

MEETING DATE: May 11, 2017

TITLE: Authorization to Execute a Cooperative Agreement with the City of Victoria for the Wassermann West Park and Natural Resource Improvement

RESOLUTION NUMBER: 17-035

PREPARED BY: Anna Brown

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TELEPHONE: 952-641-4522

REVIEWED BY: Administrator Counsel Program Mgr. (Name): James Wisker
 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): Approval at May 11 Board Meeting | |

PURPOSE or ACTION REQUESTED:

Authorization to execute a cooperative agreement with the City of Victoria which provides for the planning of a park and natural resource enhancement on and City acquisition of the properties 650230600 and 650230700 west of Lake Wassermann, Victoria, MN.

PROJECT/PROGRAM LOCATION:

Lake Wassermann, Victoria, MN

PROJECT TIMELINE:

June 16, 2017: District closing with Minneapolis Jewish Federation on Wassermann West Property
July 15, 2017: Estimated deadline for executing a purchase agreement with the City of Victoria
December 31, 2017: Planned deadline for Wassermann West park and natural resource plan

PROJECT/PROGRAM COST:

N/A

PAST BOARD ACTIONS:

January 9, 2017: Authorization, in closed session, to negotiate with the landowners for acquisition
February 23, 2017: Authorization to execute a Purchase Agreement for the property

SUMMARY:

The District has adopted the *Balanced Urban Ecology* policy as its guiding philosophy. Under this framework, the District is focused on the integration of land-use and water planning through partnership, flexibility and innovation, and through increased geographic focus in areas of high need and opportunity. The District's organizational strategy is to focus on developing high-impact capital projects that integrate non-water public investment through multijurisdictional partnership and to work to increase policy integration of land use and water to advance partnership with private development, public infrastructure, and public policy and planning.

In May of 2014, the Board formally adopted the Six Mile subwatershed as a geography of strategic planning and implementation focus. In March of 2015 the City of Victoria and the District executed a Memorandum of Understanding (MOU) which identifies the mutual value both agencies find in cooperative planning, coordination across agencies on priority water resource issues, and increasing regulatory coordination to support and foster integrated water and natural resources management. One of the priority water resource management areas identified for increased collaboration is Lake Wassermann, an impaired waterbody within the City of Victoria. Since May of 2016, the District has convened staff and policy makers from the geography as the Six Mile-Halsted Bay Planning Partnership to engage in the proactive development of a subwatershed and implementation plan which integrates identified water resource issues and natural resource areas with local planning and development projects and goals.

As planning has advanced with the Six Mile-Halsted Bay planning partnership, the District has sought to remain responsive to land use change and opportunities emerging concurrent with the formal planning process.

Through routine coordination with the City of Victoria, staff from both agencies identified 33.5 acres of undeveloped land for sale along the Lake Wassermann shoreline. The two parcels for sale include a 22 acre wetland with 6 acres of open marsh, as well as a wooded bluff along the lake shoreline. The property's wetland is a source of phosphorus pollution to Lake Wassermann. In addition to supporting the District's public interest in protecting and enhancing high value conservation land and improving water quality on priority water bodies, the property is of interest to the City for providing public access and supporting its park, trail, and open space goals. The City's 2008 Comprehensive Plan identified this area as a key connecting piece for both local and regional trail from the northeastern properties to the newer developments south of Lake Wassermann.

On February 23, 2017, pursuant to resolution 17-014 the MCWD Board of Managers authorized the execution of a purchase agreement with the landowners for a purchase price of \$875,000. The purchase agreement was structured to include a contingency period through May 15, 2017, in which the District would complete all necessary survey, environmental and title work. Within this contingency period, the District would also develop a cooperative agreement with the City of Victoria for coordinated planning on the Property and a collaborative ownership and management structure. The agreement would include a preliminary park concept plan, reviewed by the City's Park and Recreation Committee and District's Planning and Policy Committee. The park concept plan is complete and has been reviewed by both parties.

