

Minnehaha Creek Watershed District

REQUEST FOR BOARD ACTION

MEETING DATE: May 23, 2019

TITLE: Approval of cooperative agreement for Wassermann West Lakeside Park

RES. NUMBER: 19-063

PREPARED BY: Anna Brown

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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): Seeking approval at May 23, 2019 Board Meeting	

PURPOSE or ACTION REQUESTED:

Approval of agreement with the City of Victoria to advance the Wassermann West Project through final design and construction

PROJECT/PROGRAM LOCATION:

Victoria, MN (PIDs 650230700 and 650230600)

PROJECT TIMELINE:

July 2019	Issues RFP for design
August 2019	Award design contract
December 2019	90% design plans complete
Spring/Summer 2020	Project construction

PROJECT/PROGRAM COST:

Fund name and number: Wassermann West 300-3153
Current Budget: \$262,560
Expenditures to date: \$65,045 (\$60,000 grant reimbursable)
Requested amount of funding: none

PAST BOARD ACTION:

February 23, 2017	Authorization for the District to acquire the Wassermann West property (17-014)
May 11, 2017	Authorization to enter cooperative agreement with the City of Victoria (17-035)
Nov 17, 2017	Approval of design contract for park design and alum feasibility (17-071)

SUMMARY:

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.

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 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 City support for the District's public interest in protecting and enhancing high value conservation land and improving water quality on priority water bodies, the property was of interest to the City for providing public access and supporting its park, trail, and open space goals.

In February 2017, the MCWD Board of Managers approved a purchase agreement for the two parcels. A condition of that purchase agreement was the development of a Cooperative Agreement with the City of Victoria memorializing the agencies' mutual interest in developing a plan for recreational amenities and natural resource improvements on the property. In May 2017 a Cooperative Agreement was approved and the District proceeded to close. The agreement provided for the following:

- The District's acquisition of the property
- The City and District's development of a purchase agreement providing for the District's conveyance of the property to the City subject to reservation of an easement over the wetland area
- The City and District's cooperation in the development of preliminary plans for property improvements for recreation and conservation purposes.
- The City would be responsible for the costs of construction for all park amenities, while the District would fund the natural resource improvement components of the project.

In November 2017 a contract was awarded for preliminary design of Wassermann West park and natural resource improvements. Under that scope, District and City staff worked through a process that engaged the City's Park and Recreation Committee and the public to refine and reaffirm the two agencies' vision for the site, as well as refine the estimated costs of improvements.

Since reaching concurrence on the preliminary plan documents in July of 2018, the District has been working with City staff and Council to develop a plan for project implementation and financing. Through recent meetings, Victoria City Council has confirmed that they would like to proceed with final design and target construction in 2020.

Second Phase Cooperative Agreement

At the May 23, 2019 meeting, the Board of Manager is being asked to consider the approval of a second Cooperative Agreement to advance the project through final design and into construction. Significant terms of the second cooperative agreement are as follows:

- The District and City will share equally in the costs of developing final design and construction documents. The target budget for this work is \$250,000. The only exception to the shared design costs is the cost of designing a park shelter, which will be at the sole expense of the City. The 90 percent design must be approved by the Board and the City Council.

- The District will manage construction. The City will bear all construction cost, except that construction oversight will be a shared expense. The City Council must concur in the construction contract award only if the contract price exceeds the engineer's 90 percent estimate by more than 10 percent. The City also will have the right to review and approve any significant change orders. All design and construction warranties will run to the District and the City, and in consequence, the City will hold the District harmless for project design and construction.
- Under the agreement, the District will convey the property to the City when the 90 percent plan has been approved by the Board and City Council, terms of financing have been determined and the City Council has approved the contract award (if that is necessary).
- The agreement modifies the purchase agreement such that, rather than the District's financing the City's purchase over the course of 5 years as under the existing agreement, the property purchase price will be rolled into the finance vehicle, along with the City's share of design cost, its construction cost and financing costs. The District therefore will receive the property purchase price in a lump-sum payment at closing.
- The agreement is structured to provide for the District to provide financing using the Carver County Master Finance Agreement, however the City may elect to use its own financing authority. The City will make the financing decision by the time the 90 percent plans are completed.
- The existing agreement provides that on conveying the property to the City, the District will retain an easement over wetland and natural area. Under this agreement, the easement area would be expanded slightly.

Under this cooperative agreement, there are several points at which the City could elect to not proceed with the project. The City Council could decline to approve the 90% design plans, could reject a construction contract award that exceeds the engineer's estimate by 10 percent, or could reject the terms of County or bridge financing for the improvements. Under this agreement, if the City chooses not to move forward, the District may elect to convey the property to the City under the terms of the existing purchase agreement, or to retain the property. Also, if the City chooses not to proceed, it will reimburse the District for its share of design cost.

Next Steps

Following the approval of the cooperative agreement, both parties will be positioned to proceed into development of the final design for the park. District staff intend to issue a request for proposals (RFP) to secure design services. Staff expect the RFP process will be complete with a firm selected in August of 2019. The design process and timeline will be developed for the delivery of the project in 2020.

Prior to the contract award for design, the Board will consider formal project ordering through the procedural requirements of MN Statute 103B.251.

RECOMMENDATION

Staff is recommending authorization to execute the Cooperative Agreement for Wassermann West Lakefront Park.

Attachments

- Second Cooperative Agreement
- Initial Cooperative Agreement
- Project Cost Estimate

RESOLUTION

RESOLUTION NUMBER: 19-063

TITLE: **Approval of cooperative agreement for Wassermann West Lakeside Park**

- WHEREAS, on March 26, 2015 the District to entered a Memorandum of Understanding with the City of Victoria (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, District and City staff identified the Wassermann West property (the Property), consisting of 33.5 acres, more or less, riparian to the western shore of Wassermann Lake 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, with closing contingent on executing a cooperative agreement with the City providing for conveyance of the property to the City on completion of preliminary plans for public natural resource restoration and recreational improvements; and further authorized staff to develop a purchase agreement with the City as well as a design scope for water quality, ecological enhancement, and public access improvements;
- WHEREAS, on May 11, 2017, the MCWD Board of Managers authorized the execution of a cooperative agreement with the City of Victoria (the first cooperative agreement) that included a purchase agreement with the City of Victoria for the eventual conveyance of fee title to the City for a cost of \$850,000;
- WHEREAS, on June 7, 2017, the District closed on the acquisition of the property and now owns the property in fee;
- WHEREAS, on November 16, 2017, the MCWD Board of Managers authorized the execution of a contract to develop a park concept plan and preliminary feasibility for alum treatment on site;
- WHEREAS, prior to approval of the park concept plan under the first cooperative agreement, the District and City endeavored to develop a shared implementation timeline and funding and financing plan to ensure the timely and mutually satisfactory delivery of the project consistent with the park concept plan;
- WHEREAS, upon mutual consideration of both parties, the City and District elected to draft a second cooperative agreement that both modifies certain terms of the first cooperative agreement and adds terms that carry the project forward in partnership through construction;
- WHEREAS, the Board has assessed the value of the consideration to be exchanged under this agreement and finds that the exchange of consideration, including the following, is fair and beneficial to its goals:

