

**Minnehaha Creek Watershed District**

**REQUEST FOR BOARD ACTION**

**MEETING DATE:** October 25, 2018

**TITLE:** Authorization to Execute Easements and Agreement for SMCHB Carp Barriers

**RES. NUMBER:** 18-109

**PREPARED BY:** Anna Brown

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

**TELEPHONE:** 952-641-4522

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name): Michael Hayman  
 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): <u>Requesting final action October 25, 2018</u> |   |

**PURPOSE or ACTION REQUESTED:**

Authorization to execute two easements and an agreement for carp barrier construction and maintenance, with the following parties:

- Waterbrooke Fellowship (Wassermann Barrier)
- Creekview Investment, LLC (Highland Road Barrier)
- City of Minnetrista (Highland Road Barrier)

**PROJECT/PROGRAM LOCATION:**

Lake Wassermann, Victoria  
Highland Road, Minnetrista

**PROJECT TIMELINE:**

|                |   |
|----------------|---|
| Spring 2017    | MCWD recommended for funding through Lessard Sams Outdoor Heritage Fund |
| Spring 2018    | Funding approved by MN Legislature                                      |
| March 2018     | Barrier design contract awarded   |
| October 2018   | Award construction contract   |
| March 15, 2019 | Construction completion   |

**PROJECT/PROGRAM COST:**

Fund name and number: 500-5007 SMCHB Carp Management  
Current Budget: \$567,000  
Requested amount of funding: \$0

**PAST BOARD ACTION:**

May 11, 2017 Authorization to request funding from Lessard Sams Outdoor Heritage Council (17-036)  
March 8, 2018 Award contract for carp barrier design (18-021)  
Sept. 27, 2018 Approval of plans and specifications for carp barriers (18-103)  
Oct. 11, 2018 Authorization of impoundment of Six Mile Creek at Highland Road (18-107)

**SUMMARY:**

In September of 2017, the Lessard Sams Outdoor Heritage Council recommended the Six Mile Creek-Halsted Bay (SMCHB) Habitat Restoration Project for \$567,000 to the Minnesota State Legislature. The funding bill was approved by the legislature and the grant period began on July 1, 2018.

The SMCHB Habitat Restoration project will restore 2,488 acres of deep and shallow lake habitat through the management of invasive common carp. The strategy for reducing carp concentrations below the threshold where they damage ecosystems is three-fold:

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

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

At the October 25 2018 Board Meeting, staff will seek authorization to execute two easements and one agreement to establish the land rights necessary to install and maintain the barriers at the Wassermann outlet and at Highland Road.

**Wassermann Barrier**

The Wassermann barrier will be located at the outlet of Lake Wassermann. At this location, Six Mile Creek is encompassed by the property owned by Waterbrooke Fellowship, PID 650230200. Staff have developed a mutually agreeable easement providing for the District's right to install the barrier, enter the property for maintenance and inspection, and remove carp at the barrier site.

At the property owner's request, the easement has been structured such that, after a period of ten years, the landowner may request that the barrier be relocated to an equally effective area within the stream channel. This provision provides design flexibility in the case that the owner contemplates a site improvement that may conflict with the barrier location. The barrier relocation would be at the District's expense.

**Highland Road Barrier**

The Highland Road barrier will be located within the Highland Road right of way in Minnetrista. The Highland Road right of way is an easement dedicated to the City for drainage, right of way, and utility purposes. The underlying land rights belong to the property owner of the adjacent outlot, Creekview Investments. Installation will also require some encroachment into the outlot.

Staff developed an agreement and an easement to facilitate the Highland Road Barrier. The first is with the City of Minnetrista in which the City consents to the District's installation and maintenance of the barrier below the Highland Road channel crossing within the right of way, and non-exclusively assigns its right of way and drainage interests to the District, allowing for the District's installation, inspection, and maintenance of the

structure. The other is an easement with Creekview Investments to provide for the installation, maintenance, and inspection of the barrier, as well as the right to harvest fish from the easement area. Both agreements are perpetual, except that the Creekview Investment easements does allow for the property owner to terminate the construction area portion of the easement after 10 years.

### **Crown College Barrier**

The third barrier will be located in a small stream on Crown College Campus. That matter is still under discussion with the property owner and will be brought to the Board in a future meeting.

