

**Minnehaha Creek Watershed District**

**REQUEST FOR BOARD ACTION**

**MEETING DATE:** November 8, 2018

**TITLE:** Authorization to execute an agreement with Three Rivers Park District for utility installation and aeration

**RES. NUMBER:** 18-115

**PREPARED BY:** Anna Brown

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

**TELEPHONE:** (952) 641-4522

**REVIEWED BY:**  Administrator  Counsel  Program Mgr.: 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>Final Approval November 8, 2018</u>	

**PURPOSE or ACTION REQUESTED:**

Authorization to execute an agreement with Three Rivers Park District to install utilities and aerate North Lundsten, South Lundsten, and Sunny lakes.

**PROJECT/PROGRAM LOCATION:**

Carver Park Reserve, Victoria, MN

**PROJECT TIMELINE:**

Nov/Dec 2018 Installation of utility service at South Lundsten Lake

Summer/Fall 2019 Installation of utility service at North Lundsten Lake and feasibility for Sunny Lake

**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)

July 26, 2018 Authorization to enter contract for utility design services (18-070)

## **SUMMARY:**

In September 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

Aeration of shallow lakes has been proposed in six lakes: Marsh, Turbid, Mud, North and South Lundsten, and Sunny. In order to aerate these lakes, electricity service needs to be extended from existing power poles to the lake shoreline. In July 2018, the Board of Managers awarded a contract to Telcom Construction to design the utility configuration for these sites, price them, and coordinate with the utility companies.

Three of these lakes – North Lundsten, South Lundsten, and Sunny – are located within Three Rivers Park District (TRPD). Staff at both agencies have developed a cooperative agreement providing for the aeration of these waterbodies, including the following provisions:

- The District can install utility connections necessary to operate the aeration units;
- The District can install and operate the aeration units;
- The District and TRPD will develop a complementary operations and maintenance plan which will establish mutual responsibilities in the aeration of lakes within Carver Park Reserve.

TRPD has experience operating aeration units and has expressed a preliminary willingness to share in the responsibilities of annual operations. Following the approval of the agreement, both agencies will undertake the drafting of that the operations and maintenance plan. We have tentatively proposed utilizing the three-year grant period as a trial for the operations and maintenance plan, allowing for modifications and revisions at the close of the grant period.

### Recommendation

Staff recommend that the Board of Managers approve the agreement with Three Rivers Park District for utility installation and aeration.

### Attachments

- Draft Cooperative Agreement
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**RESOLUTION**

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**RESOLUTION NUMBER:** 18-115

**TITLE:** **Authorization to execute an agreement with Three Rivers Park District for utility installation and aeration**

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

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

WHEREAS, in September 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, one of the primary strategies for the management of common carp in the SMCHB Subwatershed is shallow lake aeration to prevent winterkill of fish species that predate carp eggs, preventing reproduction;

WHEREAS, three of the water bodies proposed for aeration, North Lundsten, South Lundsten, and Sunny lakes, are within Carver Park Reserve, owned and operated by Three Rivers Park District;

WHEREAS, the agencies have developed a mutually agreeable cooperative agreement providing for the District's ability to extend electric utility service to these waterbodies, and providing for the annual operation and maintenance of the aeration units;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorize the administrator to execute, on advice and consent of counsel, and with any non-substantive adjustments, a cooperative agreement with Three Rivers Park District for utility installation and shallow lake aeration in Carver Park Reserve.

Resolution Number 18-115 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

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

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**COOPERATIVE AGREEMENT**  
**Three Rivers Park District and the Minnehaha Creek Watershed District**

**Aeration in North Lundsten, South Lundsten and Sunny Lakes, Carver County**

**THIS COOPERATIVE AGREEMENT (“Agreement”)** is between the Three Rivers Park District (TRPD) and the Minnehaha Creek Watershed District (MCWD), political subdivisions of the State of Minnesota.

**WHEREAS** the TRPD owns and manages lands for conservation and recreation purposes, including the lands constituting the Carver Park Reserve, which contains North Lundsten, South Lundsten and Sunny Lakes (the “Lakes”);

**WHEREAS** the MCWD, with funding support from the State of Minnesota Lessard-Sams Outdoor Heritage Council, 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, and as a part of this program wishes to install, maintain and operate aeration systems within the Lakes to support native fish populations that serve to limit the expansion of rough fish populations;

**WHEREAS** the TRPD shares the MCWD’s water resource and habitat goals and recognizes the benefit of this program to its mission, and the TRPD and MCWD wish to cooperate in implementing the aeration element of the program within the Lakes.