- The parties will share equally in the cost of design, except for the cost of designing any roofed structures, which will be solely the City's;
- The District will oversee construction, with an equal sharing of construction oversight cost;
- Consistent with the first cooperative agreement, the City will be responsible for the costs of the park improvements and the District will be responsible for the costs of performing water quality and restoration activities;
- The agreement modifies the first purchase agreement such that the City may finance the costs of the land in a manner determined not later than the approval of 90% design plans;
- Should the City not proceed with the improvements planned and designed through this second cooperative agreement, the District may elect either to transfer title under the terms of the first purchase agreement or to retain title;

WHEREAS, on May 13, 2019, the Victoria City Council considered and approved this agreement and, before awarding a contract for design, the MCWD Board of Managers will consider and order the project in accordance with MN Statute 103B.251;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the Board President, on advice of counsel, with revised easement description and with any other non-substantive final revisions, to execute the second cooperative agreement with the City of Victoria for design and construction of Wassermann West Lakefront Park; and

BE IT FURTHER RESOLVED that the District Administrator, in accordance with the agreement, is to prepare a design and construction oversight scope of work for Board review and approval, and is to bring forward the project for Board consideration and ordering, with due notice in accordance with Minnesota Statutes §103B.251.

Resolution Number 19-063 was moved by Manager _____, seconded by Manager _____.
 Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

 Secretary Date: _____

RBA Attachment A: Second Cooperative Agreement

SECOND COOPERATIVE AGREEMENT
City of Victoria and Minnehaha Creek Watershed District

Land Conveyance and Park Development
Wassermann Lake Property

This Second 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 statutory city and political subdivision of the State of Minnesota (“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), owned in fee by the District (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 manages the wetland area and basin for water quality and habitat improvement purposes. The purpose of this Agreement is to establish local and regional park/conservation land and public access to Wassermann Lake on the Property. With the successful implementation of park improvements contemplated by this Agreement, the Property and park facility will be owned and managed by the City.

3. On June 8, 2017, the Parties entered into a cooperative agreement (“First Agreement”). The First Agreement provided for:

- (a) the District’s acquisition of the Property;
- (b) the Parties’ negotiation of a purchase agreement providing for the District’s conveyance of the Property to the City subject to reservation of an easement over the wetland area;
- (c) the Parties’ cooperation in the development of preliminary plans for improvement of the Property for recreation and conservation purposes.

These actions have been accomplished.

4. The Parties enter into this Agreement to establish mutual rights and obligations for the design and construction of the improvements, establish terms for the funding and financing of that work, and provide for perpetual maintenance of the Property and improvements.

5. This Agreement is for mutual valuable consideration and the Parties concur that it is legally binding.

DESIGN

6. The Preliminary Plans, hereby approved by the Parties, are incorporated herein as Attachment A. The Parties will cooperate in the preparation of near final design plans (the “90 percent design”) based on the Preliminary Plans. In developing the 90 percent design, the Parties will continue to cooperate to integrate water resource information and education purposes into the improvements. The 90 percent design will be subject to approval of the City Council and District Board of Managers.

7. Before executing a design contract, the District will follow the procedures to consider and order the work under this Agreement in accordance with Minnesota Statutes §103B.251. If the District Board of Managers elects not to order the work, this Agreement will terminate.

8. The design and construction oversight scope of work will be developed by the Parties and is subject to the approval of the Board and City Council. The scope will incorporate a discrete sub-scope for water quality improvement work within the easement area which may include, but not be limited to, alum treatment of the basin and vegetative restoration. Trails, boardwalk, signage and related appurtenances as allowed under paragraph 4.h of the easement will be an element of the broader design scope.

9. The Parties will terminate the present design contract pursuant to the terms thereof. The District will enter into a contract for completion of design addressing all park improvements contemplated by the Preliminary Plans, with mutually agreeable adjustment. The District will provide that professional duty of care, indemnification and hold harmless, additional insured obligations, intellectual property rights and document right of use run to the benefit of both the District and the City. The District Board of Managers may determine whether the design contract should be procured through competitive means, or as a non-competitive award to the designer of the Preliminary Plans.

10. The Parties will coordinate closely during design at a staff level. The 90 percent design will include a construction cost estimate, an operation & maintenance plan and a final construction oversight scope, and will be presented to the District Board of Managers and City Council for formal approval. If either the City Council or the District Board of Managers elects not to approve the 90 percent design, this Agreement will terminate, subject to the terms of paragraphs 22 and 31, below.

11. After mutual approval of the 90 percent design, the designer will prepare final design plans and specifications. The City will supply construction limits, access routes and any other relevant information to the District for contract document preparation. The City and District will establish City construction inspection requirements and the District will incorporate these into the contract documents. The City will be responsible to maintain work-in-progress insurance for commercially covered property and hazards, for the benefit of the contractor and the District, or will instruct the District to require that the contractor maintain such insurance.

12. The District will obtain all permits and approvals for the improvements. The City will cooperate as landowner. The City will timely process all applicable city permits. Pursuant to Minnesota Statutes §103D.335, subdivision 24, the City will not charge a fee for any such permit.

LAND CONVEYANCE and FINANCING

13. The purchase agreement signed by the Parties on December 19, 2017 is Attachment B to this Agreement and incorporated herein ("Purchase Agreement"). All contingencies set forth at paragraphs 8.2.a-d of the Purchase Agreement have been fulfilled.

14. Except as stated in paragraph 22, below, the Parties agree not to close on the Property pursuant to the Purchase Agreement. Instead, the Parties will revise the Purchase Agreement to incorporate: (a) the terms of paragraph 21 of this Agreement as to the timing of closing; (b) the repayment schedule established under paragraph 19, below ("Repayment Schedule"); and (c) the revised easement area as shown in the site plan incorporated herein as Attachment C to this Agreement; and will execute the revised purchase agreement ("Revised Purchase Agreement"). The Revised Purchase Agreement also will contain terms preserving or reinstating the Purchase Agreement in the event it is invoked under paragraph 22, below. The District Administrator and City Manager are authorized to approve and sign the Revised Purchase Agreement on behalf of the District and City, respectively.