Staff Recommends the District Board of Managers authorize the execution of the land rights easements and agreement for carp barrier construction.

### **Attachments**

- Waterbrooke Fellowship Easement
- Creekview Investment Easement
- City of Minnetrista Encroachment Agreement

**RESOLUTION**

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**RESOLUTION NUMBER:**    18-109

**TITLE:**            **Authorization to Execute Easements and Agreement for SMCHB Carp Barriers**

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

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

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

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

WHEREAS, staff have negotiated easements with property owners, and an agreement with the City of Minnetrista, to allow for installation, inspection, and maintenance of the barriers, as well as the ability to harvest common carp, at the Highland Road and Lake Wassermann sites;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the administrator, on advice of counsel, and with any adjustments that do not materially implicate District resources or risk, to execute the following land rights easements and agreement, and provide for filing in county land records as appropriate:

- Easement with Waterbrooke Fellowship
- Easement with Creekview Investments, LLC
- Encroachment Agreement with City of Minnetrista

Resolution Number 18-109 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

\_\_\_\_\_  
Secretary

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

## **EASEMENT**

### **On the Property of Waterbrooke Fellowship Carver County, Minnesota**

#### **Legal description of subject property:**

*[insert]*

THIS EASEMENT is entered into by Waterbrooke Fellowship, 8725 County Road 43, Chaska MN 55318, a [*describe legal form of entity*] (“Grantor”); and the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota with powers set forth at Minnesota Statutes Chapters 103B and 103D (“Grantee”).

## **RECITALS**

A. Grantor owns in fee certain real property as legally described above, riparian to Wassermann Lake (the “Property”). Surface water features are located on the Property, including a channel that serves as an outlet for Wassermann Lake.

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

C. The purpose of this Easement is to allow Grantee to maintain facilities in the Wassermann Lake outlet channel to prevent rough fish from migrating upstream into Wassermann Lake and for other associated management purposes.

## **TERMS**

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

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

2. Use of Easement. Grantee may install a barrier to rough fish movement within the Structure Area, as a free-standing structure or affixed to a road crossing conveyance structure. Grantee may inspect, maintain, repair, modify, replace, relocate and remove the barrier, and may harvest and otherwise manage fish from the channel adjacent to the barrier. For these purposes, Grantee may occupy the Easement Areas and may stage light vehicles and equipment within the Easement Areas, but Grantee will stage or stockpile vehicles, equipment or material within the Easement Areas only during active work. Grantee’s installation as installed will not: (a) extend vertically above adjacent road surface elevation; or (b) increase the 100-year water elevation within the channel or basin, apart from minor increase in the upstream vicinity of the barrier.

3. Access. Grantee may cross the Property, on foot or by motorized vehicle, for ingress to and egress from the Easement Areas. Grantee will make every effort to ensure that the driveway access is not blocked either during construction or during routine maintenance activities.

4. Maintenance. Grantee will be responsible for the condition of, and for all maintenance and repair related to, the barrier, and will repair any disturbance to the Property that it causes by its use. Grantor will not be asked to move any existing structures, and any damage caused to existing structures by Grantee or its contractors will be remedied at Grantee’s expense.

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

*[insert title/email/address]*

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

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

perpetuity. Grantor will avoid any action that interferes with Grantee's exercise of its rights under this Easement. Grantor, and those under Grantor's authority or control, will not construct, install or place a building or other structure, or plant trees or shrubs, within the Easement Areas. Notwithstanding the preceding, once installation is complete, Grantor may place structures and/or landscaping within the Construction Area with Grantee's written approval, not to be unreasonably withheld, on the basis of its determination that it will retain adequate access to conduct its activities under this Easement. If Grantor is to perform work that may affect the function of the barrier, it will notify Grantee and the parties will coordinate so that Grantor may perform the necessary work and Grantee may maintain, reaffix or replace the barrier, or relocate it within the Structure Area, such that it may remain effective for its purpose. Once the Easement has been in effect for ten years, Grantor may for any reason request that Grantee relocate the barrier to an equally effective location within the Structure Area, as it exists or as the parties may redefine it. Grantee will complete the relocation within two years of the date of the request.

