County recorder, and return one fully signed original, with the recorder's stamp indicating filing, to the Owner. The District will bear the cost of recording.
3. When the District has received all nine easements and the recorder's office has accepted those easements for filing, the District will be obligated to replace the culverts on the Olsen and Bjork properties in accordance with paragraphs 4 through 8, below.
4. Attachment J, attached hereto and incorporated herein, are plan sheets showing design of culvert replacements for the Olsen and Bjork properties, respectively. The District, at its cost, will obtain all required approvals for the culvert replacements and, through a contractor, will provide for culvert replacement conforming to the two attachments. Olsen and Bjork, as property owners, will cooperate as needed for approvals and so that the property owner is properly identified as the party responsible for future maintenance.
5. Olsen and Bjork hereby grant to the District, its representatives and its contractor, the license to enter and occupy their properties as necessary or convenient to perform the culvert replacement work. At least three business days before entry for culvert replacement, and again for permanent surfacing, the District will notify Olsen and Bjork by written notice delivered to the address for each at paragraph 12, below. At the request of either Owner, a District representative will meet with the Owner on site before work begins to stake limits of disturbance and identify trees, shrubs and other features for protection.

After construction, the District will restore or replace any disturbance materially to its preexisting condition.

6. Olsen and Bjork each warrants that there is no subsurface utility, irrigation line or other feature within the delineated "subsurface disturbance" boundary on the attachment. Provided that the District's contractor has followed Gopher One Call procedure in accordance with state law before subsurface disturbance and followed reasonable precautions to avoid identified features, Olsen and Bjork each holds the District and its contractor harmless and agrees to indemnify the District and its contractor, with respect to any claim arising out of damage to any such feature.

7. The District will accomplish the work as quickly as practicable, and always will maintain access across the channel for one of the two properties except as Olsen and Bjork may agree. When either crossing is unavailable, Olsen and Bjork will cooperate to provide each other foot and vehicle access across the channel. The District's contract explicitly will state that the contractor's duty of care for the work will extend to Olsen and Bjork, and that the property owner must be named as an additional insured under the contractor's general liability insurance.

8. Culvert replacement will occur during frozen or low-flow conditions. A temporary gravel surface will be placed until spring, when temperatures will allow for the District to install permanent paved crossing surface and restore vegetation. The District intends to complete the work by spring 2016. However, the parties recognize that the work is weather dependent and that the District is not obligated to incur extra costs to perform the work in unsuitable weather conditions. Owners also recognize that timely delivery of signed easements will facilitate the District's ability to complete the work at the earliest time.

9. When the District has delivered its engineer's certification of completion to Olsen and Bjork, ownership of the culverts and crossings will vest in Olsen and Bjork. Thereafter, all responsibility for the condition and maintenance of the culverts and crossings, and all responsibility to ensure that the culverts and crossings create no hydraulic obstruction or other deleterious condition, shall rest with Olsen and Bjork. The District is responsible to construct the culvert replacements in accordance with Attachment J, but otherwise makes no warranty and assumes no responsibility for the design, construction or maintenance of the culverts and crossings.

10. Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement. Each party has a specific performance remedy regardless of the adequacy of a remedy at law. This Agreement waives no applicable immunity, defense or liability limit applicable to the District as a public agency under law and creates no right in any non-party to this Agreement.

11. If a party fails to insist on another party's performance of any term of this Agreement in strict conformance hereto, that does not waive the second party's obligation to perform in every other respect and does not waive the first party's right thereafter to insist on strict performance of any term or obligation, all of which will remain in full force and affect. A failure to insist on time of performance in accordance with this Agreement does not in any way waive the obligation to perform. If the District is unable to obtain a required permit or otherwise determines that it cannot perform the culvert replacement work, it will cooperate diligently with Owners to release all easements conveyed and will bear the cost of recording or registering releases.

12. Each communication under this Agreement will be made to the following addresses of the parties:

District:

Tiffany Schaufler, Project & Land Manager  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345-1503

Owners:

[list name and address of each]

13. This Agreement may be executed in counterparts. Each Owner hereby authorizes the District to prepare one complete Agreement by assembling the completed signature pages of all Owners and the District. The Agreement is effective on execution by the District and all Owners and expires when all obligations hereunder have been performed.

14. The above recitals are incorporated into this Agreement.

15. Each Owner understands that this Agreement is a binding legal document that affects his or her rights and liabilities. Each Owner has carefully reviewed this Agreement and has consulted with his or her own legal counsel as he or she has determined appropriate or necessary.

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Lars Erdahl, Administrator Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

**OWNERS**

\_\_\_\_\_  
By: [list name of each] Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by [list name of each owner].

\_\_\_\_\_  
Notary Public

ATTACHMENT A  
HUNTINGTON FARM HOME OWNERS ASSOCIATION EASEMENT DOCUMENT

DRAFT

**EASEMENT AGREEMENT**

On the Property of Huntington Farm Home Owners Association, Inc.  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT AGREEMENT is entered into by and between Huntington Farm Home Owners Association, Inc., a Minnesota nonprofit corporation ("Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

**WITNESS:**

A. Owner owns in fee simple certain real property located at Outlot A with a PID 3011823440006 in Orono, in Hennepin County, Minnesota, as well as two sections of private road right-of-way, Outlot B and C with PIDs 3011823440007 and 3011823430005, commonly designated as Hunt Farm Road (together, the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes ("Easement").

C. Also conveyed here is a perpetual easement on private right-of-way for access to the Easement Area as that area is defined in paragraph 1, below ("Access Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to

the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated as the "Easement Area" on the site plan at Attachment C, each as attached and incorporated herein. The legal description at Attachment B controls, and the site plan delineation is illustrative only.

1a. Access Easement Description. Owner conveys to the MCWD the right in perpetuity to cross and recross Outlots B and C of the Burdened Property on foot, and with motorized vehicles and equipment, in order to exercise its rights under section 2, below, and similar rights within and adjacent to wetland and surface waters hydrologically connected to those on the Burdened Property. This right of access is restricted to that portion of the Burdened Property legally described in Attachment B and delineated as "Access Easement" on Attachment C. The legal description at Attachment B controls, and the site plan delineation is illustrative only. The MCWD will not occupy the Access Easement except for crossing purposes and will repair any damage to the Access Easement caused by its use or use by its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement Agreement.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected surface water flows; flooded or drained lands, wholly or partly; and otherwise- managed surface flows through the Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the



Easement Area for the purposes of stabilizing the bed and banks of wetlands and surface waters and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual construction activities; and the placement and maintenance of erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement Agreement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

3. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this Easement Agreement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. Prohibited Uses. Owners will not perform or knowingly allow others to perform acts on the Easement Area or Access Easement that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement Agreement.

- b. Construction. Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.
- c. Utilities. Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.
- d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.
- e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.
- f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.
- g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.
4. Recitations Incorporated. All recitations are a part of this Easement Agreement.
5. No Public Access Granted. Nothing in this Easement Agreement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement Agreement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement Agreement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement Agreement, all rights of entry on the Burdened Property, occupation of the Easement Area and use of the Access Easement granted to the

MCWD under this Easement Agreement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.

7. Owner's Warranty. Owner warrants to MCWD as follows:

a. Authority to Convey. Owner has the full power to convey the Easement and Access Easement according to the terms of this Easement Agreement. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by the following, which may or may not limit Owner's power to convey all rights under this Easement Agreement:

- Easements in favor of City of Orono (Document Nos. 5153932 and 5153933, both filed for recording on August 3, 1986);
- Easement in favor of Hennepin County (Document No. 6910744, filed for recording on June 9, 1998);
- Final certificate of Northern States Power Company (Document No. A10061736, filed for recording on March 14, 2014.

b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement Agreement.

9. Regulatory Authorities Not Affected. This Easement Agreement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement Agreement and the right to sell or transfer all or part of the Burdened Property subject hereto. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of the Easement Agreement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement Agreement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors,

subcontractors, or federal government partners pursuant to this Easement Agreement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement Agreement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement Agreement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

Huntington Farm HOA, Inc.  
Paul Fogelberg, President  
870 Hunt Farm Road  
Orono MN 55356

MCWD

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. **Authority.** This Easement Agreement is executed by Owner's President, on behalf of Owner, pursuant to vote of Owner as set forth in the Restated Declaration of Covenants, Conditions and Easements filed for recording in the office of the Hennepin County Recorder on August 11, 1988 as Document No. 5441483, and as certified by the President at Attachment D, attached hereto and incorporated herein.

19. **Miscellaneous.** This Easement Agreement is governed by the laws of the State of Minnesota. This Easement Agreement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement Agreement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement Agreement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement Agreement at the Hennepin County Office of Property Records.