15. The District and Carver County (the "County") have entered into a Master Finance Agreement, dated October 11, 2018 (MFA), by which pursuant to the terms thereof, the County may issue bonds to finance District expenditures for capital improvements and land rights acquisitions. The MFA may be used to finance the City's purchase price under the Purchase Agreement, the City's construction cost pursuant to Paragraph 32 hereof, and the City's Issuance Cost as defined below (collectively, the "City Costs"). "City's Issuance Cost" here includes underwriter compensation, reasonable legal and professional fees, the rating agency fee, the cost to print the official statement and limited and standard miscellaneous costs such as copy costs and underwriting regulatory fees allocable to financing the City Costs, whether incurred in the first instance by the City or the District. The MFA is incorporated herein as Attachment D. The MFA also provides for the District to finance the City Costs, as a bridge to County financing, by issuance of notes of a term no longer than 36 months, if necessary.

15a. The City may elect to self-finance the City Costs under this Agreement, or may ask that the District finance those costs. In the latter case, the Parties intend that the District will finance the City Costs by means of the MFA. The City Council will decide on its financing election by formal action, at the earliest occasion in order to foster efficient progress under this Agreement, and in any event not later than when it considers the 90 percent design under paragraph 10. Paragraphs 16, 19 and 20 of this Agreement, and references in paragraphs 14, 21 and 31 to Repayment Schedule, apply only if the City elects for the District to finance City Costs.

16. If requested by the City pursuant to Paragraph 15a, the District will perform all steps to request and secure County financing under the MFA for the City Costs, and, if necessary, will undertake to secure short-term financing by issuance of temporary obligations as the MFA provides. The District will work with the County to establish a maturity schedule and other terms of permanent financing satisfactory to the District and City and consistent with a 20-year Repayment Schedule under this Agreement.

17. If the City elects to have the District finance the City Costs, and either the County Board of Commissioners does not approve financing under the MFA, or the County's terms of financing would result in a City Repayment Schedule that the City finds unsatisfactory, the City may elect to finance the City Costs by other means, or may elect to terminate this Agreement, subject to the terms of paragraphs 22 and 31, below.

18. The City will pay the District the purchase price for the Property in accordance with the Revised Purchase Agreement. In addition, the City will reimburse the District for other City Costs paid by the District pursuant to this Agreement in accordance with the Repayment Schedule.

19. The District will consult with the City as to the terms of any financing under the MFA, and will cause any such financing to be issued according to commercially competitive terms acceptable to the City. On establishment of the terms of any financing under the MFA, the District and City will prepare a repayment schedule for the City's repayment of any financing under the MFA of the City Costs, which schedule will be incorporated into this Agreement as an attachment hereto (the "Repayment Schedule"). The Repayment Schedule will provide for substantially uniform semi-annual payments of principal and interest at the rates on such financing issued under the MFA and timed to coincide with District payment obligations, with full payment within twenty years, or within such other time as the Parties agree. When final payment has been made under the construction contract, the Repayment Schedule will be modified to reflect actual total costs to be repaid.

20. The obligation of the County and the District to issue any financing under the MFA will be conditioned on receipt from the City of a general obligation note or bond evidencing the obligation to make the payments pursuant to the Repayment Schedule. The City has no obligation to deliver such general obligation note or bond until it has approved the issuance thereof after satisfaction of all legal requirements precedent to such approval.

21. When 90 percent plans have been approved under paragraph 10 of this Agreement, the Agreement has been amended pursuant to paragraph 19 to incorporate the City's Repayment Schedule, and, if required by paragraph 25, the City has concurred in the contract award, the Parties will close on the Property, as provided in the Revised Purchase Agreement.

22. If the City declines to approve the 90 percent plans under paragraph 10 of this Agreement, declines to amend the Agreement under paragraph 19, fails to deliver a general obligation note or bond under paragraph 20, or declines to concur in the contract award under paragraph 25, the District and the City will consult in good faith and, promptly thereafter, the City will reconsider its action. If the City affirms its prior decision, within 45 days of written notice thereof, the District will advise the City in writing as to whether it elects to close on the Property pursuant to the Purchase Agreement (Attachment B) and all terms therein including, but not limited to, price, reserved easement, financing and repayment terms.

CONSTRUCTION

23. The District will manage construction of the park improvements.

24. The District may incorporate water quality improvement work within the easement area, as described at paragraph 14 of the First Agreement, and other water quality or ecological work within the easement area, into the construction contract, or may pursue such work by separate contract.

25. The District will procure a construction contract or contracts by sealed bids or Best Value method. If the District uses Best Value method, the City will participate in evaluating technical proposals and bids. The contract documents will reflect construction deadlines to which the District and City have agreed. In its judgment, the District may procure the work by means of a single contract, or may segment the work to better achieve the completed work. The District will promptly share bid information with the City and consult with City staff regarding the recommendation of award. In the event the low bid or

selected Best Value proposal exceeds the 90 percent estimate by more than 10 percent, the City must approve, in advance and in writing, the letting of the construction contract(s).

26. The contract documents will include the following:

- a. The contract will state substantial and final completion dates agreeable to the City.
- b. The contract will require that the contractor:
 - (i) Provide performance and payment bonds, which may be reduced to a warranty or maintenance bond after work completion;
 - (ii) Name the City as an additional insured under the contractor's commercial general liability policy, for work and completed operations;
 - (iii) Indemnify the City for the contractor's negligent acts and those of its subcontractors;
 - (iv) Extend duties of care and warranties to the City;
 - (v) Determine the location of and protect all utilities and structures;
 - (vi) Comply with local traffic and site control requirements; and
 - (vii) Restore or repair any damage to the City's lands and facilities.

27. During the work, the District, with written City concurrence, may effect work changes by written and executed change order or work change directive. City concurrence is not required when the change qualifies as a field directive; where it does not affect contract price or maintenance requirements, or substantially affect public design; or where the City Manager has waived City concurrence in writing.

28. The City will promptly consider a proposed work change, and will not unreasonably withhold concurrence. If a work change affects the easement area, the City's work change decision must receive District concurrence. The City Manager is delegated the authority to approve work changes up to \$10,000.

29. The District will notify the City when it considers the work, or a previously designated phase thereof, to be substantially complete. The City will promptly inspect and transmit its written concurrence or lack thereof. The City's failure to do so within thirty (30) days after notice will constitute concurrence. The City will withhold concurrence only on a material deviation from plans and specifications and its written notice will specifically describe the deviation and the contract basis to withhold concurrence. In that event, the parties will cooperate in good faith to resolve the City's objection.