The Cooperative Agreement that has been developed between the District and City has the following major terms:

- Upon the execution of this Cooperative Agreement, the City and District will engage in a coordinated design process to develop preliminary plans for park improvements in the upland and wetland areas of the property, based on the park concept plan developed within the contingency period, which will be approved by Board and Council. Preliminary plans are to be completed by December 31, 2017 for review and approval by the Board and the City Council. The District and City will share equally the costs of developing the preliminary park plans.

- Upon execution of the Cooperative Agreement, the City and District also will execute a purchase agreement to enter into a deed conveyance or contract for deed for an amount of \$850,000 wherein the City will pay half of that amount at closing and the rest over a period of five years. At closing, the District will retain an easement over the wetland areas (attachment A to the Cooperative Agreement) that will allow it to perform water quality and wetland restoration work as the Board may authorize.
- The City will be responsible to construct the park improvements and District will be responsible for restoration and water quality work, except where grant or other external financing opportunities are procured to both parties benefit.

The Victoria City Council will have held a hearing on the Cooperative Agreement on May 8, 2017, in advance of the District hearing on this resolution.

Next Steps:

Pursuant to City Council consideration on May 8, 2017, next steps include:

- The District and Seller will close on or before June 16, 2017
- Within 60 days of the execution of this cooperative agreement, the City and District will execute a purchase agreement to enter into a contract for deed consistent with the letter of intent in attachment C
- The District will retain a design consultant and work with the City to develop a scope and contract for park design. The District separately will retain a consultant to develop a water quality/wetland restoration design.

RESOLUTION

RESOLUTION NUMBER: 17-035

TITLE: **Authorization to Execute a Cooperative Agreement with the City of Victoria for the Wassermann West Park and Natural Resource Improvement**

WHEREAS, the Minnehaha Creek Watershed District Board of Managers has adopted a balanced urban ecology policy that recognizes the multi-sector value of integrating natural systems and land use planning; and

WHEREAS, this approach incorporates geographic focus, facilitating a greater understanding of the threats and opportunities within a system and allowing the District to develop relationships with municipalities and other partners; and

WHEREAS, on February 9, 2017, the Board of Managers approved the District's strategic direction and alignment report, stating its principal organizational strategy of:

- Developing high impact capital projects integrated with non-water initiatives through multijurisdictional partnership;
- Changing the land-use water policy environment to increase early value added partnership with private development, public infrastructure, and public policy and planning; and

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

WHEREAS, on March 26, 2015 the Board authorized the District to enter a Memorandum of Understanding with the City of Victoria (the City), outlining opportunities to collaborate and integrate mutual efforts in the realms of coordinated planning of local water and land use plans, assessment of specific water management issues, and coordinated regulatory review of water and land development; and

WHEREAS, the District is engaged in a planning process for the Six Mile-Halsted Bay subwatershed that will identify implementation strategies 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;

WHEREAS, District and City staff have worked together under this planning framework to proactively identify areas for coordinated project development at the urban fringe; and

WHEREAS, District and City staff identified the Wassermann West property (the Property), consisting of 32 acres, more or less, riparian to the western shore of Wassermann Lake and presently owned by DM & RS Limited Partnership and the Minneapolis Jewish Federation, as an opportunity for coordinated project development to meet strategic goals of both the District and City by improving lake water quality, protecting and enhancing riparian wetland and shoreline, and affording public access to Wassermann Lake, among other potential project benefits; and

WHEREAS on February 23, 2017, the MCWD Board of Managers authorized the execution of a purchase agreement for the Property at a cost not to exceed \$875,000; and further authorized staff to develop a purchase agreement with the City to evaluate opportunities on the property for water quality, ecological enhancement, and public access;

WHEREAS, Concurrence of the City and District in a park improvement concept design and execution of a Cooperative Agreement between the City and District for a transfer of the property from the District to the City and park improvement construction by the City are conditions of the District and Seller closing on the property;

WHEREAS the park improvement concept design has been reviewed by the MCWD Planning and Policy Committee, the City Park and Recreation Committee, the City Planning Commission and the City Council, and all have concurred in the concept design and found that it is consistent with the strategic goals of each entity;