**THEREFORE** the TRPD and MCWD enter into this Agreement for mutual consideration, intending to be legally bound.

1. The MCWD, its employees and contractors may enter TRPD lands on foot or in light motor vehicle, with trailer as necessary, to install, inspect, maintain, operate and remove aeration equipment and related appurtenances, utilities and protective structures or enclosures, in those areas delineated and labeled as Aeration Areas in Exhibits A through C, attached hereto and incorporated herein. In addition, with TRPD approval, the MCWD may place electrical or other utility connections across the surface or subsurface of TRPD lands outside of the Aeration Areas as reasonably necessary to provide utility service to the aeration installations. For scheduled work, the MCWD will provide five business days’ notice and, on TRPD request, will conform to reasonable travel, parking and staging conditions. For unscheduled work, the MCWD will endeavor to provide as much advanced notice as possible, if less than five days. Before entering for inspection, repair or other work, the MCWD will notify the TRPD by electronic mail to the following:

**Pete Hill/Park Supervisor/Pete.Hill@threeriversparks.org**  
**Angie Smith/Director of Natural Resources/ Angie.Smith@threeriversparks.org**  
**Brian Vlach/Senior Water Resources Manager/Brian.Vlach@threeriversparks.org**

2. The MCWD will repair any damage or disturbance to TRPD land from its exercise of access. The TRPD may stipulate and thereafter adjust access routes, provided any such route will remain reasonably convenient to the MCWD.

3. The MCWD may authorize a utility provider to use the rights granted under this Agreement to install, maintain, repair and remove a utility, and may authorize the provider to use vehicles and equipment customary for those purposes, subject to the utility provider adhering to TRPD’s permit approval

process. If the TRPD is able to facilitate utility service for the installation through its own existing service or otherwise, the parties may agree in writing to any such arrangements including payment therefor.

4. On request, the TRPD will give the MCWD any information in its possession regarding subsurface structures or utilities in the installation area. Before any installation, the MCWD will transmit the system design to the TRPD and obtain TRPD staff concurrence, not to be unreasonably withheld. The TRPD may impose conditions on location or installation in the interest of public use, safety or conservation that may or may not result in a material inconvenience, or a materially greater cost, but will reduce risk of property loss or liability risk, for the MCWD. The TRPD must concur in any tree removal or disturbance of any existing structure.

5. The MCWD will obtain all permits and approvals required to install and operate the aeration systems, will obtain and install all required signage, and will bear the cost of design, permitting and installation. The TRPD will cooperate with the MCWD in securing permits and approvals in its status as landowner. The TRPD is aware that as the result of aeration, lake area will remain in an ice-free or thin-ice condition during the winter and will be marked by warning signage. As between the TRPD and MCWD, the TRPD will take any steps it believes warranted, beyond those steps required by permits or approvals, to limit safety risk to public users of the Carver Park Reserve.

6. The parties will cooperate to develop an aeration operation and maintenance plan, under which the parties, each at its cost, will assume operation and maintenance responsibilities as the plan may provide. Until a mutually approved plan is in place, the MCWD may operate and maintain the aeration systems at its own cost and in cooperation with TRPD. The plan is adaptive and may be revised with the concurrence of the parties.

7. The MCWD will indemnify the TRPD, its officials and its employees, and hold the TRPD, its officials and its employees harmless, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of any negligent or willful act or omission of the MCWD, its officials or its employees pursuant to this Agreement. The TRPD will indemnify the MCWD, its officials and its employees, and hold the MCWD, its officials and its employees harmless, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of any negligent or willful act or omission of the TRPD, its officials or its employees pursuant to this Agreement.

8. Notwithstanding any other term of this Agreement, neither party waives any applicable immunity in tort. This Agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party. Nothing hereunder constitutes the intent for one party to be responsible for the acts or omissions of the other pursuant to Minnesota Statutes §471.59, subdivision 1a.

9. In approving this Agreement, the governing body of each of the parties' delegates to its chief executive officer the authority to receive all notices, take all actions and confer all approvals for which the Agreement explicitly provides.

10. This Agreement is effective when fully signed by the parties. The term of the Agreement is three years, after which it will renew automatically for successive three-year terms, unless either party provides written notice to the other party of its intent to terminate the Agreement at least 90 days prior to the end of any term.

**THREE RIVERS PARK DISTRICT**

**MINNEHAHA CREEK WATERSHED DISTRICT**

\_\_\_\_\_  
John Gunyou  
Chair, Board of Commissioners

\_\_\_\_\_  
Sherry White  
President, Board of Managers

Date:

Date:

\_\_\_\_\_  
Boe Carlson  
Superintendent

*Approved as to form and execution:*

Date:

\_\_\_\_\_  
MCWD Attorney

DRAFT