30. The construction oversight engineer will certify completion and supply a copy of signed record drawings to the City.

FUNDING

31. The District and City will share equally the cost of the design and construction oversight contract under paragraph 8, above, except that the City will be responsible for the entire design cost relating to structure(s) that provide a roof or other form of enclosure. The District will pay invoices pursuant to its management of the design and construction oversight contract, and the City will reimburse the District its share within thirty (30) days of receipt of District documentation of payment. Notwithstanding the foregoing, if the construction of the improvements does not proceed because the City does not concur in the 90 percent plans under paragraph 10 of this Agreement, does not agree to amend the Agreement pursuant to paragraph 19 to incorporate the City's Repayment Schedule, or fails to deliver a general obligation note or bond under paragraph 20, the City, within 30 days of District invoice, will reimburse

the District for all design costs except those attributable to design of the water quality improvements contemplated within the easement area, as described at paragraph 14 of the First Agreement.

32. The City will bear the cost of construction. The District will pay invoices pursuant to its management of the construction contract, and will be reimbursed by the City within thirty (30) days of transmitting documentation of payment to the City or, if the District finances City Costs, pursuant to the financing terms in paragraphs 15 thru 20, above.

33. Each party will bear its own process and administrative costs in carrying out this Agreement, and its costs for all operation & maintenance that is its obligation.

34. The Parties will apply reasonable effort to identify and seek applicable grant funding to defray design or construction cost. Neither party commits to securing any such funding. Any grant funding available for the cost of the design and construction oversight contract pursuant to paragraph 31 hereof will be applied equally to the City's and the District's shares of such costs.

GENERAL TERMS

35. Notwithstanding anything to the contrary in this Agreement, each party is 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 liability of the City and the District. Nothing in this Agreement constitutes 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.

36. The professional retained by the District to prepare design plans and specifications and monitor construction pursuant to paragraph 9 above will provide appropriate design warranties to both the District and City. In consequence of the designer warranties in paragraph 9, above, and the contractor warranties in paragraph 26, above, the City holds the District harmless with respect to all claims, costs, liabilities and damages of any kind arising out of the design or construction of the improvements, excluding from the hold harmless only water quality improvement work within the easement area, as described at paragraph 14 of the First Agreement, and construction management responsibilities under paragraph 23 of this Agreement.

37. 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

Ann Mahnke, Public Works/Park and Recreation Director_

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.

38. 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.

39. 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.

40. This Agreement is effective when fully executed by the Parties. When this Agreement is effective, the First Agreement is deemed superseded and no longer of effect.

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 Plan



CONCEPT PLAN

Attachment B: Purchase Agreement (December 19, 2017)

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the “**Agreement**”) is made and entered into as of the Effective Date, MINNEHAHA CREEK WATERSHED DISTRICT, a watershed district with purposes and powers as set forth in Minnesota Statutes Chapters 103B and 103D (“**Seller**”) and CITY OF VICTORIA, a Minnesota municipal corporation (“**Buyer**”).

RECITALS

A. Seller owns approximately 32 acres of land in the City of Victoria, State of Minnesota, and legally described on Exhibit A attached hereto and made a part hereof (the “**Real Property**”).

B. Seller and Buyer are parties to that certain Cooperative Agreement dated June 8, 2017 (the “**Cooperative Agreement**”) pursuant to which the parties memorialized their desire and respective obligations relative Seller’s sale of the Real Property to Buyer and Buyer’s establishment of local and regional park/conservation land and public access to Wasserman Lake.

C. In furtherance of the Cooperative Agreement, Seller hereby desires to sell the Real Property to Buyer, together with (i) all licenses, permits and governmental registrations, filings, authorizations and approvals relating to the Real Property (collectively, the “**Permits**”); (ii) all originals and copies of plans and surveys relating to the Real Property; and (iii) any easements, hereditaments and appurtenances to the Real Property (collectively, with the Real Property, the “**Property**”), and Buyer desires to buy the Property from Seller, all subject to and on the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Seller and Buyer agree:

1. **Sale and Purchase.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Property, together with and including all hereditaments, appurtenances, easements and rights of way thereunto belonging or in any way appertaining to the Property and also the right, title and interest, if any, of Seller in and to the bounding and abutting streets, alleys and highways, subject to and upon the terms and conditions of this Agreement.

2. **Purchase Price.** The purchase price for the Property is Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000.00) (the “**Purchase Price**”).

3. **Payment of Purchase Price.**

3.1 On or before the second (2nd) business day after the Effective Date, Buyer will deposit Ten Thousand and 00/100 Dollars (\$10,000.00) as earnest money (the “**Earnest Money Deposit**”) into an interest bearing escrow account with First American Title Insurance Company (“**Title Company**”) for the benefit of Buyer and Seller. The Earnest Money Deposit is refundable, except as expressly provided in this Agreement, and will be credited, with interest, against the Purchase Price at Closing. All interest accruing on the Earnest Money Deposit shall accrue to the benefit of Buyer.

3.2 The balance of the Purchase Price will be paid as follows:

- a. Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$425,000.00) delivered in cash, by wire transfer or other immediately available funds to the Title Company at Closing (the “**Cash At Closing**”); and
- b. A Promissory Note in the principal amount of Four Hundred Twenty-Five Thousand and 00/100 Dollars (\$425,000.00) and otherwise in the form attached hereto as Exhibit B (the “**Note**”), plus or minus proration and less credits allocable to Buyer in accordance with this Agreement, and secured by a Contract for Deed in the amount of the Note and otherwise in the form attached hereto as Exhibit C (the “**Contract for Deed**”).

4. **Closing.**

4.1 The closing of the sale of the Property (the “**Closing**”) shall occur on the first business day after the later of (a) the expiration of the Due Diligence Period; and (b) the date the Seller and Buyer have agreed on the Preliminary Plans, as defined below (the “**Closing Date**”). The Closing will occur on the Closing Date at Title Company’s offices, or such other mutually acceptable location, through an escrow established with Title Company.

4.2 At the Closing, Buyer will deliver into escrow (a) the Cash at Closing, by wire transfer or other immediately available funds, (b) the Note; (c) the Contract for Deed; (d) the Easement in the form attached hereto as Exhibit D (the “**Easement**”); and (e) a duly signed closing statement.

4.3 At the Closing, Seller will deliver the following items into escrow, duly signed and, as appropriate, acknowledged by Seller: (a) the Easement; (b) affidavit of non-foreign seller; (c) a closing statement, and; (d) at Seller’s option, a warranty deed (“**Deed**”) conveying good and marketable title to the Property.

4.4 Seller and Buyer will execute and deliver any and all additional documents or instruments that are customary in Minnesota or reasonably required by Title Company.

4.5 Seller will deliver possession of the Property to Buyer, subject to the terms of the Contract for Deed, on the Closing Date.