**OWNER**

Huntington Farm Home Owners Association, Inc.  
a Minnesota nonprofit corporation

\_\_\_\_\_  
By: Paul Fogelberg, President

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Paul Fogelberg, President of Huntington Farm Home Owners Association, as the act of said association.

\_\_\_\_\_  
Notary Public

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

**SUBORDINATION**

The City of Orono, a statutory city and political subdivision of the State of Minnesota, and grantee of easements each filed for recording on August 3, 1986, as Document Nos. 5153932 and 5153933, agrees that its rights under its prior easements shall be subordinated hereto.

\_\_\_\_\_  
Lili McMillan, Mayor

Date:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lili McMillan as Mayor of the City of Orono.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Diane Tieg, City Clerk

Date:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Diane Tieg as Clerk, City of Orono.

\_\_\_\_\_  
Notary Public

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

DRAFT



ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

Huntington Farms, Hennepin County

Outlot A

Outlot B

Outlot C

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: EASEMENT AREA & ACCESS EASEMENT

**\*\*To be finalized before execution of easement\*\***

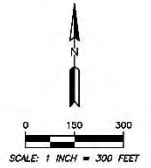
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ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Huntington Farm Home Owner's Association Property



		1802 Woodbine Dr. Mendota, WI 53520 Ph: 601-355-2512 Fax: 601-225-1989		PROJECT TITLE <b>CERTIFICATE OF SURVEY</b>	
Responsive partner. Exceptional outcomes.					
CLIENT NAME MINNEHAHA CREEK WATERSHED DISTRICT		DWG NO. CNA	DWG'D XXX	APP'D XXX	DWG DATE JAN. 2016
PROJECT NO. 0185-0031		SHEET NO. 1 OF 1		SCALE 1" = 300'	

ATTACHMENT D

CERTIFICATE of PRESIDENT, HUNTINGTON FARM HOME OWNERS  
ASSOCIATION, INC.

**\*\*To be provided by HOA President, Paul Fogelberg, before execution of  
easement\*\***

DRAFT

ATTACHMENT B  
GLEN & MICHAELA CHELBERG EASEMENT DOCUMENT

DRAFT

**EASEMENT**

On the Property of Glen and Michaela Chelberg  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Glen Chelberg and Michaela Chelberg, each the spouse of the other (together, "Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

**WITNESS:**

A. Owner owns in fee simple certain real property located at 4490 Watertown Road, Maple Plain, in Hennepin County, Minnesota (the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated as the "Easement Area" on the site plan at Attachment C, each as attached and incorporated herein. The legal description at Attachment B controls, and the site plan delineation is illustrative only.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected surface water flows; flooded or drained lands, wholly or partly; and otherwise- managed surface flows through the Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the bed and banks of wetlands and surface waters and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual

construction activities; and the placement and maintenance of erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

3. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. Prohibited Uses. Owners will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. Construction. Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to



prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
  - a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by the following, which may or may not limit Owner's power to convey all rights under this Easement:
    - Easements in favor of City of Orono (Document Nos. T3144816 and T3144818, both filed for registration on April 14, 1999);
    - Mortgage in favor of Hiway Federal Credit Union (Document No. T4835112, filed for registration on February 15, 2011);
    - Mortgage in favor of Associated Bank (Document No. T05236766, filed for registration on February 25, 2015).
  - b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

MCWD

Glen & Michaela Chelberg  
4490 Watertown Road  
Maple Plain MN 55359

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly registering this Easement at the Hennepin County Office of Property Records.

OWNER

\_\_\_\_\_  
By: Glen Chelberg

Date:

\_\_\_\_\_  
By: Michaela Chelberg

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Glen Chelberg and Michaela Chelberg, each the spouse of the other.

\_\_\_\_\_  
Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

DRAFT

**SUBORDINATION**

The City of Orono, a statutory city and political subdivision of the State of Minnesota, and grantee of easements filed for registration on April 14, 1999, as Document Nos. T3144816 and 3144818, agrees that its rights under its prior easements shall be subordinated hereto.

\_\_\_\_\_  
Date:  
Lili McMillan, Mayor

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lili McMillan as Mayor of the City of Orono.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date:  
Diane Tiegs, City Clerk

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Diane Tiegs as Clerk, City of Orono.

\_\_\_\_\_  
Notary Public

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

**CONSENT AND SUBORDINATION**

Hiway Federal Credit Union, a Minnesota corporation, the current holder and owner of a mortgage filed for registration with Hennepin County, Minnesota, on February 15, 2011, as Document No. T4835112, hereby consents to the grant and registration of the foregoing Easement by Glen and Michaela Chelberg and agrees that in the event of the foreclosure of said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

Hiway Federal Credit Union

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, Hiway Federal Credit Union, as the act and deed of said credit union.

\_\_\_\_\_  
Notary Public

**CONSENT AND SUBORDINATION**

Associated Bank, a Minnesota corporation, the current holder and owner of a mortgage filed for registration with Hennepin County, Minnesota, on February 25, 2015, as Document No. T05236766, hereby consents to the grant and registration of the foregoing Easement by Glen and Michaela Chelberg and agrees that in the event of the foreclosure of said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Associated Bank

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, Associated Bank, as the act and deed of said bank.

\_\_\_\_\_  
Notary Public



ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

Turnham Toll Addition, Hennepin County  
Block 1, Lot 1

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

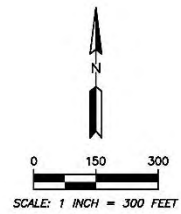
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Chelberg Property



 <p>1802 Woodside Dr. Woodbury, MN 55119 Ph: 651-395-9212</p>	PROJECT TITLE		
	EASEMENT EXHIBIT		
Responsive partner. Exceptional outcomes. CLIENT NAME MINNEHAHA CREEK WATERSHED DISTRICT	DWG BY CLK/D CNA XXX	APP'D XXX	DWG DATE JAN, 2016 SCALE 1" = 300'
	PROJECT NO. 0185-0031	SHEET NO. 1 OF 1	

ATTACHMENT C  
CATHERINE MEHAFFEY EASEMENT DOCUMENT

DRAFT

**EASEMENT**

On the Property of Catherine Mehaffey  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Catherine M. Mehaffey, a single person ("Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

WITNESS:

A. Owner owns in fee simple certain real property located at 4720 Watertown Road, Maple Plain, in Hennepin County, Minnesota (the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of streambank stabilization and vegetation improvements within and adjacent to surface waters lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of bioengineered and structural elements for bank stabilization; and vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated as the "Easement Area" on the site plan at Attachment C, each as attached and incorporated herein. The legal description at Attachment B controls, and the site plan delineation is illustrative only.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the bed and bank of the watercourse and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected channel flows in and through the Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the channel bed and banks and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding and use of approved herbicides within the Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual construction activities; and the placement and maintenance of erosion control and similar construction-phase site measures. The MCWD may enter

the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of artificial structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

During a period of active work pursuant to this section 2, the MCWD may use the Burdened Property for staging, stockpiling and access to the Easement Area. The MCWD will diligently give prior notice to, and coordinate with, Owner to limit occupation of the Burdened Property outside of the Easement Area and inconvenience to Owner as much as reasonably possible. The MCWD will repair any disturbed area outside of the Easement Area substantially to the preexisting condition.

3. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. Prohibited Uses. Owners will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. Construction. Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD. Notwithstanding, a utility system may be installed and maintained below the channel bottom in accordance with applicable MCWD permit requirements.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Owner's Warranty. Owner warrants to MCWD as follows:
  - a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by a mortgage in favor of Marketplace Home Mortgage LLC (Document No. A9877016, filed for recording on November 26, 2012), which may or may not limit Owner's power to convey all rights under this Easement:
  - b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.
  - c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.
  - d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any



federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

7. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

8. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

9. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

10. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

11. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments

levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

12. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

13. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

14. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

15. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

16. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

Catherine M. Mehaffey  
4720 Watertown Road  
Maple Plain MN 55359

MCWD

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

17. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly registering this Easement at the Hennepin County Office of Property Records.

OWNER

\_\_\_\_\_  
By: Catherine M. Mehaffey

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Catherine M. Mehaffey, a single person.

\_\_\_\_\_  
Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator 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 55401

**CONSENT AND SUBORDINATION**

Marketplace Home Mortgage LLC, a Minnesota corporation, the current holder and owner of a mortgage filed for recording with Hennepin County, Minnesota, on November 26, 2012, as Document No. A9877016, hereby consents to the grant and registration of the foregoing Easement by Catherine Mehaffey and agrees that in the event of the foreclosure of said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Marketplace Home Mortgage LLC

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, Marketplace Home Mortgage, as the act and deed of said bank.