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

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

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

**WATERBROOKE FELLOWSHIP, Grantor**

*[signature block(s)]*

STATE OF MINNESOTA  
COUNTY OF CARVER

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by  
\_\_\_\_\_ as \_\_\_\_\_ of  
Waterbrooke Fellowship.

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry White, President

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018,  
by Sherry White as President of the Minnehaha Creek Watershed District.

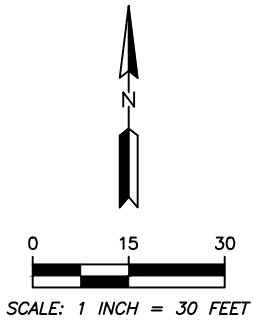
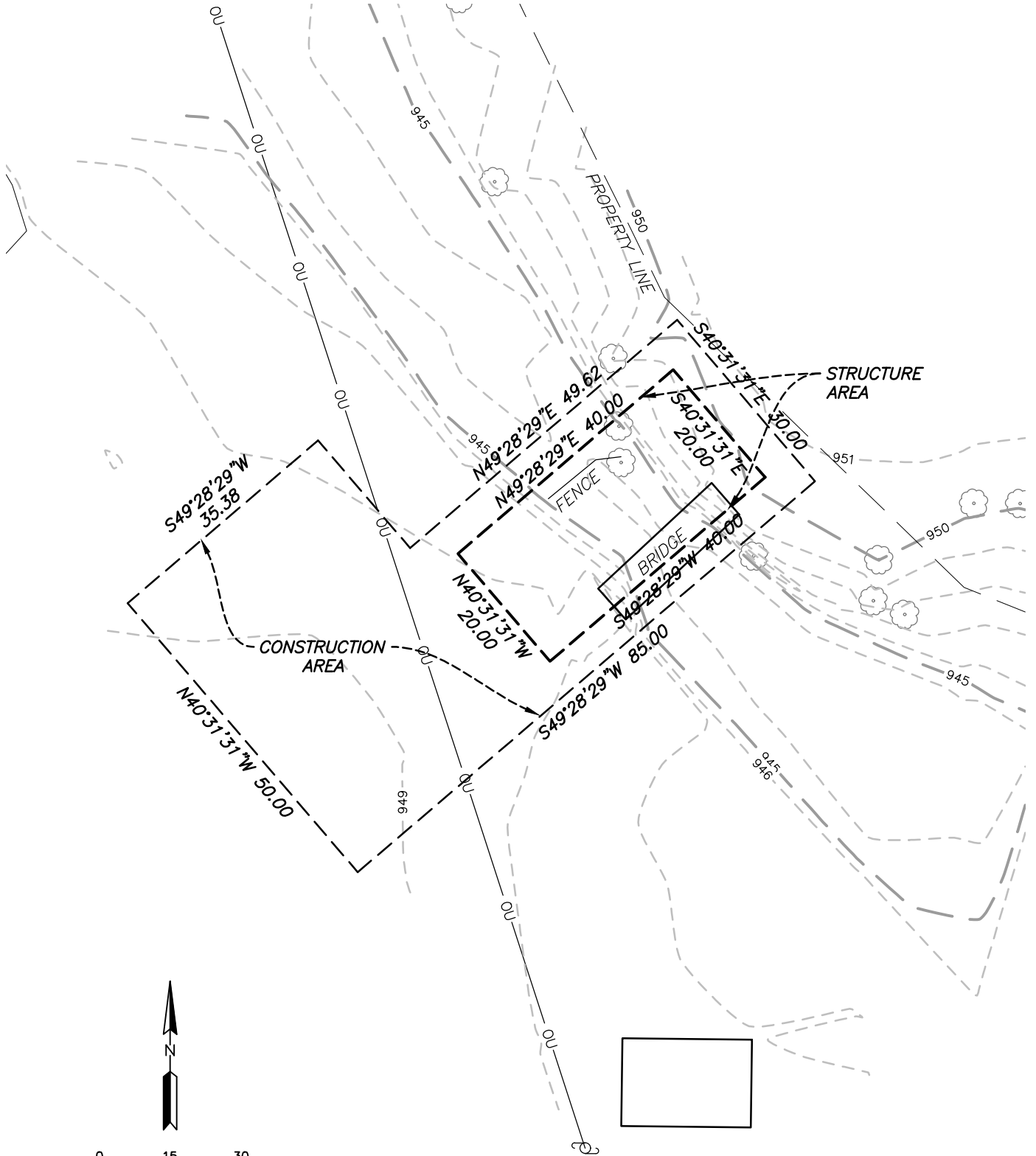
\_\_\_\_\_  
Notary Public