5. **Closing Costs.** At Closing, Buyer will credit Seller an amount equal to \$4,500.00 to reimburse Seller for one-half of the costs incurred by Seller for all search, commitment, abstracting and other fees charged by Title Company in connection with preparation of the Title Commitment (as defined below), the cost of the Survey (as defined below) and the cost of the Phase I (as defined below) for the Property. Buyer will pay all premiums for any Owner’s Policy of Title Insurance desired by Buyer, the costs of recording any documents requested by Buyer, and the costs of recording the Deed if delivered by Seller at Closing. Buyer will pay the cost of recording the Contract for Deed. Seller and Buyer will split any Title Company closing fee, and allocate all other closing costs according to the customary practice for similar transactions in Carver County, Minnesota. Except as provided in Section 15, each party will pay its own attorneys' fees.

6. **Closing Adjustments.** Seller shall pay all expenses of the Property relating to the period prior to the Closing Date, and Buyer shall pay all expenses of the Property relating to the period on and after the Closing Date. Expenses relating to both before and after the Closing Date will be prorated between Buyer and Seller as of the Closing Date. The Closing Date will be allocated to Buyer. Seller shall pay installments of real estate taxes due and payable in the calendar years prior to the year in

which the Closing Date occurs, and Buyer shall pay all installments of real estate taxes due and payable in the calendar years after the year in which the Closing Date occurs. Installments of real estate taxes due and payable in the calendar year in which the Closing Date occurs shall be prorated as of the Closing Date on a per diem basis. Buyer shall be responsible for all levied, pending, assessed and due and payable special assessments or deferred or past due taxes in accordance with the terms of the Contract for Deed. This Section 6 will survive Closing.

7. **Due Diligence, Title and Survey Matters.** Prior to the date hereof, the Buyer reviewed and approved the following with respect to the Property (collectively, the **"Due Diligence Materials"**): (a) a title commitment (**"Title Commitment"**) issued by the 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 updated ALTA survey (**"Survey"**); (iii) a Phase 1 Environmental Site Assessment (**"Phase I"**); and (iv) such other documents, reports, and information that Seller had in its possession relative to the Property. Within ten (10) business days after the Effective Date, Seller will provide Buyer with updates to the Title Commitment or Survey, if any. If there are any changes to the Title Commitment or Survey, then Buyer will have a period of twenty (20) days after receipt of the updated Title Commitment and Survey (the **"Due Diligence Period"**) to provide Seller with any and all written objections thereto, and Seller may, but shall not be obligated to, cure the same prior to Closing. Buyer shall also have the right, prior to the expiration of the Due Diligence Period, to conduct a physical inspection, testing or investigations of the Real Property. Before conducting any on-site inspections, testing or investigations, Buyer will provide Seller with a certificate of liability insurance insuring Buyer and its contractors in an amount of not less than \$1,000,000.00 naming Seller as an additional insured. Any damage caused by Buyer to the Property during any inspections, tests or investigations conducted by Buyer, its employees or agents shall be restored at Buyer's cost. Buyer will indemnify, defend and hold Seller harmless from all liabilities incurred by Seller that arise solely as a result of the negligence or willful misconduct of Buyer, its employees or agents in connection with any inspections, testing or investigations. At any time prior to the expiration of the Due Diligence Period, City may (a) terminate this Agreement or (b) waive its termination right in writing and elect to proceed to Closing. Seller covenants and agrees to satisfy on or before the Closing Date any monetary encumbrances created by Seller. The Property will be subject to any title matters to which Buyer fails to object or waives its objection and such title matters shall be deemed **"Permitted Exceptions"**.

8. **Conditions to Closing.**

8.1 **Buyer's Conditions Precedent to Closing.** Buyer's obligation to consummate the transaction contemplated in this Agreement is contingent upon satisfaction of all of the following (the **"Buyer's Contingencies"**):

- (a) on the Closing Date, Seller's representations and warranties made in this Agreement remain true and correct, as if remade on and effective as of the Closing Date;
- (b) on the Closing Date, Seller is not in default under this Agreement or any other contract or agreement affecting or relating to the Property; and
- (c) prior to the Closing Date, Seller and Buyer have agreed on Preliminary Plans for the park improvement, as defined in the Cooperative Agreement and which include terms of Buyer's operation and maintenance of the park improvement including the following terms, conditions and restrictions: (i)

the approximately 13.0 acres of the Real Property that is upland (the “**Upland**”) will be limited to public uses and the sale of goods or services associated with such public uses; (ii) Seller will have a right of prior consultation as to Buyer’s design and alteration of the Upland, and any improvements and signage to be located on the Upland; (iii) Buyer will be solely responsible for all improvements to be constructed and/or installed on the Upland and Buyer will indemnify Seller and hold it harmless for claims, damages and matters relating to same; and (iv) Seller and Buyer will have mechanism for agreement on cost-sharing for signage and other water-resource related improvements (collectively the “**Preliminary Plans**”).

If any of the Buyer’s Contingencies described above has failed as of the date set for satisfaction thereof, then Buyer may terminate this Agreement by delivering written notice to Seller. If Buyer fails to deliver such written notice, then Buyer will be deemed to have elected to proceed to Closing. If this Agreement terminates pursuant to this Section neither party shall have any further obligation under this Agreement.

8.2 Seller’s Conditions to Closing. Seller’s obligations to consummate the transaction contemplated in this Agreement is contingent upon satisfaction of all of the following (the “**Seller’s Contingencies**”):

- (a) on the Closing Date, Buyer’s representations and warranties made in this Agreement remain true and correct, as if remade on and effective as of the Closing Date;
- (b) on the Closing Date, Buyer is not in default under this Agreement or any other contract or agreement affecting or relating to the Property; and
- (c) Seller being satisfied, in its sole and absolute discretion, that Buyer has implemented such ordinances, policies, or other measures to ensure that Buyer will have sufficient, available funds to make full and timely payments under the Note and Contract for Deed for the full term thereof; and
- (d) Seller approving the Preliminary Plans.

9. Representations and Warranties.

9.1 Seller’s Representations and Warranties. As an essential part of this Agreement and in order to induce Buyer to enter into this Agreement and purchase the Property, Seller hereby represents and warrants to Buyer that:

(a) Seller has not received any written notice that any actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or threatened against or affect the Property.

(b) Seller has not received any written notice of any pending condemnation or eminent domain proceedings. To Seller’s knowledge, there are no condemnation or eminent domain proceedings contemplated against the Property.

(c) Seller has fee simple title interest to the Property.

(d) Seller has duly and validly authorized and executed this Agreement and has full power to enter into and to perform this Agreement according to its terms and the execution and the delivery of this Agreement and the consummation of the transactions contemplated hereby will not constitute a default under any indentures, agreements, mortgages, or any other instruments to which Seller is a party, and is not in contravention of any law, order, ordinance, or regulation by which Seller is bound or subject.