\_\_\_\_\_  
Notary Public

ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

That part of the Northwest 1/4 of the Northwest 1/4 of Section 31, Township 118 North, Range 23, West of the 5th Principal Meridian, lying Northeasterly of the center line of Watertown Road and lying Northwesterly of a line described as follows:

Commencing at the Northwest corner of said Northwest 1/4 of the Northwest 1/4; thence East along the North line of said Northwest 1/4 of the Northwest 1/4 a distance of 949 feet to the point of beginning of the line being described; thence deflecting right 121 degrees 17 minutes to the centerline of said road, and there ending, Hennepin County, Minnesota.

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

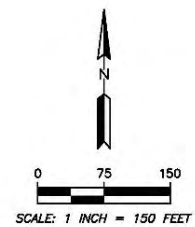
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Mehaffey Property



 <p>1802 Woodsole Dr. Woodbury, MN 55119 Ph: 651-365-5212</p>	PROJECT TITLE	
	EASEMENT EXHIBIT	
Responsive partner. Exceptional outcomes.	OWN BY	APP'D
CLIENT NAME	CNA	XXX
MINNEHAHA CREEK WATERSHED DISTRICT	PROJECT NO.	DWG DATE
	0185-0031	JAN. 2016
	SHEET NO.	SCALE
	1 OF 1	1" = 150'



ATTACHMENT D  
DAVID & KATHYRN BIEK EASEMENT DOCUMENT

DRAFT

**EASEMENT**

On the Property of David and Kathryn Biek  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between David Biek and Kathryn L. Biek, each the spouse of the other (together, "Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

**WITNESS:**

A. Owner owns in fee simple certain real property located at 4675 Creekwood Trail, Maple Plain, in Hennepin County, Minnesota (the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of streambank stabilization and vegetation improvements within and adjacent to surface waters lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of bioengineered and structural elements for bank stabilization; and vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated as the "Easement Area" on the site plan at Attachment C, each as attached and incorporated herein. The legal description at Attachment B controls, and the site plan delineation is illustrative only.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the bed and bank of the watercourse and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected channel flows in and through the Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the channel bed and banks and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding and use of approved herbicides within the Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual construction activities; and the placement and maintenance of erosion control and similar construction-phase site measures. The MCWD may enter

the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of artificial structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

During a period of active work pursuant to this section 2, the MCWD may use the Burdened Property for staging, stockpiling and access to the Easement Area. The MCWD will diligently give prior notice to, and coordinate with, Owner to limit occupation of the Burdened Property outside of the Easement Area and inconvenience to Owner as much as reasonably possible. The MCWD will repair any disturbed area outside of the Easement Area substantially to the preexisting condition.

3. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. **Prohibited Uses.** Owners will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. **Construction.** Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. **Utilities.** Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD. Notwithstanding, a utility system may be installed and maintained below the channel bottom in accordance with applicable MCWD permit requirements.

d. **Surface Alteration.** Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. Recitations Incorporated. All recitations are a part of this agreement.

5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.

6. Owner's Warranty. Owner warrants to MCWD as follows:

a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by the following, which may or may not limit Owner's power to convey all rights under this Easement:

- A mortgage in favor of Private Bank Minnesota (Document Nos. A9532250 and A9815974, both filed for recording on July 16, 2012).
- A mortgage in favor of U.S. Bank National Association (Document No. A9845114, filed for recording on September 20, 2012).

b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

7. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

8. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

9. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

10. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

11. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

12. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

13. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

14. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

15. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

16. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

David & Kathryn Biek  
4675 Creekwood Trail  
Maple Plain MN 55359

MCWD

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

17. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly registering this Easement at the Hennepin County Office of Property Records.

OWNER

\_\_\_\_\_  
By: David Biek

Date:

OWNER

\_\_\_\_\_  
By: Kathryn L. Biek

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by David Biek and Kathryn L. Biek, each the spouse of the other.

\_\_\_\_\_



Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator 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 55401

**CONSENT AND SUBORDINATION**

Private Bank Minnesota, a Minnesota corporation, the current holder and owner of a mortgage filed for recording with Hennepin County, Minnesota, on July 16, 2012, as Document Nos. A9532250 and A9815974, hereby consents to the grant and recordation of the foregoing Easement by David and Kathryn Biek and agrees that in the event of the foreclosure of the said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

Private Bank Minnesota

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, Private Bank Minnesota, as the act and deed of said bank.

\_\_\_\_\_  
Notary Public

A mortgage in favor of U.S. Bank National Association (Document No. A9845114, filed for recording on September 20, 2012).

**CONSENT AND SUBORDINATION**

U.S. Bank National Association, a Minnesota corporation, the current holder and owner of a mortgage filed for recording with Hennepin County, Minnesota, on September 20, 2012, as Document No. A9845114, hereby consents to the grant and registration of the foregoing Easement by David and Kathryn Biek and agrees that in the event of the foreclosure of said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

U.S. Bank National Association

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, U.S. Bank National Association, as the act and deed of said bank.

\_\_\_\_\_  
Notary Public

ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

Painters Woods  
Block 1, Lot 5

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

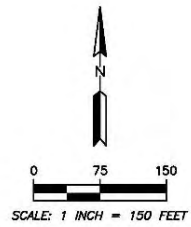
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Biek Property



 <p>1802 Wooddale Dr. Woodbury, MN 55119 Ph: 651-355-5212</p> <p>Responsive partner. Exceptional outcomes.</p>	PROJECT TITLE			
	EASEMENT EXHIBIT			
CLIENT NAME	DWN BY CNA	CHK'D XXX	APP'D XXX	DWG DATE JAN, 2016
MINNEHAHA CREEK WATERSHED DISTRICT	PROJECT NO. 0185-0031	SCALE 1" = 150'		
		SHEET NO. 1 OF 1		

ATTACHMENT E  
KEVIN & LORI BJORK EASEMENT DOCUMENT

DRAFT

**EASEMENT**

On the Property of Kevin and Lori Bjork  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Kevin P. Bjork and Lori S. Bjork, each the spouse of the other (together, "Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

**WITNESS:**

A. Owner owns in fee simple certain real property located at 4650 Creekwood Trail, Maple Plain, in Hennepin County, Minnesota (the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of streambank stabilization and vegetation improvements within and adjacent to surface waters, and construction and maintenance of hydrologic and vegetative improvements within and adjacent to surface waters and wetland, lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of bioengineered and structural elements for bank stabilization; installation of rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and vegetation for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated on the site plan as Attachment C as the "Creek Easement Area" and as the "Wetland Easement



Area," each as attached and incorporated herein (together, "Easement Area"). The legal descriptions at Attachment B control, and the site plan delineation is illustrative only.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the bed and bank of the watercourse, the beds of wetland and surface waters, and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected channel flows in and through the Creek Easement Area. Directed and redirected surface water flows; flooded or drained lands, wholly or partly; and otherwise-managed surface flows through the Wetland Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the bed and banks of the channel, wetlands and surface waters and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding and use of approved herbicides within the Easement Area, and including controlled burns within the Wetland Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site

inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual construction activities; and the placement and maintenance of erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of artificial structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

During a period of active work pursuant to this section 2, the MCWD may use the Burdened Property outside of the Easement Area for staging, stockpiling and access to the Easement Area. The MCWD will diligently give prior notice to, and coordinate with, Owner to limit occupation of the Burdened Property outside of the Easement Area and inconvenience to Owner as much as reasonably possible. The MCWD will repair any disturbed area outside of the Easement Area substantially to the preexisting condition.

3. **Owner's Reserved Rights.** Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. **Prohibited Uses.** Owners will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. **Construction.** Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. **Utilities.** Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD. Notwithstanding, a utility system may be installed and maintained below the channel bottom in accordance with applicable MCWD permit requirements.

- d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.
- e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.
- f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.
- g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.
4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow, within the Wetland Easement Area only, for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Wetland Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
- a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any

indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by the following, which may or may not limit Owner's power to convey all rights under this Easement:

- A mortgage in favor of Nationstar Mortgage LLC (Document No. A09998831, filed for recording on August 27, 2013).

b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this

Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened

Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

Kevin & Lori Bjork  
4650 Creekwood Trail  
Maple Plain MN 55359

MCWD

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly registering this Easement at the Hennepin County Office of Property Records.

OWNER

\_\_\_\_\_  
By: Kevin P. Bjork

Date:

OWNER

\_\_\_\_\_  
By: Lori S. Bjork

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Kevin P. Bjork and Lori S. Bjork, each the spouse of the other.

\_\_\_\_\_  
Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator 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 55401

**CONSENT AND SUBORDINATION**

Nationstar Mortgage LLC, a Minnesota corporation, the current holder and owner of a mortgage filed for recording with Hennepin County, Minnesota, on August 27, 2013, as Document No. A09998831, hereby consents to the grant and registration of the foregoing Easement by Kevin and Lori Bjork and agrees that in the event of the foreclosure of said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

Nationstar Mortgage LLC

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, Nationstar Mortgage LLC, as the act and deed of said bank.