WHEREAS The Board has assessed the value of the consideration to be exchanged under this agreement and finds that the exchange of consideration, as follows, is fair and beneficial to its goals:

- The City and and District will collaboratively develop preliminary park plans for the Property;
- MCWD and the City will enter an agreement for conveyance of the Property from the District to the City for a cost of \$850,000, with the District reserving an easement allowing it to undertake work for water quality and wetland restoration purposes;
- The City will, at its cost, prepare a final design and construct the park improvements and the District will, at its cost, perform water quality and restoration improvements;
- The City and District will collaborate to develop a phasing and investment plan for park improvements, including identification of external grants or other financing strategies; and

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the Board President, on advice of counsel, to execute the Cooperative Agreement with the City of Victoria for the acquisition of and park planning for the Wassermann West property, with any further non-substantive changes and on advice of counsel; and

BE IT FURTHER RESOLVED that the District administrator is authorized to develop, and execute on behalf of the District, a purchase agreement materially consistent with the Cooperative Agreement and incorporated letter of intent, for the conveyance of a contract for deed with the City of Victoria, and take all administrative steps to fulfill the terms to prepare for closing on the conveyance; and

BE IT FINALLY RESOLVED that the District administrator, in accordance with the Cooperative Agreement and in coordination with the City as provided therein, will solicit one or more consultants for park design and water quality/wetland restoration design and bring proposed scopes of work forward for Board consideration.

Resolution Number 17-035 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

DRAFT COOPERATIVE AGREEMENT
City of Victoria and Minnehaha Creek Watershed District

Land Conveyance and Park Development
Minneapolis Jewish Federation Property on Wassermann Lake

This Cooperative Agreement (“Agreement”) is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (“District”), and the City of Victoria, a Minnesota municipal corporation (“City”) (together, the “Parties”).

BACKGROUND

1. The Agreement concerns two contiguous tax parcels, PID 650230600 (26.12 deeded acres) and PID 650230700 (7.36 deeded acres), under private ownership (together, the “Property”). The Property is riparian to Wassermann Lake and comprises about 20.5 acres of wetland and 13.0 acres of upland. The wetland area contains part of a basin that receives runoff from a catchment to the west before it discharges to Wassermann Lake. The majority of the basin lies within the Property.
2. The District would like to manage the wetland area and basin for water quality and habitat improvement purposes. The Parties would like to establish local and regional park/conservation land and public access to Wassermann Lake in this location. The land and park facilities proposed for construction under this Agreement would be owned and managed by the City pursuant to a park improvement and maintenance plan (“Preliminary Plans”) approved by the parties.
3. On March 8, 2017, the District entered into a purchase agreement with the present owners of the Property, DM & RS Limited Partnership and Minneapolis Jewish Federation. Closing is contingent on, among other conditions, the prior execution of a cooperative agreement between the Parties specifying terms for the Parties to cooperate on design of a park for the Property and for the District to convey the Property to the City. In conveying the Property to the City, the District would reserve an easement for its preservation and improvement of the wetland area.
4. The Parties enter into this Agreement to meet the above-referenced closing contingency. The Parties agree that this Agreement is supported by mutual consideration and is legally binding. This Agreement shall be effective upon the District’s closing and acquisition of the Property.

PARK DESIGN

5. The Parties approve the Concept for Public Park and conservation use of the Property attached hereto as Attachment A and incorporated herein.
6. The District will retain a design consultant(s) to prepare Preliminary Plans consistent with Attachment A. The choice of consultant(s) to complete the Preliminary Plans is subject to District and City approval, not to be unreasonably withheld. As part of selecting the consultant, the Parties will develop and concur in the consultant(s) scope, which will provide for City as well as public participation in development of the Preliminary Plans. While the intent is that the park and associated improvements

will be constructed at one time, the consultant's scope of work will include preparation of Preliminary Plans that provide for possible phased construction and completion of the improvements. The Preliminary Plans may provide for trails, boardwalk, signage and related appurtenances within the wetland area in conformance with paragraph 4.h of the wetland easement specified at paragraph 14, below. The Parties will share equally the consultant cost of preparing the Preliminary Plans. The Parties will exercise best efforts so that the Preliminary Plans are complete by Dec 31, 2017.