(e) Seller has not used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any Hazardous Materials on or affecting the Real Property in any manner which violates any federal, state or local law, statute, regulation, requirement, ordinance, rule or policy. “**Hazardous Materials**” means any asbestos, urea-formaldehyde foamed-in-place insulation, polychlorinated biphenyl, petroleum, crude oil or any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances 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, the Minnesota Environmental Response and Liability Act, as amended, or any other federal, state or local laws, statutes, regulations, requirements, ordinances, rules or policies.

For purposes of this Section, “Seller’s knowledge” means the current actual knowledge of Anna Brown, Project Manager for Seller, without a duty of investigation or inquiry.

9.2 **Buyer’s Representations and Warranties.** As an essential part of this Agreement and in order to induce Seller to enter into this Agreement, Buyer hereby represents and warrants to Seller that Buyer has duly and validly authorized and executed this Agreement and has full power to enter into and to perform this Agreement, the Note, the Contract for Deed and the Easement according to their respective terms and the execution and the delivery of this Agreement, the Note, the Contract for Deed and the Easement and the consummation of the transactions contemplated therein will not constitute a default under any indentures, agreements, mortgages, or any other instruments to which Buyer is a party, and is not in contravention of any law, order, ordinance, or regulation by which Buyer is bound or subject.

10. **Assignment.** Neither Seller nor Buyer may assign or transfer their respective interest in this Agreement without the other party’s written consent.

11. **Brokers.** Seller represents and warrants to Buyer that Seller has not engaged the services of any broker in connection with the sale of the Property. Buyer represents and warrants to Seller that Buyer has not engaged the services of any broker in connection with the purchase of the Property. Seller and Buyer each hereby agree to indemnify the other against, and hold the other harmless from, any claim made by any broker or sales agent or similar party for a commission due or alleged to be due under the terms of any brokerage agreement entered into by said party.

12. **Interim Operations.** Commencing on the Effective Date and continuing through and including the Closing Date, Seller shall (a) operate, maintain and manage the Property in the ordinary course of business in accordance with prudent, reasonable business practices, including maintenance of adequate insurance with respect to the Property (including commercial general liability insurance), and compliance with the Permits and all applicable laws, (b) not lease, convey or otherwise transfer any of the Property, (c) execute no contracts, leases or other agreements regarding any of the Property (including any amendment or modification of any existing mortgage and related loan documents or the Permits) that extend beyond the Closing Date without the prior consent of Buyer, and (d) promptly

deliver to Buyer a copy of any notice, consent, waiver, request or other communication Seller receives from any public or private entity with respect to any of the Property.

13. **Default.** In the event that:

13.1 Seller fails to consummate the transactions contemplated in this Agreement for any reason or otherwise breaches any covenant, representation or warranty contained in this Agreement, except to the extent caused by Buyer's default or failure of Buyer to satisfy any conditions precedent to Seller's obligations set forth herein, Buyer shall be entitled to (a) enforce specific performance of this Agreement and in such action, will have the right to recover damages which are suffered by Buyer by reason of the delay in the acquisition of the Property; (b) bring suit for damages for breach of this Agreement; or (c) cancel and terminate this Agreement and be relieved of its obligations hereunder. No delay or omission in the exercise of any right or remedy accruing to Buyer upon any breach by Seller under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by Buyer of any condition, or the breach of any term, covenant or condition herein contained, shall not be deemed to be a waiver of any other condition, or of any subsequent breach of any term, covenant or condition herein contained. All rights, powers, options or remedies afforded to Buyer shall be cumulative and not alternative. The exercise of one right, power, option, or remedy shall not bar any other right, power, option or remedy.

13.2 Buyer fails to consummate the transactions contemplated in this Agreement for any reason or otherwise breaches any covenant, representation or warranty contained in this Agreement, except to the extent caused by Seller's default or failure of Seller to satisfy any conditions precedent to Buyer's obligations set forth herein, Seller will have the right to (a) bring suit for damages for breach of this Agreement; (b) terminate this Agreement and be relieved of its obligations hereunder; and/or (c) pursue any and all rights and remedies at law or in equity.

14. **Notices.** Any notice, demand, request or other communication under this Agreement must be in writing, and shall be deemed given when it is personally delivered to the address set forth below or two (2) business days after such notice is mailed by first class mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

To Buyer:
City of Victoria
1620 Stieger Lake Lane
Victoria, MN 55386
Attn.: City Manager

To Seller:
Minnehaha Creek Watershed District
15320 Minnetonka Blvd.
Minnetonka, MN 55345
Attn.: Mr. James Whisker and Ms. Anna Brown

Either party may change its address for notice purposes by giving written notice to the other party in the manner set forth in this Section.

15. **Attorneys' Fees.** In the event of any proceeding to enforce this Agreement, the non-prevailing party shall pay the reasonable attorneys' fees and costs incurred by the prevailing party.

16. **Confirming Termination.** Notwithstanding anything in this Agreement to the contrary, if this Agreement terminates for any reason, each party agrees to execute any and all documents required by applicable Minnesota Statutes.

17. **Additional Provisions.**

17.1 **Effective Date.** “Effective Date” means the date on which Seller signs the Agreement after Buyer has signed it, as shown on the signature page, but if Seller does not deliver the signed Agreement to Buyer on that day, then the Effective Date will be postponed by one day for each day Seller delays in delivering this Agreement to Buyer.

17.2 **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties relating to the transaction contemplated hereby and may not be amended, waived or discharged except by an instrument in writing executed by both parties.

17.3 **Invalidity.** If any clauses or provisions herein contained would invalidate this Agreement in whole or in part, such clauses or provisions only shall be invalid, and the remainder of this Agreement will remain in full force and effect.

17.4 **Limitation on Offer.** The preparation of the Agreement by Buyer and the submission of this Agreement for the review or execution by any party shall not be deemed to be an offer by Buyer to purchase the Property, and this Agreement shall not be binding upon Buyer unless or until it has been executed by both Seller and Buyer.

17.5 **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

17.6 **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

17.7 **Time of Essence.** Time is of the essence of this Agreement.

17.8 **Survival.** All of the terms, conditions, covenants, representations and warranties of this Agreement will survive Closing and the delivery of the Contract for Deed for a period of twenty-four (24) months.

17.9 **Dates.** If any date, deadline or time for performance under this Agreement falls on a weekend or is a bank holiday, that date, deadline or time for performance will automatically be extended to the next day that is not on a weekend and is not a bank holiday.

17.10 **Construction.** The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as defining or as limiting in any way the scope or intent of the provisions hereof. Wherever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

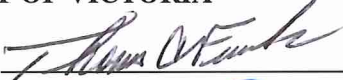
17.11 **Counterparts; Facsimile Signature.** This Agreement may be executed in counterparts, each of which will be deemed an original. For purposes of executing this Agreement, a facsimile of a signature will be deemed an original.