\_\_\_\_\_  
Notary Public



ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

Painters Woods  
Block 1, Lot 4

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: CREEK EASEMENT AREA and WETLAND EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

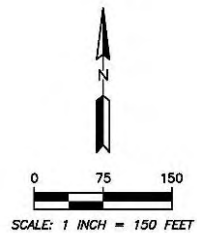
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Bjork Property



 <p>1802 Wooddale Dr. Woodbury, MN 55119 Ph: 651-395-5212</p> <p>Responsive partner. Exceptional outcomes.</p>	PROJECT TITLE		
	EASEMENT EXHIBIT		
CLIENT NAME	DWN BY	CHK'D	APP'D
MINNEHAHA CREEK WATERSHED DISTRICT	CNA	XXX	XXX
	PROJECT NO.	SHEET NO.	DWG DATE
0185-0031	1 OF 1	JAN. 2016	SCALE 1" = 150'

ATTACHMENT F  
DALE & JONMARI OLSEN

DRAFT

**EASEMENT**

On the Property of Dale and Jonmari Olsen  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Dale A. Olsen and Jonmari B. Olsen, each the spouse of the other (together, "Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

**WITNESS:**

A. Owner owns in fee simple certain real property located at 4680 Creekwood Trail, Maple Plain, in Hennepin County, Minnesota (the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of streambank stabilization and vegetation improvements within and adjacent to surface waters, and construction and maintenance of hydrologic and vegetative improvements within and adjacent to surface waters and wetland, lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of bioengineered and structural elements for bank stabilization; installation of rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and vegetation for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated on the site plan at Attachment C as the "Creek Easement Area" and as the "Wetland Easement

Area," each as attached and incorporated herein (together, "Easement Area"). The legal descriptions at Attachment B control, and the site plan delineation is illustrative only.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the bed and bank of the watercourse, the beds of wetland and surface waters, and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected channel flows in and through the Creek Easement Area. Directed and redirected surface water flows; flooded or drained lands, wholly or partly; and otherwise-managed surface flows through the Wetland Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the bed and banks of the channel, wetlands and surface waters and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding and use of approved herbicides within the Easement Area, and including controlled burns within the Wetland Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site

inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual construction activities; and the placement and maintenance of erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of artificial structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

During a period of active work pursuant to this section 2, the MCWD may use the Burdened Property outside of the Easement Area for staging, stockpiling and access to the Creek Easement Area. The MCWD will diligently give prior notice to, and coordinate with, Owner to limit occupation of the Burdened Property outside of the Easement Area and inconvenience to Owner as much as reasonably possible. The MCWD will repair any disturbed area outside of the Easement Area substantially to the preexisting condition.

3. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. Prohibited Uses. Owners will not perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. Construction. Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD. Notwithstanding, a utility system may be installed and maintained below the channel bottom in accordance with applicable MCWD permit requirements.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow, within the Wetland Easement Area only, for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Wetland Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
  - a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As



an exception to the foregoing, the Burdened Property is encumbered by the following, which may or may not limit Owner's power to convey all rights under this Easement:

- An easement in favor of the City of Orono (Document No. A9845198, filed for recording on September 19, 2012).

b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened

Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party,

including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

Dale & Jonmari Olsen  
4680 Creekwood Trail  
Maple Plain MN 55359

MCWD

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly registering this Easement at the Hennepin County Office of Property Records.

OWNER

\_\_\_\_\_  
By: Dale A. Olsen

Date:

OWNER

\_\_\_\_\_  
By: Jonmari B. Olsen

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Dale A. Olsen and Jonmark B. Olsen, each the spouse of the other.

\_\_\_\_\_  
Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

**SUBORDINATION**

The City of Orono, a statutory city and political subdivision of the State of Minnesota, and grantee of an easement filed for recordation on September 19, 2012, as Document No. A9845198, agrees that its rights under its prior easement shall be subordinated hereto.

\_\_\_\_\_  
Date:  
Lili McMillan, Mayor

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lili McMillan as Mayor of the City of Orono.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date:  
Diane Tiegs, City Clerk

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Diane Tiegs as Clerk, City of Orono.

\_\_\_\_\_  
Notary Public  
This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

Painters Woods  
Block 1, Lot 3

DRAFT

ATTACHMENT B

LEGAL DESCRIPTIONS: CREEK EASEMENT AREA and WETLAND EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

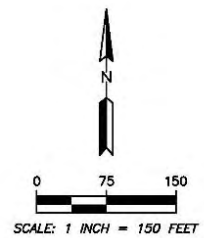
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Olsen Property



 <p><b>WENCK ASSOCIATES</b></p> <p>1802 Wooddale Dr. Woodbury, MN 55119 Ph: 651-395-5212</p> <p>Responsive partner. Exceptional outcomes.</p>	PROJECT TITLE				
	EASEMENT EXHIBIT				
CLIENT NAME	DWN BY	CHK'D	APP'D	DWG DATE	JAN. 2016
MINNEHAHA CREEK WATERSHED DISTRICT	CNA	XXX	XXX	SCALE	1" = 150'
	PROJECT NO.	SHEET NO.			
	0185-0031			1 OF 1	



ATTACHMENT G  
JEFFREY & TRACY ERB EASEMENT DOCUMENT

DRAFT

**EASEMENT**

On the Property of Jeffrey and Tracy Erb  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Jeffrey Erb and Tracy Erb, each the spouse of the other (together, "Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

WITNESS:

- A. Owner owns in fee simple certain real property located at 4700 Creekwood Trail, Maple Plain, in Hennepin County, Minnesota (the "Burdened Property").
- B. The easement here conveyed is a perpetual easement for construction and maintenance of hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

- 1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated as the "Easement Area" on the site plan at Attachment C, each as attached and incorporated herein. The legal description at Attachment B controls, and the site plan delineation is illustrative only.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected surface water flows; flooded or drained lands, wholly or partly; and otherwise- managed surface flows through the Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the bed and banks of wetlands and surface waters and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual

construction activities; and the placement and maintenance of erosion control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

3. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. Prohibited Uses. Owners will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. Construction. Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or

pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
  - a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by the following, which may or may not limit Owner's power to convey all rights under this Easement:
    - Mortgage in favor of Voyager Bank (Document No. A9339406, filed for recording on March 27, 2009);
    - Mortgages in favor of State Bank & Trust (Document Nos. A9755983 and A9755984, both filed for recording on February 28, 2012).
  - b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.

c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.

d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

Jeffrey and Tracy Erb  
4700 Creekwood Trail  
Maple Plain MN 55359

MCWD

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.

OWNER

\_\_\_\_\_  
By: Jeffrey Erb

Date:

\_\_\_\_\_  
By: Tracy Erb

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Jeffrey Erb and Tracy Erb, each the spouse of the other.

\_\_\_\_\_  
Notary Public



MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator 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 55401

### CONSENT AND SUBORDINATION

Voyager Bank, a Minnesota corporation, the current holder and owner of a mortgage filed for recording with Hennepin County, Minnesota, on March 27, 2009, as Document No. A9339406, hereby consents to the grant and registration of the foregoing Easement by Jeffrey and Tracy Erb and agrees that in the event of the foreclosure of said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_ day of \_\_\_\_\_, 2016.

Voyager Bank

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, Voyager Bank, as the act and deed of said bank.

\_\_\_\_\_  
Notary Public

**CONSENT AND SUBORDINATION**

State Bank & Trust, a Minnesota corporation, the current holder and owner of mortgages filed for recording with Hennepin County, Minnesota, on February 28, 2012, as Document Nos. A9755983 and A9755984, hereby consents to the grant and recording of the foregoing Easement by Jeffrey and Tracy Erb and agrees that in the event of the foreclosure of either said mortgage or other sale of the Burdened Property under judicial or non-judicial proceedings, it shall be sold subject to said Easement.

Signed and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

State Bank & Trust

\_\_\_\_\_  
By:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ as \_\_\_\_\_, State Bank & Trust, as the act and deed of said bank.