7. The Preliminary Plans will anticipate and accommodate requirements of applicable permits and approvals, including those of the District. Such requirements may include but not be limited to vegetated wetland buffer.

8. The Preliminary Plans will address both the park improvements and areas outside of the wetland easement area defined pursuant to paragraph 14, below, that are to remain in natural or restored condition. The Preliminary Plans may be amended, from time to time, by mutual agreement of the Parties.

9. The completed Preliminary Plans will be considered by the City Council and District Board of Managers. The Preliminary Plans will be considered complete for this purpose if they:

- a. Define areas of hard surface, improved areas and natural/restored areas with reasonable precision.
- b. Incorporate and comply with applicable permitting or approval requirements, in the opinion of the designer.
- c. Are sufficiently detailed for the Parties to confirm the proper balance among active and passive public uses and conservation purposes.
- d. Are sufficiently detailed for the designer to provide the City Council with a decision-level cost estimate.

10. The City Council and District Board of Managers will consider the complete Preliminary Plans in good faith and take formal action to approve such Preliminary Plans. Absent approval of both bodies, either party may terminate this Agreement by written notice to the other.

11. After approval of the Preliminary Plans and closing on conveyance of the Property pursuant to paragraph 13, below, the City will prepare final plans and specifications for construction consistent with the mutually approved Preliminary Plans, procure a contractor and construct the improvements materially conforming to the final plans and specifications. Notwithstanding the foregoing, the Final Plans and specifications for construction may identify restoration elements that the District, at its cost, will implement independently in coordination with the City's construction.

12. The Parties will cooperate to seek grant or other external funding for design and construction.

PROPERTY CONVEYANCE

13. Within 60 days of the effective date of this Agreement, the Parties will enter into a purchase agreement for the Property that conforms to the letter of intent attached as Attachment B hereto, and otherwise is supplemented with customary terms.

14. The wetland easement reserved by the District shall materially conform to Attachment B attached hereto. During development of the Preliminary Plans under paragraph 6, above, the District, with an opportunity for City consultation, will prepare plans for water quality improvement work pursuant to its reserved easement rights, which may include but not be limited to alum treatment of the basin and vegetation restoration. The District will complete 90 percent plans for Board of Managers approval consideration at such time as the Board acts on the Preliminary Plans pursuant to paragraph 10, above.

15. The City and District agree to enter into a purchase agreement in a form substantially consistent with the Letter of Intent attached as Attachment B.

GENERAL TERMS

16. Notwithstanding anything to the contrary in this Agreement, each party shall be responsible for its own acts and omissions, and the results thereof, to the extent authorized by law and will not be responsible for the acts and omissions of the other party or the results thereof. Minnesota Statutes Chapter 466 and other applicable law govern the liability of the City and the District. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which the City or District is entitled under Minnesota Statutes Chapter 466 or otherwise. This Agreement creates no right in any third party, waives no immunity, defense or liability limit with respect to any third party or the other party to this Agreement, and creates no relationship of third-party beneficiary, principal and agent, partnership, or joint venture as between the City and District. Only contractual remedies are available for the failure of a party to fulfill the terms of this Agreement.

17. The professional retained by the District to prepare the Preliminary Plans pursuant to paragraph 6, above, and by the City to prepare final plans and specifications pursuant to paragraph 11, above, each will be responsible to provide appropriate design warranties to both the City and District as the Parties may require. The District has no authority to select or supervise the design, means, method or manner of performing any part of the park improvement, or the person or firm performing the design or construction of the park improvement. The preceding sentence, however, does not apply to any restoration element that the District implements independently. With respect to each such element, the City has no authority to select or supervise the design, means, method or manner of its performance, or the person or firm performing the design or construction.