[SIGNATURES ON FOLLOWING PAGE]

Seller and Buyer have signed and delivered this Agreement as of the Effective Date.

BUYER:

CITY OF VICTORIA

By: 
Its: Mayor

By: 
Its: City Clerk

Dated: 12/14/17

SELLER:

**MINNEHAHA CREEK WATERSHED
DISTRICT**

By: 
Its: Administrator

Dated: 12/19/2017

EXHIBIT A

LEGAL DESCRIPTION

Parcel A:

All that part of Government Lot 8, Section 23, Township 116, Range 24, which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; thence North 89 degrees 41 minutes 16 seconds East, a distance of 220.95 feet; thence South 63 degrees 24 minutes 30 seconds East, a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

Parcel B:

All that part of the Southwest Quarter of the Southwest Quarter and Government Lot 8, Section 23, Township 116, Range 24, which lies southerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1576.88 feet to the point of beginning of the line to be described; thence North 89 degrees 41 minutes 16 seconds East, a distance of 220.95 feet; thence South 63 degrees 24 minutes 30 seconds East, a distance of 306.34 feet; thence South 79 degrees 24 minutes 38 seconds East, a distance of 192.18 feet; thence North 68 degrees 00 minutes 47 seconds East, a distance of 358 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

And which lies northerly of the following described line:

Commencing at the southwest corner of said Section 23; thence North 00 degrees 44 minutes 31 seconds East, an assumed bearing along the west line of the Southwest Quarter and Government Lot 8, said Section 23, a distance of 1349.00 feet to the point of beginning of the line to be described; thence South 83 degrees 10 minutes 47 seconds East, a distance of 302.49 feet; thence South 75 degrees 14 minutes 21 seconds East, a distance of 77.81 feet; thence South 22 degrees 00 minutes 00 seconds East, a distance of 361.40 feet; thence North 58 degrees 00 minutes 05 seconds East, a distance of 737.00 feet more or less to the shoreline of Wassermann Lake and said line there terminating.

EXHIBIT B
PROMISSORY NOTE

\$425,000.00

Victoria, Minnesota
[], 2017

FOR VALUE RECEIVED, CITY OF VICTORIA, a statutory city and political subdivision of the State of Minnesota, having an address at 1670 Stieger Lake Lane, Victoria, Minnesota ("**Borrower**"), as maker, hereby unconditionally promises to pay to the order of **MINNEHAHA CREEK WATERSHED DISTRICT**, a public body with power set forth at Minnesota Statutes Chapter 103B and 103D, as lender, having an address at 15320 Minnetonka Boulevard, Minnetonka, Minnesota 55345 ("**Lender**"), or at such other place as the holder hereof may from time to time designate in writing, the principal sum of [FOUR HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$425,000.00)] (the "**Debt**"), in lawful money of the United States of America, with interest thereon to be computed from the date of this Promissory Note (this "**Note**") at the rate of 0.50% per annum, and to be paid in accordance with the terms of this Note and that certain Contract for Deed dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Contract**"). All capitalized terms not defined herein shall have the respective meanings set forth in the Contract.

ARTICLE 1: PAYMENT TERMS

Borrower agrees to pay the principal sum of this Note and interest on the unpaid principal sum of this Note from time to time outstanding at the rates and at the times specified in the Contract and the outstanding balance of the principal sum of this Note and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date set forth in the Contract.

ARTICLE 2: DEFAULT AND ACCELERATION

The Debt shall without notice become immediately due and payable at the option of Lender (i) if any payment required in this Note is not paid on or prior to the date when due (taking into account any applicable grace period expressly provided for in the Contract), (ii) if not paid on the Maturity Date, or (iii) if any other Event of Default has occurred and is continuing. Borrower acknowledges and agrees that Lender may, at its sole election, exercise its remedies under this Note or the Contract.

ARTICLE 3: SECURITY

This Note is secured by the Contract. All of the terms, covenants and conditions contained in the Contract are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein.

ARTICLE 4: SAVINGS CLAUSE

Notwithstanding anything to the contrary contained herein, (a) all agreements between Borrower and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest on account of the Debt, the interest contracted for, charged or received by Lender shall never exceed the maximum legal rate, (b) in calculating whether any interest exceeds the maximum legal rate, all such interest shall, to the extent permitted by applicable law, be amortized, prorated, allocated

and spread over the full amount and term of all principal indebtedness of Borrower to Lender so that the rate of interest does not exceed the maximum legal rate, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the maximum legal rate, any such excess shall be deemed to be immediately reduced to such maximum legal rate and any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Borrower to Lender, or if there is no such indebtedness, shall immediately be returned to Borrower.

ARTICLE 5: NO ORAL CHANGE

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by Borrower and Lender.

ARTICLE 6: WAIVERS

Borrower and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, notice of intention to accelerate, notice of acceleration, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or the Contract made by agreement between Lender or any other person shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Borrower or any other person who may become liable for the payment of all or any part of the Debt under this Note or the Contract. No notice to or demand on Borrower shall be deemed to be a waiver of the obligation of Borrower or of the right of Lender to take further action without further notice or demand as provided for in this Note or the Contract.

ARTICLE 7: GOVERNING LAW

(A) THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA.

(B) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER OR BORROWER ARISING OUT OF OR RELATING TO THIS NOTE MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF MINNEAPOLIS, COUNTY OF HENNEPIN, AND BORROWER WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND BORROWER HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

CITY OF VICTORIA

By: _____
Its: Mayor

By: _____
Its: City Clerk

State of Minnesota, County of _____

This instrument was acknowledged before me on _____, 2017, by _____ and _____, the Mayor and City Clerk, respectively, of CITY OF VICTORIA, a statutory city and political subdivision of the State of Minnesota, on behalf of the city.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

EXHIBIT C
CONTRACT FOR DEED

(Top 3 inches reserved for recording data)

CONTRACT FOR DEED
by **Business Entity**

DATE: _____, 2017 (the "Effective Date")

THIS CONTRACT FOR DEED (the "Contract") is made on the above date by **MINNEHAHA CREEK WATERSHED DISTRICT**, a public body with power set forth at Minnesota Statutes Chapter 103B and 103D ("Seller"), and **CITY OF VICTORIA**, a statutory city and political subdivision of the State of Minnesota ("Purchaser").

Seller and Purchaser agree to the following terms:

1. **Property Description.** Seller hereby sells and Purchaser hereby buys real property in Carver County, Minnesota, described as follows:

SEE EXHIBIT A.

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto (the "Property"). Unless otherwise specified, Seller hereby delivers possession of the Property to Purchaser on the date hereof.