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



# EASEMENT EXHIBIT

## WASSERMAN LAKE CARP BARRIER



|  |   |               |  |              |
|--|---|---------------|--|--------------|
| <br>Responsive partner. Exceptional outcomes. | 1802 WOODDALE DR.<br>WOODBURY, MN 55125<br>Ph: 651-395-5212 |               | PROJECT TITLE<br><b>EASEMENT EXHIBIT</b> |              |
|  | CLIENT NAME<br><b>MINNEHAHA CREEK WATERSHED DISTRICT</b>    | DWN BY<br>CNA | CHK'D<br>XXX                             | APP'D<br>XXX |
| PROJECT NO.<br><b>0185-0100</b>  |   |               | SHEET NO.<br><b>1 OF 1</b>               |              |

## **EASEMENT**

### **On the Property of Creekview Investments LLC Hennepin County, Minnesota**

#### **Legal description of subject property: Outlot A, Creekview Business Park Addition**

THIS EASEMENT is entered into by Creekview Investments LLC, 4520 Creekview Circle, Suite 201, Minnetrista MN 55375, a Minnesota limited liability corporation (“Grantor”); and the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota with powers set forth at Minnesota Statutes Chapters 103B and 103D (“Grantee”).

## **RECITALS**

A. Six Mile Creek flows across real property, as legally described above, that Grantor owns in fee title (the “Property”). Six Mile Creek drains a subwatershed located in Carver and Hennepin Counties and outlets into Halsted Bay of Lake Minnetonka.

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

C. The purpose of this Easement is to allow Grantee to maintain facilities in the Six Mile Creek channel to prevent rough fish from migrating through the subwatershed and for other associated management purposes.

## **TERMS**

For good and valuable consideration, and the mutual covenants and conditions set forth herein, the receipt and sufficiency of which hereby are acknowledged, and

intending to be legally bound, Grantor conveys to Grantee a perpetual easement on the Property, as specifically described herein.

1. Easement Description. The Easement is on those parts of the Property delineated and labeled as “Structure Area” and “Construction Area” on the site plan at Attachment A to this Easement, attached hereto and incorporated herein (together, “Easement Areas”).
2. Use of Easement. Grantee may install a barrier to rough fish movement within the Structure Area, as a free-standing structure or affixed to a road crossing conveyance structure. Grantee may inspect, maintain, repair, modify, replace, relocate and remove the barrier, and may harvest and otherwise manage fish from the channel adjacent to the barrier. For these purposes, Grantee may occupy the Easement Areas and may stage light vehicles and equipment within the Easement Areas, but Grantee will stage or stockpile vehicles, equipment or material within the Easement Areas only during active work. Grantee’s installation as installed will not: (a) extend vertically above adjacent road surface elevation; or (b) increase the 100-year water elevation within the channel or basin, apart from minor increase in the upstream vicinity of the barrier.
3. Access. Grantee may cross the Property, on foot or by motorized vehicle, for ingress to and egress from the Easement Areas.
4. Maintenance. Grantee will be responsible for the condition of, and for all maintenance and repair related to, the barrier, and will repair any disturbance to the Property that it causes by its use.
5. Grantor’s Reserved Rights. Grantor reserves all rights and privileges associated with ownership of the Property except as set forth in this section 5, in perpetuity. Grantor will avoid any action that interferes with Grantee’s exercise of its rights under this Easement. Grantor, and those under Grantor’s authority or control, will not construct, install or place a building or other structure, or plant trees or shrubs, within the Easement Areas. Notwithstanding the preceding, once installation is complete, Grantor may place structures and/or landscaping within the Construction Area with Grantee’s written approval, not to be unreasonably withheld, on the basis of its determination that it will retain adequate access to conduct its activities under this Easement.
7. No Public Access Granted. Nothing in this Easement authorizes any right of access onto the Property by the general public. The right of entry conveyed to Grantee under this Easement applies to and shall be limited to authorized employees, representatives, contractors and subcontractors of Grantee.