18. Each notification required by this Agreement must be made to the project representative. The project representatives of the parties are:

Anna Brown, Planner - Project Manager
Minnehaha Creek Watershed District
15320 Minnehaha Boulevard
Minnetonka, MN 55345
(952) 471-0590

City of Victoria
1670 Stieger Lake Lane
Victoria, MN 55386
(952) 443-4210

Contact information will be kept current. Either contact may be changed by a party by written notification to the other party.

19. An amendment to this Agreement must be in writing and will not be effective until it has been executed and approved by the Parties. A party to this Agreement may not assign or transfer any right or obligation hereunder without an assignment agreement executed by the Parties and the assignee.

20. A party's failure to enforce a provision of this Agreement does not waive the provision or that party's right to enforce it subsequently.

21. Attachments A through B are incorporated into this Agreement.

22. This Agreement is effective after execution by the Parties upon the District's acquisition of the Property.

IN TESTIMONY WHEREOF the parties have executed this Agreement by their authorized officers.

CITY OF VICTORIA

By _____
Its Mayor

Date:

By _____
Its City Manager

Date:

Approved for form and execution:

MCWD Counsel

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Its President

Date:

ATTACHMENT A
CONCEPT FOR PUBLIC PARK



WASSERMANN WEST WATERFRONT PARK - ISLAND PARK

HART | HOWERTON

March 20, 2017

ATTACHMENT B
FORM
LETTER OF INTENT

May ____, 2017

City of Victoria

RE: Letter of Intent for Proposed Purchase and Sale of Approximately _____ Acres on Wassermann Lake in Victoria, Minnesota

Dear _____:

This letter of intent outlines the general terms and conditions upon which MINNEHAHA CREEK WATERSHED DISTRICT, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (the “**District**”), as seller, desires to negotiate with the CITY OF VICTORIA, a Minnesota municipal corporation (the “**City**”), as buyer, for the sale and purchase of that certain real property (the “**Land**”) located in the City and described in Paragraph 1 below. This letter of intent does not constitute a binding agreement or contract; and neither City nor District will be bound to purchase and sell the Land unless both City and District execute a binding purchase and sale contract for the Land (“**Purchase Agreement**”). The purpose of this letter is to summarize discussions concerning the purchase and sale of the Land and to set forth a basis upon which the parties, together with their respective attorneys, may proceed to draft and negotiate toward the execution of a definitive and binding Purchase Agreement. It is understood that either party may terminate negotiation of the Purchase Agreement at any time and for any reason (or no reason).

A. Based on the foregoing understanding, the parties desire to negotiate a Purchase Agreement with the following terms and conditions:

1. The Land consists of two unplatted lots containing approximately 33.5 acres in the aggregate, located adjacent to Wassermann Lake in the City of Victoria, Carver County, Minnesota, and assigned PIDs 650230600 and 650230700. Approximately 13.0 acres of the Land is upland (the “**Upland**”) and approximately 20.5 acres of the Land is wetland (the “**Wetland**”).

2. Purchase Price The Purchase Price for the Land will be \$850,000.00, payable as described in Section 3 below.

3. District Financing and Security City shall pay the Purchase Price by paying \$425,000.00 at closing, and, pursuant to Minnesota Statutes, Section 412.211, Subd. 2, by executing and delivering to District a promissory note in the principal amount of \$425,000.00 (the “Note”), or, at the election of the District, a Contract for Deed. The term of the Note or Contract for Deed shall be five (5) years, with principal and interest payable annually, on or before February 1st, in installments of **\$42,500.00**, at **0.50%** interest, with a final balloon payment of **\$212,500.00** made on or before December 31, 2022, provided however, that to the extent permitted by applicable Minnesota statutes, the City may request an extension of its final balloon payment of not more than 3 years subject to the District’s agreement to mutually acceptable payment terms. Notwithstanding anything herein to the contrary, the City may pay the Note in advance, in full or part, with no penalty.