\_\_\_\_\_  
Notary Public

ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

Painters Woods, Hennepin County  
Block 1, Lot 5

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

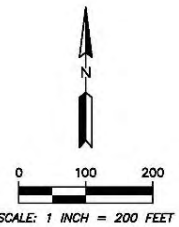
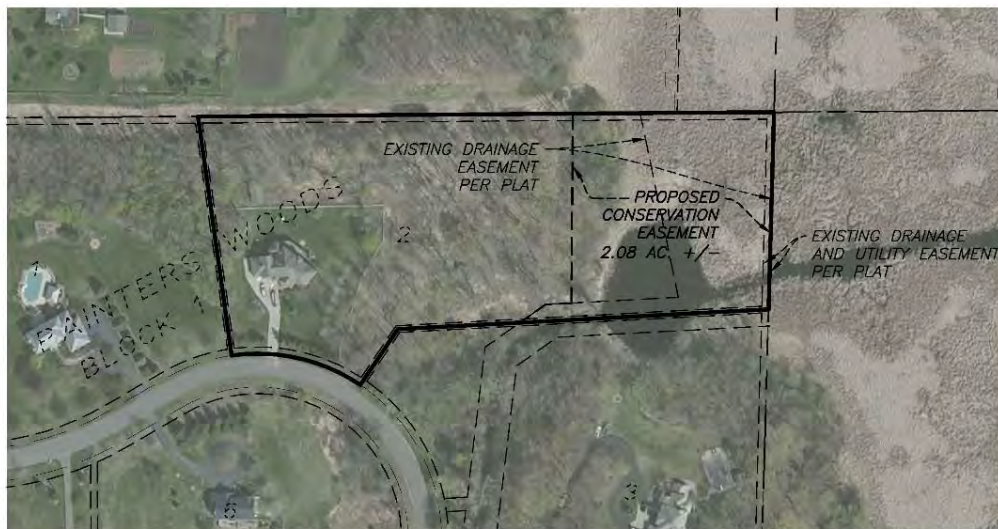
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Erb Property



 <p>1802 Wooddale Dr. Woodbury, MN 55119 Ph: 651-395-5212</p>	PROJECT TITLE		
	EASEMENT EXHIBIT		
Responsive partner. Exceptional outcomes.	DWN BY/CHK'D	APP'D	DWG DATE
CLIENT NAME	CNA XXX	XXX	JAN. 2016
MINNEHAHA CREEK WATERSHED DISTRICT	PROJECT NO.	SHEET NO.	SCALE
	0185-0031	1 OF 1	1" = 200'

ATTACHMENT H  
DOUGLAS DEAKINS EASEMENT DOCUMENT

DRAFT

**EASEMENT**

On the Property of Douglas A. Deakins  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Douglas A. Deakins, a single person ("Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

**WITNESS:**

A. Owner owns in fee simple certain real property located at 1100 Town Line Road, Maple Plain, in Hennepin County, Minnesota (the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and vegetation for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated as the "Easement Area" on the site plan at Attachment C, each as attached and incorporated herein. The legal description at Attachment B controls, and the site plan delineation is illustrative only.



2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected surface water flows; flooded or drained lands, wholly or partly; and otherwise- managed surface flows through the Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the bed and banks of wetlands and surface waters and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual construction activities; and the placement and maintenance of erosion

control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

3. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. Prohibited Uses. Owners will not perform or knowingly allow others to perform acts on the Easement Area that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. Construction. Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury or property damage, or to improve the hydrological function and value of

the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
  - a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by the following, which may or may not limit Owner's power to convey all rights under this Easement:
    - Declaration in favor of City of Orono (Document No. T4366202, filed for registration on March 14, 2007);
    - Easement in favor of City of Orono (Document No. T4366206, filed for registration on March 14, 2007).
  - b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.
  - c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.
  - d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any

federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.

9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.

10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.

11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.

12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.

13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

Douglas A. Deakins  
1100 Town Line Road  
Maple Plain MN 55359

MCWD

Administrator  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly registering this Easement at the Hennepin County Office of Property Records.

OWNER

\_\_\_\_\_  
By: Douglas A. Deakins

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Douglas A. Deakins, a single person.

\_\_\_\_\_  
Notary Public

MINNEHAHA CREEK WATERSHED DISTRICT

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

**SUBORDINATION**

The City of Orono, a statutory city and political subdivision of the State of Minnesota, and grantee of a declaration and an easement each filed for registration on March 14, 2007, as Document Nos. T4366202 and T4366206, respectively, agrees that its rights under its prior declaration and easement shall be subordinated hereto.

\_\_\_\_\_  
Date:  
Lili McMillan, Mayor

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lili McMillan as Mayor of the City of Orono.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Date:  
Diane Tiegs, City Clerk

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Diane Tiegs as Clerk, City of Orono.

\_\_\_\_\_  
Notary Public

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

DRAFT



ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

Diesen Development, Hennepin County  
Block 1, Lot 2

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

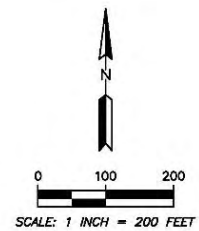
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Deakins Property



 <p>1802 Woodale Dr. Woodbury, MN 55119 Ph: 651-395-5212</p>	PROJECT TITLE		EASEMENT EXHIBIT	
	Responsive partner. Exceptional outcomes.			
CLIENT NAME	DWN BY	CHK'D	APP'D	DWG DATE
MINNEHAHA CREEK WATERSHED DISTRICT	CNA	XXX	XXX	JAN. 2016
	PROJECT NO.	SHEET NO.		SCALE 1" = 200'
	0185-0031			1 OF 1

ATTACHMENT I  
RICHARD & KATHLEEN RUDD EASEMENT DOCUMENT

DRAFT

**EASEMENT**

On the Property of Richard R. and Kathleen M. Rudd  
Hennepin County, Minnesota

Legal description of burdened property:  
Attachment A

THIS EASEMENT is entered into by and between Richard R. Rudd and Kathleen M. Rudd, each the spouse of the other (together, "Owner"), and the Minnehaha Creek Watershed District (MCWD), a special-purpose governmental body established under and with authorities specified at Minnesota Statutes Chapters 103B and 103D.

**WITNESS:**

A. Owner owns in fee simple certain real property located at 4575 Spruce Way, Orono, in Hennepin County, Minnesota (the "Burdened Property").

B. The easement here conveyed is a perpetual easement for construction and maintenance of hydrologic and vegetative improvements within and adjacent to surface waters and wetland lying in part on the Burdened Property, including but not limited to excavation, grading and filling; installation of rock, bioengineered, vegetated and appurtenant structural elements for bank stabilization and outlet management; and vegetation within and adjacent to the channel for stabilization, water quality, habitat and aesthetic purposes ("Easement").

THEREFORE, with the payment of one dollar and other good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, Owner conveys and warrants to the MCWD and the MCWD accepts an easement of both a perpetual and a temporary nature on the Burdened Property, as specifically set forth herein.

1. Easement Description. The Easement is limited to that portion of the Burdened Property legally described in Attachment B and delineated as the "Easement Area" on the site plan at Attachment C, each as attached and incorporated herein. The legal description at Attachment B controls, and the site plan delineation is illustrative only.

2. MCWD's Easement Rights. Owner conveys to the MCWD the right in perpetuity to construct and maintain the following, solely at the MCWD's own cost and expense, within the Easement Area:

a. Land and Vegetation Alteration. Modification of lands within the Easement Area, including the beds of wetland and surface waters and adjacent top of bank by excavation, dredging, grading, fill and shaping. Removal of surface vegetation, brush and trees within the Easement Area, together with all right, title and interest in any spoils, soil or timber produced therefrom.

b. Flowage and Flow Management. Directed and redirected surface water flows; flooded or drained lands, wholly or partly; and otherwise- managed surface flows through the Easement Area. This does not include the right to increase flood elevation, drain or redirect surface flows on or across any lands outside of the Easement Area, including the remainder of the Burdened Property.

c. Rock, Bioengineered Elements and Associated Structures. Rock, bioengineered elements and fabricated structures installed within the Easement Area for the purposes of stabilizing the bed and banks of wetlands and surface waters and managing flows through the conveyance system.

d. Vegetation. Vegetation planted within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, along with the right to manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns within the Easement Area.

e. Signs. Signs installed within the Easement Area stating that the Easement Area is subject to this Easement and describing the purposes to which it is dedicated.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, the MCWD and its authorized representatives, agents, contractors and subcontractors may use the Easement Area for design and construction purposes, including but not limited to site inspection and testing; performance of surveys and other actions for compliance with cultural resource preservation laws; performance of due diligence and compliance activities related to site pollution and contamination laws; equipment staging and use, and materials stockpiling in a manner that avoids undue disturbance to the quiet enjoyment of the Burdened Property except for within the Easement Area during the actual construction activities; and the placement and maintenance of erosion

control and similar construction-phase site measures. The MCWD may enter the Easement Area to inspect and maintain and, with reasonable prior notice to Owners, to modify and reconstruct improvements in order to preserve or enhance them within the purposes of this Easement. Any modification or reconstruction that, compared with the original constructed design, would increase the visible dimensions or profile of structural elements more than trivially requires Owners' written consent, which will not be unreasonably withheld.