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

9. Indemnification; Insurance. Grantee, on behalf of itself, its successors, and assigns, hereby holds Grantor harmless, and agrees to indemnify it, against and from all claims for loss, damage, or expenses which may be incurred or asserted by any party, to any extent resulting from Grantee's activity on the Property under this Easement, except to the extent caused by the gross negligence or willful act of Grantor or its agent. During the period of installation described under paragraph 2, above, Grantee shall require Grantor to be named as an additional insured under its contractor's occurrence-based commercial general liability policy, covering the contractor's work and completed operations, and with primary coverage on a non-contributory basis.

10. Miscellaneous. The parties may amend this Easement only by a duly executed writing meeting all requirements of law. This Easement runs with the land in perpetuity and binds and benefits the parties and their respective representatives, heirs, successors, assigns and all others who exercise any right by or through them. Notwithstanding the foregoing, after ten years and with six months' written notice to Grantee, Grantor, in its discretion, may terminate that part of the Easement that burdens the Construction Area, in which case the parties will cooperate to file a partial release of easement. Grantee, at its cost, may file and refile this Easement for recordation or registration in the Hennepin County land records. All recitals are a part of this Easement.

**CREEKVIEW INVESTMENTS LLC, Grantor**

*[signature block(s)]*

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by  
\_\_\_\_\_ as \_\_\_\_\_ of  
Creekview Investments LLC.

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
Sherry White, President

Date:

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

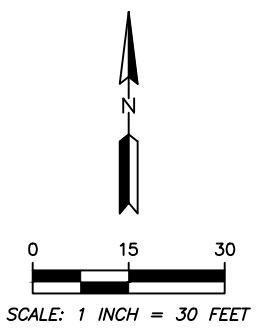
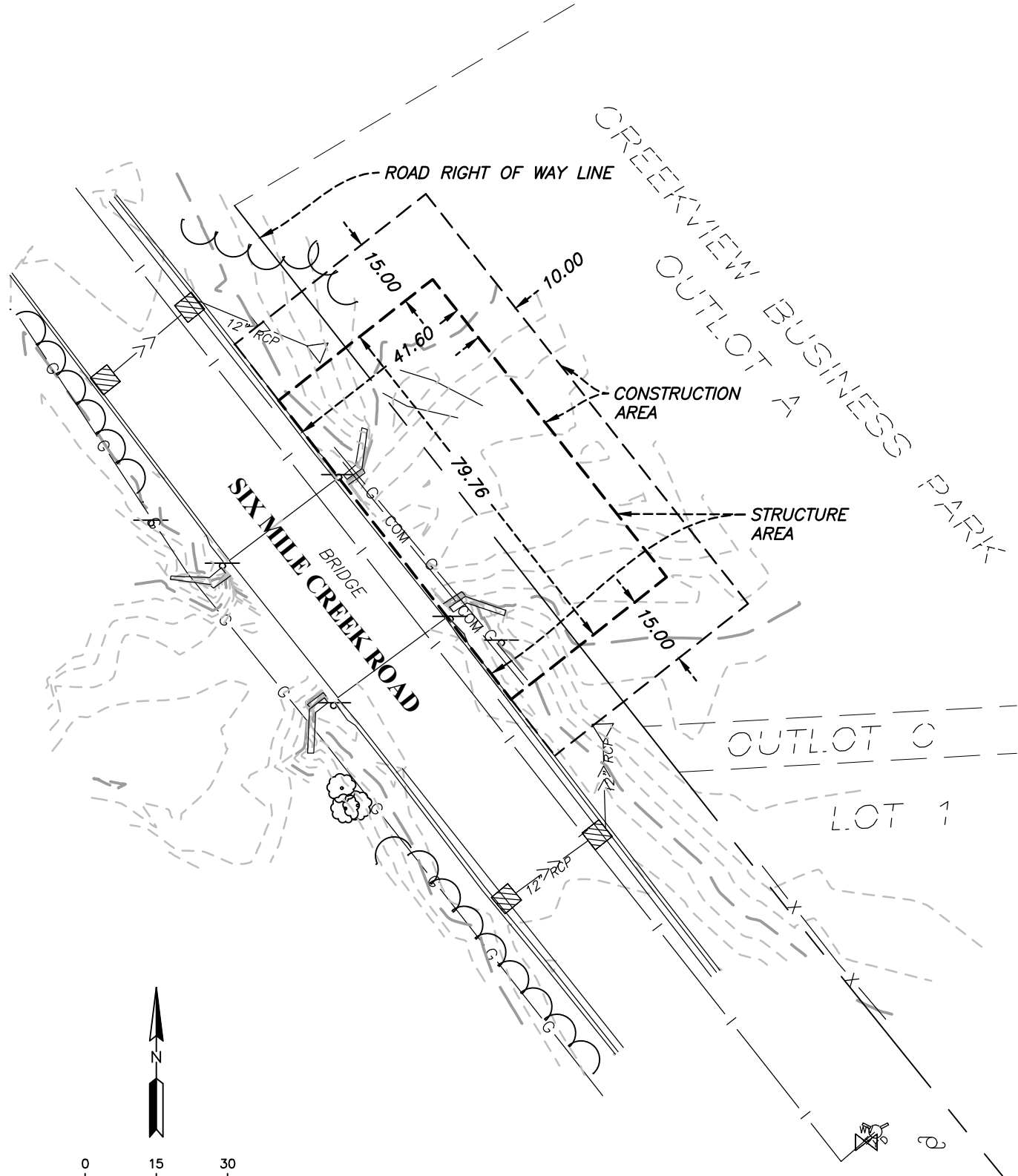
This instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by  
Sherry White as President of the Minnehaha Creek Watershed District.