4. Easement: At Closing, the City shall grant to the District a perpetual easement with respect to the Wetland upon the terms and conditions, and in the form attached hereto.

Preliminary Plans: With respect to the Upland, City and District will agree upon Preliminary Plans with the following basic terms:

- (i) The Upland will be limited to public uses and the sale of goods or services associated with such uses.
- (ii) District will have a right of prior consultation as to City design and alteration of the Upland, and any improvements and signage to be located thereon. City will be responsible for improvements for City purposes and indemnify District and hold it harmless for matters relating to same.
- (iii) District and City may agree to cost-share signage and other water-resource related improvements.

6. Due Diligence

Prior to the date hereof, the City reviewed and approved the following with respect to the Land (collectively, the “**Due Diligence Materials**”): (a) a title commitment (“**Title Commitment**”) issued by First American Title Insurance Company (“**Title Company**”), together with copies of all recorded documents evidencing the exceptions to title that are described in Schedule B of the title commitment; (ii) an ALTA survey (“**Survey**”); (iii) a Phase 1 Environmental Site Assessment (“**Phase I**”); and (iv) such other documents, reports, and information that District had in its possession relative to the Land. Within ten (10) business days after execution of the Purchase Agreement between the City and the District, the District will provide the City with any updates to the Due Diligence Materials. If there are any changes in any of the Due Diligence Materials, then the City will have a period of twenty (20) days after receipt of the updated Due Diligence Materials (the “**Due Diligence Period**”) to provide District with any and all objections, and District may, but shall not be obligated to, cure the same prior to Closing. Any damage caused by City to the Land during any inspections, tests or investigations conducted by the City, its employees or agents shall be restored at City’s cost. At any time prior to the expiration of the Due Diligence Period, City may (a) terminate the Purchase Agreement or (b) waive its termination right and proceed to Closing by written notice to District.

7. Closing, Costs, and Prorations

The sale and purchase of the Land will close (“**Closing**”) at a mutually agreed upon time and place following: (a) the expiration of the Due Diligence Period; (b) District’s acquisition of the Land from the Current Owner (as defined below); and (c) the City and District’s agreement on the final park design plan for the Land. City and District agree to work diligently and in good faith on the final park design plan and both parties agree that they will not unreasonably withhold their approval of the final park design plan. At Closing, District will convey the Land to City. At Closing, City shall reimburse District for one-half of the costs of the Title Commitment, the Survey, and the Phase I. Any owner’s policy of title insurance desired by City shall be procured by City at City’s sole cost and expense. District and City shall each pay one-half of the fees charged by Title Company to coordinate the Closing.

8. Conditions Precedent

District's obligation to convey the Land to the City will be contingent upon:

- a. District acquiring fee title to the Land from the current fee owner of the Land ("**Current Owner**").
- b. District being satisfied (in its sole and absolute discretion) that City has implemented such ordinances, policies, or other measures to ensure that City will have sufficient, available funds to make full and timely payments under the Note for the full term thereof.
- c. District approving the Park Improvement and Maintenance Plan contemplated by paragraph 5 above.

City's obligation to purchase the Land will be contingent upon City determining (in its sole and absolute discretion) during the Due Diligence Period that it is satisfied with its review of the updated Due Diligence Materials, the results of any supplemental inspections, investigations, studies and tests of the Land and its review of any updates to the status of title to the Land.

City's obligation to purchase the Land is also contingent on the City approving the Park Improvement and Maintenance Plan contemplated by paragraph 5 above.

9. Broker Commission

City and District each represent that no real estate broker was in any way involved in this transaction. City and District will indemnify each other against any losses, claims, damages, costs, expenses and liability, which City and District may incur which arise from any person claiming a brokerage commission in connection with this transaction.

This letter of intent states all the material terms of a purchase agreement to be executed by City and District, subject to supplementation with customary terms approved by City and District.