3. Owner's Reserved Rights. Owner reserves all rights and privileges associated with ownership of the Burdened Property except as expressly provided in this easement. Except as explicitly stated otherwise, all restrictions stated herein apply within the Easement Area.

a. Prohibited Uses. Owners will not perform or knowingly allow others to perform acts on the Easement Area or Access Route that would materially impair or interfere with the MCWD's ability to perform work authorized under this Easement.

b. Construction. Owner will not construct or install within the Easement Area a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Owner will not install within the Easement Area a new utility system or expand an existing utility system including, without limitation, water, sewer, power, fuel, communications and data lines and related facilities, without the prior written approval of and in accordance with terms specified by the MCWD.

d. Surface Alteration. Owner will not alter surface soils or vegetation within the Easement Area, including without limitation filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Soil and Water Degradation. Owner will not engage in activities or uses that directly cause or are likely to directly cause soil degradation, erosion, sedimentation or water pollution on or within the Easement Area.

f. Placement of Waste, Fill or Other Material. Owner will not dump, dispose or otherwise place refuse, brush or other waste material within the Easement Area.

g. Trees, Shrubs and Other Vegetation. Owner will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides within the Easement Area except as reasonably required to prevent or control infestations, noxious weeds, disease, fire, personal injury

or property damage, or to improve the hydrological function and value of the water resources within or associated with the Easement Area, and in each case with written MCWD approval.

4. Recitations Incorporated. All recitations are a part of this agreement.
5. No Public Access Granted. Nothing in this Easement authorizes any public right of access onto the Burdened Property. The right of entry conveyed to the MCWD under this Easement is limited to authorized MCWD representatives, agents, designees, contractors and subcontractors.
6. Federal Government Use of Easement. A purpose of this Easement is to allow for water resource restoration work to occur by partnership between the MCWD and the U.S. Army Corps of Engineers and with federal grants or other financial assistance for that work. Accordingly and notwithstanding any other term of this Easement, all rights of entry on the Burdened Property and occupation of the Easement Area granted to the MCWD under this Easement may be exercised independently and non-exclusively by representatives, agents, contractors and subcontractors of the United States, provided that they strictly abide by the terms and conditions of this Easement Agreement.
7. Owner's Warranty. Owner warrants to MCWD as follows:
  - a. Authority to Convey. Owner has the full power to convey this Easement according to its terms. This conveyance does not constitute a default under any indenture, agreement, mortgage or other instrument to which either Owner is a party and does not contravene any law to which either Owner is subject. As an exception to the foregoing, the Burdened Property is encumbered by an easement in favor of City of Orono (Document No. 8559453, filed for recording on April 8, 2005). which may or may not limit Owner's power to convey all rights under this Easement.
  - b. Pending Actions. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened that affect the Easement Area.
  - c. Liens. No lien for services or materials (mechanic's or materialmen's lien) affects the Easement Area.
  - d. Hazardous Materials. Owner has not handled, stored or disposed of any hazardous material on or affecting the Easement Area in violation of any federal, state or local law, and to the best of Owner's knowledge no prior owner, tenant, occupant or licensee of the Burdened Property has handled, stored or disposed of any hazardous material on or affecting the Easement



Area in violation of any federal, state or local law. For the purpose of this paragraph, "hazardous material" means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any other hazardous pollutant, waste, material or substance as defined in the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, or the Minnesota Environmental Response and Liability Act, as amended.

8. Inspection and Enforcement. The MCWD may enter the Easement Area at reasonable times and in a reasonable manner to monitor activities on and uses of those areas. The MCWD may act to prevent or remedy all activities and uses of the Easement Area that violate the terms of this Easement.
9. Regulatory Authorities Not Affected. This Easement does not replace or diminish the regulatory authority of any federal, state or local public body, including the MCWD, as it may apply to the Burdened Property or any activity on it.
10. Reserved Rights. Owner reserves all rights accruing from the ownership of the Burdened Property not otherwise conveyed to the MCWD herein, including without limitation the right to engage in or allow others to engage in all activities or uses of the Burdened Property that are not prohibited or limited by this Easement and the right to sell or transfer all or part of the Burdened Property subject to this Easement. Owner will inform all others who exercise any right on the Burdened Property by or through Owner of the nature of this Easement and the general constraints that it imposes.
11. Property Transfer. Owner will inform the transferee of the existence of this Easement in conjunction with any transfer of interest in the Burdened Property, including an easement or a leasehold interest, in all or part of the Burdened Property. Owner will give fifteen (15) days' prior written notice to the MCWD of a transfer of all or any part of a fee interest in the Burdened Property, provided that MCWD shall have no right to block or prevent Owner's transfer of the Burdened Property to any third party, whether by sale, rental, lease, or otherwise.
12. Taxes and Liens. Owner retains all financial obligations and bears all costs and liabilities of any kind accruing from the fee ownership of the Burdened Property. Owner will pay all taxes and assessments levied against the Burdened Property. The MCWD may, but is not obligated to, make any payment of taxes or assessments levied against the Burdened Property in place and on behalf of Owner and will be reimbursed by Owner for such amounts.
13. Indemnification. The MCWD hereby holds Owner and his or her heirs, successors, and assigns (collectively "Indemnitees") harmless, and agrees to defend

and indemnify such Indemnitees from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages (including reasonable attorney's fees, which does not include attorney fees incurred by Owner during the time that the MCWD has retained an attorney to provide a defense to Owner) arising out of the MCWD's design, construction, operation or maintenance of the work or any other actions undertaken by the MCWD or its representatives, agents, contractors, subcontractors, or federal government partners pursuant to this Easement, except to the extent resulting from an action or inaction of Owner for which Owner independently would be subject to liability.

14. Insurance. Owner and the MCWD each remain solely responsible for maintaining liability and other insurance for its own uses of and authority over the Burdened Property.

15. Waiver. A decision by either party not to exercise its rights of enforcement in the event of a breach of a term of this Easement is not a waiver of such term, any subsequent breach of the same or any other term, or any of the party's rights under this Easement. The delay or failure to discover a breach or to exercise a right of enforcement as to such breach does not impair or waive a party's rights of enforcement, all of which shall be cumulative and not exclusive.

16. Acts Beyond Party's Control. A party will not exercise its right of enforcement against the other party for injury or alteration to the Burdened Property resulting from: (a) a cause beyond the reasonable control of that party, including without limitation fire, flood, a precipitation event with a statistical recurrence interval of 100 years or more, storm, and earth movement resulting from natural forces or the act of a third party; or (b) any prudent action taken by the party under emergency conditions to prevent, abate or mitigate significant injury or alteration resulting from such a cause.

17. Notices. Any notice or other communication that either party must give to the other will be in writing and delivered to the following address or such other address as either party designates by written notice to the other:

OWNER

Richard & Kathleen Rudd Administrator  
607 Park Lane  
Long Lake MN 55356

MCWD

Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka MN 55345

Copy to:

Smith Partners (Attn. MCWD)

400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

18. Miscellaneous. This Easement is governed by the laws of the State of Minnesota. This Easement sets forth the entire agreement of the parties and supersedes all prior discussions and agreements. The parties may amend this Easement only by a writing duly executed by both parties and meeting all requirements of law. The terms of this Easement bind and benefit the parties and their respective personal representatives, heirs, successors, assigns and all others who exercise any right by or through them and shall run in perpetuity with the Burdened Property. The MCWD bears the cost of duly recording this Easement at the Hennepin County Office of Property Records.

**OWNER**

\_\_\_\_\_  
By: Richard R. Rudd

Date:

\_\_\_\_\_  
By: Kathleen M. Rudd

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Richard R. Rudd and Kathleen M. Rudd, each the spouse of the other.

\_\_\_\_\_  
Notary Public

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Lars Erdahl, Administrator

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lars Erdahl as Administrator of the Minnehaha Creek Watershed District.

\_\_\_\_\_  
Notary Public

**SUBORDINATION**

The City of Orono, a statutory city and political subdivision of the State of Minnesota, and grantee of an easement filed for recording on April 8, 2005, as Document No. 8559453, agrees that its rights under its prior easement shall be subordinated hereto.

\_\_\_\_\_  
Lili McMillan, Mayor

Date:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Lili McMillan as Mayor of the City of Orono.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Diane Tiegs, City Clerk

Date:

This instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2016, by Diane Tiegs as Clerk, City of Orono.

\_\_\_\_\_  
Notary Public

This document prepared by:  
Smith Partners P.L.L.P.  
400 Second Avenue South  
Suite 1200  
Minneapolis MN 55401

ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

That part of the South 1/2 of the Northwest 1/4 and of the North 1/2 of the Southwest 1/4 of Section 30, Township 118, North Range 23, West of the 5th Principal Meridian described as follows: Commencing at a point 956.5 feet East of the West 1/4 post of Section 30, Township 118, Range 23; thence running North at right angles 450.62 feet to the Southerly right of way of Great Northern Railroad; thence Southeasterly along said right of way 1030.9 feet more or less to the East West 1/4 line of said Section; thence West on said 1/4 line 927.2 feet more or less to the point of beginning, Hennepin County, Minnesota.