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

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

# EASEMENT EXHIBIT

## SIX MILE CREEK ROAD CARP BARRIER



|   |  |  |   |                     |              |                      |
|---|--|--|---|---------------------|--------------|----------------------|
|  <p><b>WENCK</b><br/>ASSOCIATES</p> <p>Responsive partner. Exceptional outcomes.</p> | 1802 WOODDALE DR.<br>WOODBURY, MN 55125<br>Ph: 651-395-5212                          |  | PROJECT TITLE<br><p style="text-align: center;"><b>EASEMENT EXHIBIT</b></p> |                     |              |                      |
|   | CLIENT NAME<br><p style="text-align: center;">MINNEHAHA CREEK WATERSHED DISTRICT</p> |  | DWG BY<br>CNA   | CHK'D<br>XXX        | APP'D<br>XXX | DWG DATE<br>10-10-18 |
|   |  |  | PROJECT NO.<br>0185-0100  | SHEET NO.<br>1 OF 1 |              | SCALE<br>1" = 30'    |

## **ENCROACHMENT AGREEMENT**

### **City of Minnetrista and Minnehaha Creek Watershed District Highland Road Right-of-Way**

THIS ENCROACHMENT AGREEMENT (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2018, between the City of Minnetrista, a municipal corporation under the laws of Minnesota (“City”), and the Minnehaha Creek Watershed District (MCWD), a political subdivision of the State of Minnesota. The parties agree as follows:

#### **RECITALS**

A. The City holds an interest in certain right-of-way (ROW), denominated as Highland Road, where it crosses Six Mile Creek-Halsted Bay north and west of its intersection with Highway 7 (see Exhibit A) (“ROW interest”). It also holds a certain dedicated drainage and utility interest in and adjacent to the Six Mile Creek channel in the location of the ROW (“Drainage interest”).

B. The MCWD is a special purpose unit of government with a statutory mandate to protect and manage water resources for beneficial public use. The MCWD has undertaken a multi-year program to improve water quality and habitat within the Six Mile Creek-Halsted Bay subwatershed by means that include systematic management of rough fish populations within the subwatershed (the “Project”). The City supports the Project.

C. The purpose of this Agreement is to allow the MCWD to maintain facilities in Six Mile Creek within City ROW to facilitate rough fish collection and for other associated management purposes. The parties agree that there is mutual consideration for this Agreement and that it is legally binding according to its terms.