EASEMENT

On the Property of City of Victoria (PID 650230600 and PID 650230700)

Carver County, Minnesota

Legal description of burdened property:

Attachment A

This Easement is entered into between the City of Victoria, a statutory city and political subdivision of the State of Minnesota (“Grantor”), and the Minnehaha Creek Watershed District, a public body with powers set forth at Minnesota Statutes Chapters 103B and 103D (“Grantee”).

A. Grantor owns in fee simple certain real property located in Carver County, Minnesota, as legally described in Attachment A hereto (the “Burdened Property”).

B. The Burdened Property is riparian to Wassermann Lake and contains about 20.5 acres of wetland. The wetland area contains part of a basin that receives runoff from a catchment to the west before it discharges to Wassermann Lake.

C. By an executed agreement between Grantor and Grantee, Grantor has committed to convey this Easement so that Grantee can restore, manage and preserve the wetland area and basin for water quality and habitat improvement purposes. By that agreement, Grantee acquired the Burdened Property in fee, and in turn has conveyed the Burdened Property to Grantor for development and use as public park land, while reserving this Easement.

THEREFORE, for the payment of one dollar and other good and valuable consideration, and the mutual terms set forth herein, the receipt and sufficiency of which hereby are acknowledged, Grantor conveys to Grantee and Grantee accepts the Easement on the Burdened Property, subject to terms specifically set forth herein.

1. Easement Description. The Easement Area is as legally described and delineated on the site plan at Attachment B hereto.

2. Grantee's Easement Rights. Grantor conveys to Grantee the right to engage in the following activities within the Easement Area. The rights conveyed to Grantee hereunder may be exercised by authorized representatives, agents, contractors and subcontractors of Grantee.

a. Land Alteration. Grantee may modify lands by excavation, dredging, grading, fill and shaping. Grantee owns all right, title and interest in any spoils, soil and vegetative material removed, but will deposit the material in an upland location on the Burdened Property at Grantor's request on reasonable terms arranged with Grantor.

b. Flowage and Flow Management. Grantee may direct and redirect surface water flows; flood or drain lands, wholly or partly; and otherwise manage surface flows within and through the Easement Area. This does not include the right to increase flood elevation on, or 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. Grantee may install, maintain and remove rock, bioengineered elements and fabricated structures within the Easement Area to stabilize the bed and banks of wetlands and surface waters and manage flows.

d. Vegetation and Nutrient Management. Grantee may remove surface vegetation, brush and trees within the Easement Area. Grantee may plant vegetation within the Easement Area for stabilization, water quality, habitat and aesthetic purposes, and may manage the vegetation through means including but not limited to replanting and reseeding, mowing, weeding, use of approved herbicides and controlled burns. Grantee may apply aluminum sulfate and similar nutrient management treatments in accordance with professional practice.

e. Exclusion Structures. Consistent with paragraph 4.h, below, Grantee may install, maintain and remove fencing or other appurtenances to protect habitat or ecological features.

f. Design, Construction and Associated Rights. For the purposes authorized in this section 2, Grantee may use the Easement Area for site inspection, investigation and testing; equipment staging and use and materials stockpiling during construction; and placing and maintaining erosion control and similar construction-phase site measures. Grantee may enter the Easement Area to inspect, maintain, modify and reconstruct improvements.

Before constructing or installing new improvements, Grantee will communicate its intent to Grantor and, at Grantor's request, consult in good faith regarding the improvements.

3. Access and Staging. Grantee may cross the Burdened Property on foot, by motorized vehicle or with equipment to reach the Easement Area. During active work within the Easement Area, Grantee may stage equipment and stockpile materials outside of the Easement Area subject to reasonable terms and conditions of Grantor. Grantor may designate a route across the Burdened Property provided it is reasonably convenient to Grantee. Grantee will repair any damage to the Burdened Property caused by its access and staging.