DRAFT

ATTACHMENT B

LEGAL DESCRIPTION: EASEMENT AREA

**\*\*To be finalized before execution of easement\*\***

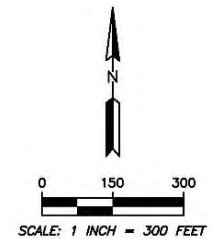
DRAFT


ATTACHMENT C

SITE PLAN

**EASEMENT EXHIBIT**

Rudd Property



		1802 Wooddale Dr. Woodbury, MI 55119 Ph: 651-395-5212		PROJECT TITLE	
		Responsive partner. Exceptional outcomes.		EASEMENT EXHIBIT	
CLIENT NAME		DWN BY	CHK'D	APP'D	DWG DATE
MINNEHAHA CREEK WATERSHED DISTRICT		CNA	XXX	XXX	JAN. 2016
		PROJECT NO.		SCALE 1" = 300'	
		0185-0031		SHEET NO.	
				1 OF 1	

ATTACHMENT J  
CONSTRUCTION PLAN SHEETS

DRAFT



ATTACHMENT 3

**WARNING:**

THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND/OR RELOCATION OF LINES.

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.

CALL BEFORE YOU DIG  
**GOPHER STATE ONE CALL**

TWIN CITY AREA: 651-454-0002  
TOLL FREE 1-800-252-1166

**NOTES:**

1. NOT ALL EXISTING TREE LOCATIONS SHOWN IN AREA. IF ADDITIONAL TREES ARE LOCATED NEAR CONSTRUCTION AREAS AND MAY IMPACT OPERATIONS, NOTIFY ENGINEER FOR REVIEW.
2. DRIVEWAY REMOVAL LIMITS ARE APPROXIMATE. CONTRACTOR TO ADJUST IN FIELD AS REQUIRED FOR CONSTRUCTION.
3. ALL BRUSH REMOVAL IS CONSIDERED INCIDENTAL. ANY COMPENSATION SHALL BE INCLUDED IN APPROPRIATE BID ITEMS.
4. A LOCATE REQUEST WAS MADE AND HAS GOPHER STATE ONE CALL TICKET NO. 160060192. LIMITED INFORMATION HAS BEEN PROVIDED. HOWEVER, ADDITIONAL UTILITIES (ELECTRICAL, COMMUNICATION, FIBER OPTIC, ETC.) ARE ANTICIPATED IN THE DRIVEWAY SECTIONS AND CONTRACTOR SHALL PLAN ACCORDINGLY.
5. FOR SAFETY CONCERNS, ONLY ONE DRIVEWAY/CULVERT SHALL BE REMOVED AND RESTORED AT A TIME.
6. SEE ADDITIONAL NOTES ON SHEET G-102

PID 3011823330008  
4745 CREEKWOOD TR

PID 3011823330007  
4675 CREEKWOOD TR

PID 3011823330006  
4650 CREEKWOOD TR

PID 3011823330005  
4680 CREEKWOOD TR



REV	REVISION DESCRIPTION	DWN	APP	REV DATE
0	ISSUED FOR QUOTES	MJS	CJM	01/15/16

SEAL

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

PRINT NAME: CHRISTOPHER J. MEEHAN

SIGNATURE: *[Signature]*

DATE: 01/15/2016 LICENSE #: 43066

PRIME CONSULTANT

Responsive partner. Exceptional outcomes.

PROJECT TITLE: PAINTER CREEK CULVERT REPLACEMENT

MINNEHAHA CREEK WATERSHED DISTRICT  
QUALITY OF WATER, QUALITY OF LIFE

SHEET TITLE: EXISTING CONDITIONS AND REMOVAL PLAN			
DWN BY	CHK'D	APP'D	DWG DATE
MJS			JAN 2016
PROJECT NO.	SHEET NO.	SCALE	REV NO.
0185-5091	C-101	AS SHOWN	0



ATTACHMENT 3

**WARNING:**

THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND/OR RELOCATION OF LINES.

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.

CALL BEFORE YOU DIG  
**GOPHER STATE ONE CALL**

TWIN CITY AREA: 651-454-0002  
TOLL FREE 1-800-252-1166

**NOTES:**

1. DRIVEWAY REPLACEMENT EXTENTS ARE APPROXIMATE. MATCH EXISTING DRIVEWAY GRADES, ALIGNMENT, AND SECTION W/ MINIMUM 3" BITUMINOUS AND 8" CLASS 5 PER DETAIL 1/C-801.
2. PROTECT DRIVEWAY PAVEMENT NOT IDENTIFIED FOR REMOVAL. DAMAGED PAVEMENT TO BE REPAIRED BY CONTRACTOR AT NO ADDITIONAL COST TO OWNER.
3. CONTRACTOR SHALL PROVIDE TEMPORARY ACCESS TO HOMEOWNERS AT THE END OF EACH WORKING DAY.
4. CONTRACTOR RESPONSIBLE TO NOTIFY RESIDENTS OF ACCESS DISRUPTION A MINIMUM OF 48 HOURS IN ADVANCED.
5. FOR SAFETY CONCERNS, ONLY ONE DRIVEWAY/CULVERT SHALL BE REMOVED AND RESTORED AT A TIME.
6. CONTRACTOR SHALL TEMPORARILY RESTORE DRIVEWAY SURFACES WITH CLASS 5. UPON BITUMINOUS PLANT OPENINGS AND ROAD RESTRICTIONS LIFTED, THE DRIVEWAYS SHALL BE RESTORED WITH BITUMINOUS PER DETAIL 1/C-801. TEMPORARY DRIVEWAY BID ITEM PROVIDED AND REMOVAL OF TEMPORARY CLASS 5 IN SPRING IS INCIDENTAL TO BID ITEM.
7. DRIVEWAYS TO BE CLEARED OF ANY DEBRIS AND SWEEP IMMEDIATELY AT SUSPENSION OF WORK ACTIVITIES OR UPON COMPLETION OF CULVERT INSTALLATION AND ASSOCIATED RESTORATION.
8. RESTORE ALL DISTURBED PERVIOUS AREAS WITH EROSION CONTROL BLANKET AND NATIVE SEED AS NOTED ON SHEET G-102.
9. IN THE EVENT THE WORK IS NOT COMPLETED DURING WINTER CONDITIONS AND/OR MOVING WATER MAY RESULT IN WATER CONTAINING SEDIMENT FROM THE WORK. CONTRACTOR SHALL INSTALL FLOTATION SILT CURTAIN TYPE MOVING WATER PER MNDOT SPEC 2573 REQUIREMENTS.
10. SEE ADDITIONAL NOTES ON SHEET G-102

PID 3011823330008  
4745 CREEKWOOD TR

PID 3011823330007  
4675 CREEKWOOD TR

PID 3011823330005  
4680 CREEKWOOD TR

PID 3011823330006  
4650 CREEKWOOD TR



REV	REVISION DESCRIPTION	DWN	APP	REV DATE
0	ISSUED FOR QUOTES	MJS	CJM	01/15/16

SEAL

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

PRINT NAME: CHRISTOPHER J. MEEHAN

SIGNATURE: *[Signature]*

DATE: 01/15/2016 LICENSE #: 43066

PRIME CONSULTANT

Responsive partner. Exceptional outcomes.