#### **TERMS**

1. The MCWD may install a barrier to rough fish movement in the channel within the Structure Area delineated on Exhibit A, attached hereto and incorporated herein. The barrier will not be attached to any portion of the City’s constructed Highland Road crossing or any structural appurtenance thereto. The MCWD may inspect, maintain, repair, modify, replace, relocate and remove the barrier, and may harvest and otherwise manage fish from the channel adjacent to the barrier. For these purposes, the MCWD may occupy the Project Area as delineated on Exhibit A, and may stage light vehicles and equipment within the Project Area, but the MCWD will stage or stockpile vehicles, equipment or material within the Project Area only during active work. The MCWD’s installation will not: (a) extend vertically above the adjacent road surface elevation; or (b) materially increase the 100-year water elevation within the channel. The MCWD will notify the City at least one week before commencing construction.

2. The MCWD will be subject to any applicable City permits or approvals necessary to perform the work, but will not be subject to permit fees. Any road disturbance associated with the Project will be coordinated with the City. The MCWD will repair any road or other

ROW damage resulting from its activity. The MCWD will restore areas of disturbance to preexisting condition or better.

3. The barrier and any appurtenances will remain MCWD property. The MCWD has the ongoing right to enter the Project Area to inspect, operate, maintain, repair, relocate and remove the barrier.

4. At all times, the MCWD will avoid obstruction of the way of travel on Highland Road. The MCWD may make safe entry and exit between the ROW and the Project Area but otherwise will conform to applicable City requirements concerning use of the ROW adjacent to the travel surface.

5. For the purpose of the MCWD's actions described and as delimited in this Agreement, the City assigns to the MCWD, non-exclusively, its ROW and Drainage interests. The City makes no representation as to the precise nature or scope of those interests. With respect to any third party owner of a fee or other interest in the lands involved, the MCWD assumes all responsibility as to the nature and scope of the City's interest and, accordingly, the scope of encroachment rights that the City is conveying under this Agreement.

6. The City reserves all rights, privileges and obligations associated with its ROW and Drainage interests, except as set forth in this section 6. The City will avoid any action that interferes with the MCWD's exercise of its rights under this Agreement. If the City is to perform work that may affect the function of the barrier, it will notify the MCWD and the parties will coordinate so that the City may perform the necessary work and the MCWD may maintain, reattach or replace the barrier, or relocate it within the Structure Area.

7. The MCWD will indemnify, defend and hold harmless the City, its council members, employees and agents, from and against any and all actions, causes of action, claims, proceedings, costs and damages arising out of installation or maintenance of the barrier, except to the extent the action, cause of action, claim, proceeding, cost or damage results from an action or inaction of the City that is an independent basis for liability. Notwithstanding the foregoing, Minnesota Statutes chapter 466 and other applicable law governs liability of the City and the MCWD. This Agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party or the other party to this Agreement.

8. MCWD may not assign this Agreement without the prior written permission of the City, which consent shall be at the sole discretion of the City.

9. Any notice or correspondence to be given under this Agreement shall be deemed to be given if delivered personally or sent by United States certified or registered mail, postage prepaid, return receipt requested:



a) as to MCWD: Minnehaha Creek Watershed District  
15230 Minnetonka Blvd  
Minnetonka, MN 55345  
Attention: District Administrator

b) as to City: City of Minnetrista  
7701 County Road 110 W  
Minnetrista, MN 55364  
Attention: City Administrator

or at such other address as either party may from time to time notify the other in writing in accordance with this section.

10. If either party waives in writing any default or nonperformance by the other party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

11. The parties may amend this Agreement only by a writing duly signed by both parties. This Agreement is effective for five years from the date it is fully executed, and will renew automatically for successive five-year periods unless amended or terminated by written agreement of the parties. The rights here conferred on the MCWD may be exercised by the authorized representatives and contractors of the MCWD.

15. This Agreement shall be interpreted under the laws of Minnesota.

16. The above recitals are incorporated into this Agreement.

17. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties cause this Agreement to be executed.