4. Grantor's Limitations within Easement Area. Grantor reserves all rights and privileges associated with ownership of the Burdened Property, subject to the following constraints within the Easement Area. For the purposes of this section 4, "Grantor" includes all those acting under authority, direction or permission of Grantor.

a. Prohibited Uses. Grantor will not perform an act that would materially impair or interfere with Grantee's ability to exercise its rights under this Easement.

b. Construction. Grantor will not construct or install a permanent or temporary structure, surface or improvement of any kind.

c. Utilities. Grantor will not install 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 Grantee.

d. Surface Alteration. Grantor will not alter surface soils including, without limitation, filling, excavating or removing soil, sand, gravel, rocks or other material.

e. Placement of Waste, Fill or Other Material. Grantor will not dump, dispose of or otherwise place refuse, brush or other waste material.

f. Trees, Shrubs and Other Vegetation. Grantor will not remove, destroy, cut, mow or otherwise alter vegetation, or apply fertilizers, herbicides or pesticides, 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 water resources, and in each case with written Grantee approval.

g. Motorized Vehicles. Grantor will not operate a motorized vehicle or motorized equipment except for the purpose of activity otherwise authorized under this section 4.

h. Trails, Boardwalks and Signage. Notwithstanding any other provision of this section 4, Grantor may install, maintain and remove trails, boardwalks, signage and related appurtenances for public recreation and education. Any such work will be in accordance with terms and specifications approved by Grantee in writing, approval not to be unreasonably withheld.

Grantor reserves the right to sell, transfer, lease or encumber all or part of the Burdened Property subject to this Easement. Grantor will inform all others who exercise any right on the Burdened Property, by or through Grantor, of this Easement and the constraints that it imposes.

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

6. Taxes and Insurance. Grantor retains all financial obligations, and bears all costs and liabilities, accruing from the fee ownership of the Burdened Property, and will pay all taxes and assessments levied against the Burdened Property. Each of the parties remains solely responsible to maintain liability and other insurance for its own use of and authority over the Burdened Property.

7. Burdened Property Management. Grantee will be responsible for inspection and maintenance of the condition of all improvements it has constructed or installed under this Easement. Grantee holds Grantor harmless, and will defend and indemnify Grantor, from and against any and all suits, actions, causes of actions, proceedings, claims, costs and damages arising out of Grantor's design, construction, operation or maintenance of such improvements, except to the extent resulting from an action or inaction of Grantor for which Grantor independently would be subject to liability. As the fee owner of the Burdened Property and municipal land manager, Grantor will be responsible for day-to-day inspection and maintenance of the Burdened Property, including that portion burdened by this Easement. This responsibility includes, but is not limited to, sanitation; inspection for and addressing obvious hazards resulting from events such as severe weather; inappropriate or unlawful use; and law enforcement.

8. Waiver. A decision by a 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.

9. Acts Beyond Party's Control. A party will not exercise its right of enforcement against another 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.

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

Administrator
Minnehaha Creek Watershed District
15320 Minnehaha Boulevard
Minnetonka, MN 55345

City Manager
City of Victoria

1670 Stieger Lake Lane

Victoria, MN 55386

11. Miscellaneous. The parties may amend this Easement only by a duly executed writing. This Easement and all terms herein 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 run in perpetuity with the Burdened Property. Grantee bears the cost of duly recording or registering this Easement at the Carver County Office of Property Records.

12. Recitations and Attachments Incorporated. All recitations, and Attachments A and B, are a part of this agreement.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto execute and deliver this Easement.

MINNEHAHA CREEK WATERSHED DISTRICT

By: _____

Its: President

STATE OF MINNESOTA

COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Sherry Davis White as President of the Minnehaha Creek Watershed District.

Notary Public

CITY of VICTORIA

By: _____

Its: Mayor

STATE OF MINNESOTA

COUNTY OF CARVER

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____ as the Mayor of the City of Victoria, Minnesota.

Notary Public

Prepared by Smith Partners PLLP
400 Second Avenue South, Suite 1200
Minneapolis, MN 55401
612-344-1400

ATTACHMENT A

LEGAL DESCRIPTION: BURDENED PROPERTY

ATTACHMENT B

SITE PLAN and LEGAL DESCRIPTION: EASEMENT AREA

DRAFT