PROJECT TITLE: PAINTER CREEK CULVERT REPLACEMENT

QUALITY OF WATER, QUALITY OF LIFE

SHEET TITLE: GRADING AND DRAINAGE PLAN

DWN BY	CHK'D	APP'D	DWG DATE	JAN 2016
MJS			SCALE	AS SHOWN
PROJECT NO.	SHEET NO.	REV NO.		
0185-5091	C-301	0		



**Painter Creek Culvert Replacement Quote Tabulation**

1/22/2016

Item No.	Base Quote Item Description	Units	Quantity	Engineer's Estimate		Minnesota Dirt Works, Inc.		Blackstone Contractors, LLC		Sunram Construction, Inc.		G.L. Contracting Inc.		Minger Construction Companies Inc.	
				Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension	Unit Price	Extension
1	Mobilization & Demobilization	LS	1	\$ 4,000.00	\$ 4,000.00	\$ 2,150.00	\$ 2,150.00	\$ 5,000.00	\$ 5,000.00	\$ 2,500.00	\$ 2,500.00	\$ 3,335.90	\$ 3,335.90	\$ 15,000.00	\$ 15,000.00
2	Clear Tree	EA	5	\$ 500.00	\$ 2,500.00	\$ 225.00	\$ 1,125.00	\$ 1,000.00	\$ 5,000.00	\$ 370.00	\$ 1,850.00	\$ 610.50	\$ 3,052.50	\$ 350.00	\$ 1,750.00
3	Grub Tree	EA	5	\$ 500.00	\$ 2,500.00	\$ 180.00	\$ 900.00	\$ 250.00	\$ 1,250.00	\$ 165.00	\$ 825.00	\$ 610.50	\$ 3,052.50	\$ 150.00	\$ 750.00
4	Remove storm sewer pipe/culvert	LF	118	\$ 20.00	\$ 2,360.00	\$ 13.00	\$ 1,534.00	\$ 10.00	\$ 1,180.00	\$ 27.00	\$ 3,186.00	\$ 11.10	\$ 1,309.80	\$ 6.00	\$ 708.00
5	Remove bituminous pavement	SY	105	\$ 10.00	\$ 1,050.00	\$ 3.70	\$ 388.50	\$ 2.00	\$ 210.00	\$ 7.50	\$ 787.50	\$ 9.20	\$ 966.00	\$ 5.00	\$ 525.00
6	Salvage and respread topsoil	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 770.00	\$ 770.00	\$ 3,000.00	\$ 3,000.00	\$ 2,000.00	\$ 2,000.00	\$ 2,003.90	\$ 2,003.90	\$ 3,900.00	\$ 3,900.00
7	Restore culvert slopes	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 475.00	\$ 475.00	\$ 3,000.00	\$ 3,000.00	\$ 10,150.00	\$ 10,150.00	\$ 1,202.40	\$ 1,202.40	\$ 3,300.00	\$ 3,300.00
8	Common Borrow (LV)	CY	50	\$ 50.00	\$ 2,500.00	\$ 36.40	\$ 1,820.00	\$ 20.00	\$ 1,000.00	\$ 24.50	\$ 1,225.00	\$ 18.20	\$ 910.00	\$ 10.00	\$ 500.00
9	Riprap Class II	TON	73	\$ 100.00	\$ 7,300.00	\$ 69.00	\$ 5,037.00	\$ 85.00	\$ 6,205.00	\$ 90.00	\$ 6,570.00	\$ 116.90	\$ 8,533.70	\$ 85.00	\$ 6,205.00
10	36" RC Pipe Class III	LF	120	\$ 130.00	\$ 15,600.00	\$ 91.50	\$ 10,980.00	\$ 180.00	\$ 21,600.00	\$ 150.00	\$ 18,000.00	\$ 188.70	\$ 22,644.00	\$ 180.00	\$ 21,600.00
11	36" RC Safety Apron and Grate	EA	4	\$ 3,500.00	\$ 14,000.00	\$ 2,280.00	\$ 9,120.00	\$ 3,200.00	\$ 12,800.00	\$ 3,000.00	\$ 12,000.00	\$ 3,056.80	\$ 12,227.20	\$ 4,000.00	\$ 16,000.00
12	Aggregate Base Class 5, 100% crushed	TON	50	\$ 40.00	\$ 2,000.00	\$ 40.00	\$ 2,000.00	\$ 30.00	\$ 1,500.00	\$ 50.00	\$ 2,500.00	\$ 25.20	\$ 1,260.00	\$ 41.00	\$ 2,050.00
13	Type SP 9.5 Wearing Course Mixture (3,B)	TON	20	\$ 300.00	\$ 6,000.00	\$ 225.00	\$ 4,500.00	\$ 140.00	\$ 2,800.00	\$ 180.00	\$ 3,600.00	\$ 277.50	\$ 5,550.00	\$ 200.00	\$ 4,000.00
14	Geotextile Fabrix, Type V Non-woven	SY	105	\$ 5.00	\$ 525.00	\$ 2.00	\$ 210.00	\$ 2.00	\$ 210.00	\$ 4.50	\$ 472.50	\$ 7.60	\$ 798.00	\$ 1.00	\$ 105.00
15	Common Topsoil Borrow (LV)	CY	10	\$ 50.00	\$ 500.00	\$ 49.25	\$ 492.50	\$ 35.00	\$ 350.00	\$ 35.00	\$ 350.00	\$ 43.00	\$ 430.00	\$ 10.00	\$ 100.00
16	Erosion Control Blanket Category 3, Straw 2S	SY	600	\$ 4.00	\$ 2,400.00	\$ 2.00	\$ 1,200.00	\$ 2.00	\$ 1,200.00	\$ 3.25	\$ 1,950.00	\$ 4.40	\$ 2,640.00	\$ 3.00	\$ 1,800.00
17	Flotation Silt Curtain Type Moving Water	LF	30	\$ 50.00	\$ 1,500.00	\$ 21.00	\$ 630.00	\$ 10.00	\$ 300.00	\$ 25.00	\$ 750.00	\$ 36.60	\$ 1,098.00	\$ 35.00	\$ 1,050.00
18	Native Seed Mix MN State Seed Mix 36-211	LB	5	\$ 50.00	\$ 250.00	\$ 21.00	\$ 105.00	\$ 50.00	\$ 250.00	\$ 55.00	\$ 275.00	\$ 47.70	\$ 238.50	\$ 25.00	\$ 125.00
<b>SUM OF Quote ITEMS 1 THROUGH 18:</b>				<b>TOTAL</b>	<b>\$ 68,985.00</b>	<b>\$ 43,437.00</b>	<b>\$ 66,855.00</b>	<b>\$ 68,991.00</b>	<b>\$ 71,252.40</b>	<b>\$ 79,468.00</b>					

# Proposal



Responsive partner.  
Exceptional outcomes.

**To:** Tiffany Schaufler, Project and Land Manager, Minnehaha Creek Watershed District

**From:** Chris Meehan, P.E., CFM, Wenck Associates, Inc.

**Date:** January 25, 2016

**Subject:** Painter Creek Crossings Replacement – Construction Observation/As-Built Plans

This proposal is to provide construction observation assistance for the replacement of two culverts and restoration of Painter Creek adjacent to Creekwood Trail in Orono.

Wenck understands that the District has determined the Painter Creek culverts which serve 4650 and 4680 Creekwood Trail in Orono are undersized and are in need of replacement. The District would like to replace the existing culverts with new 36-inch pipes along with restoration of the adjacent banks. As part of this replacement the District would like assistance with construction oversight and development of as-built plans.

## 1. Construction Oversight/As-Built Plans

As part of this scope Wenck will provide a part-time limited construction observation which will include a pre-construction meeting, inspections, coordinate staking, communicate with the project manager and MCWD, measure and track contract quantities, and coordinate independent materials testing. The remainder of the project team will be available for project support. Wenck will also assist with administration of contract documents as required, punch list walk through and list, final payment, and project close-out documents including a certification of completion. Following construction, Wenck will complete as-built drawings of the constructed product in a timely fashion, submit to the MCWD for review, and submit final documents.

Prior to construction, Wenck will coordinate and conduct a field walkthrough with the MCWD Staff and collect a photo inventory of existing conditions.

### Objectives:

- Preliminary walkthrough and existing conditions photos
- Preconstruction meeting
- Coordinate independent material testing
- Submittal/shop drawing review
- Construction staking
- Construction administration
- Construction observation and project documentation
- Record plan survey
- Certificate of Completion

### Deliverable and Meetings:

- Coordinate and conduct field walkthrough and photo inventory
- Pre-construction meeting
- Three (3) construction meetings

**Ms. Tiffany Schaufler**  
 Project and Land Manager  
 Minnehaha Creek Watershed District  
 January 25, 2016



- Assist with punch list walk through and list
- Draft Record Plans
- Final Record Plans

A summary of work requested and associated fee for services is provided below.

**Table 1. Painter Creek Crossings Replacement Construction Observation/As-Built Plans**

<b>Scope of Work</b>	<b>Fee estimate</b>
<b>1. Construction Oversight/As-Built Plans</b>	\$4,150
<b>TOTAL =</b>	<b>\$4,150</b>

Each task includes the expected minimum level of effort using the most efficient discounted hourly rates that are currently used by MCWD along with direct expenses covering mileage, survey equipment, etc. It is anticipated the scope of work will be finalized within two weeks of construction being completed.

Wenck appreciates the opportunity to provide you with our proposal. If you have any questions or comments regarding this proposal, please call me at (763) 252-6844.

If this proposal is acceptable, please sign and return.

Sincerely,

WENCK ASSOCIATES, INC.

Chris Meehan, P.E.  
**Project Manager**

ACCEPTED BY:

Minnehaha Creek Watershed District

\_\_\_\_\_  
 Tiffany Schaufler, Project and Land Manager  
**Minnehaha Creek Watershed District**

\_\_\_\_\_  
 (Date)