**CITY OF MINNETRISTA**

By \_\_\_\_\_  
Its Mayor

Date:

By \_\_\_\_\_  
Its City Manager

Date:

*Approved for form and execution:*

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

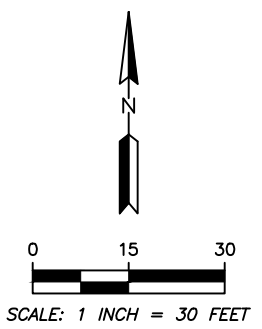
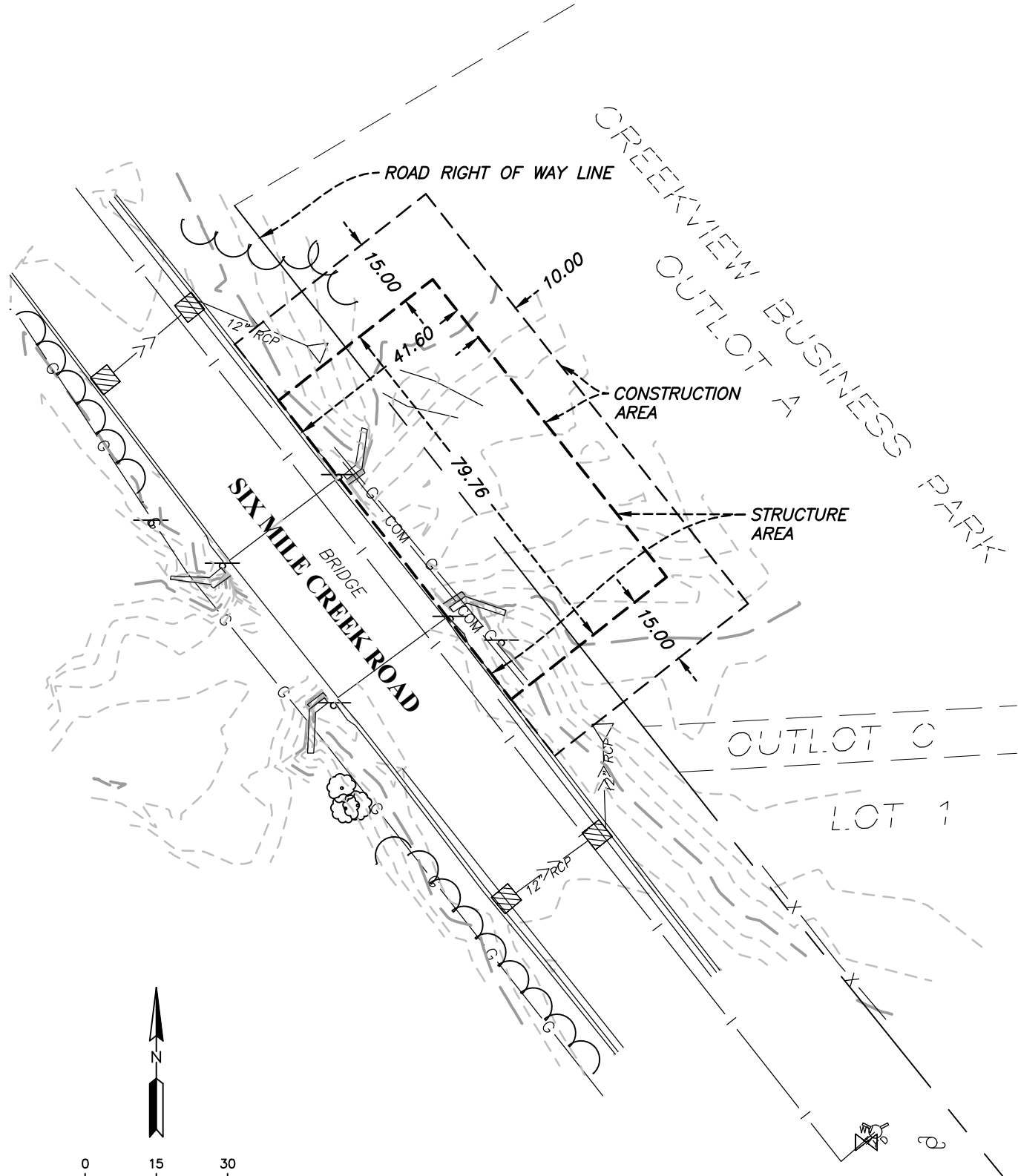
**MINNEHAHA CREEK WATERSHED DISTRICT**


By \_\_\_\_\_  
Its President

Date:

# EASEMENT EXHIBIT

## SIX MILE CREEK ROAD CARP BARRIER



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