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: [...].)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

2. **Title.** Seller warrants that title to the Property is, on the date of this Contract, subject only to the following exceptions:

- (a) Covenants, conditions, restrictions (without effective forfeiture provisions) and declarations of record, if any;
- (b) Reservation of minerals or mineral rights by the State of Minnesota, if any;
- (c) Utility and drainage easements which do not interfere with present improvements;
- (d) Applicable laws, ordinances, and regulations;
- (e) The lien of real estate taxes and installments of special assessments which are payable by Purchaser pursuant to paragraph 6 of this Contract; and
- (f) Those items recorded against the Property in the public records.

3. **Delivery of Deed.** Upon Purchaser's full performance of this Contract, Seller shall execute, acknowledge, and deliver to Purchaser a Special Warranty Deed (the "**Deed**"), in recordable form, conveying marketable title to the Property to Purchaser, subject only to the following exceptions:

- (a) Those exceptions referred to in paragraph 2(a), (b), (c), (d), and (e) of this Contract; and
- (b) Liens, encumbrances, adverse claims or other matters which Purchaser has created, suffered or permitted to accrue after the date of this Contract.

At Seller's option, upon execution of this Contract Seller may execute, acknowledge and deliver, and Buyer shall accept, the Deed,

4. **Purchase Price.** Purchaser shall pay to Seller at the address of **15320 Minnetonka Boulevard, Minnetonka, Minnesota 55345**, the sum of FOUR HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$425,000.00), as and for the purchase price (the "**Purchase Price**") for the Property, payable in five (5) annual installment payments on or before February 1 of each of the first, second, third, fourth and fifth anniversaries of the Effective Date in an amount equal to \$42,500.00, plus all accrued interest owing on each such payment date. On December 31, 2022 (the "**Maturity Date**"), Purchaser shall pay Seller the outstanding balance due and owing hereunder, plus all accrued interest owing on such payment date as the final BALLOON PAYMENT. The Purchase Price shall accrue interest beginning the Effective Date at the rate of 0.50% per annum. Notwithstanding anything herein to the contrary, provided that Purchaser is not in default under the terms of this Contract and to the extent permitted under applicable law, prior to the Maturity Date Purchaser may deliver written notice to Seller electing to extend the Maturity Date for a period of up to three (3) years, subject to agreement on terms and conditions acceptable to Purchaser and Seller.

5. **Prepayment.** Unless otherwise provided in this Contract, Purchaser shall have the right to fully or partially prepay this Contract at any time without penalty. Any partial prepayment shall be applied first to payment of amounts then due under this Contract, including unpaid accrued interest, and the balance shall be applied to the principal installments to be paid in the inverse order of their maturity. Partial prepayment shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments.

6. **Real Estate Taxes and Assessments.** Purchaser shall pay, before penalty accrues, all real estate taxes and installments of special assessments assessed against the Property which are due and payable on and after the Effective Date and in all subsequent years.

7. **Property Insurance.**

- (a) Insured Risks and Amounts. Purchaser shall keep all buildings, improvements, and fixtures now or later located on or a part of the Property insured against loss by fire, lightning and such other perils as are

included in a standard "all-risk" endorsement, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy, including, without limitation, vandalism, malicious mischief, burglary, theft and, if applicable, steam boiler explosion. Such insurance shall be in an amount no less than the full replacement cost of the buildings, improvements, and fixtures located on the Property from time to time, without deduction for physical depreciation. If any of the buildings, improvements, or fixtures are located in a federally designated flood prone area, and if flood insurance is available for that area, Purchaser shall procure and maintain flood insurance in reasonable amounts.

(b) Notice of Damage. In the event of damage to the Property by fire or other casualty, Purchaser shall promptly give notice of such damage to Seller and the insurance company.

8. Damage to the Property.

(a) Application of Insurance Proceeds. If the Property is damaged by fire or other casualty, the insurance proceeds paid on account of such damage shall be applied to payment of the amounts payable by Purchaser under this Contract, even if such amounts are not then due to be paid, unless Purchaser makes a permitted election described in the next paragraph. Amounts applied to amounts payable under this Contract shall be first applied to unpaid accrued interest and next to the installments to be paid as provided in this Contract in the inverse order of their maturity. Such payment shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments. The balance of insurance proceeds, if any, shall be the property of Purchaser.

(b) Purchaser's Election to Rebuild. If Purchaser is not in default under this Contract, or after curing any such default, Purchaser may elect to have that portion of such insurance proceeds necessary to repair, replace, or restore the damaged Property (the "**Repairs**") deposited in escrow with a bank or title insurance company qualified to do business in the State of Minnesota, or such other party as may be mutually agreeable to Seller and Purchaser. The election may only be made by written notice to Seller within ninety (90) days after the damage occurs. If such a permitted election is made by Purchaser, Seller and Purchaser shall jointly deposit, when paid, such insurance proceeds into such escrow. If such insurance proceeds are insufficient for the Repairs, Purchaser shall, before the commencement of the Repairs, deposit into such escrow sufficient additional money to insure the full payment for the Repairs. All escrowed funds shall be disbursed by the escrowee in accordance generally accepted sound construction disbursement procedures. The costs incurred or to be incurred on account of such escrow shall be deposited by Purchaser into such escrow before the commencement of the Repairs. Purchaser shall complete the Repairs as soon as reasonably possible and in a good and workmanlike manner, and in any event the Repairs shall be completed by Purchaser within two (2) years after the damage occurs. If, following the completion of and payment for the Repairs, there remains any undisbursed escrow funds, such funds shall be applied to payment of the amounts payable by Purchaser under this Contract in accordance with paragraph 8(a) above.

9. Injury or Damage Occurring on the Property.

(a) Liability. Seller shall be free from liability and claims for damages by reason of injuries or damage occurring on or after the date of this Contract to any person or persons or property while on or about the Property. Purchaser shall defend, indemnify and hold Seller harmless from all claims, demands, liability, loss, cost, expense, cost and obligations, including without limitation reasonable attorneys' fees, on account of or arising out of any such injuries or damage.

(b) Liability Insurance. At all times prior to the maturity date hereunder, Purchaser shall, at Purchaser's own expense, procure and maintain liability insurance with limits of not less than \$1,500,000 per occurrence insuring against claims for bodily injury, death and property damage occurring on or about the Property. Purchaser shall cause Seller to be named as an additional insured and within three (3) days after a request from Seller will provide Seller with a certificate of insurance evidencing that such insurance is in full force

and effect and endorsement(s) establishing Seller's additional insured status. Nothing herein creates any right in any third party of waives or limits any immunity, defense or liability limit available under applicable law to Seller or Purchaser.

10. Insurance Generally. The insurance which Purchaser is required to procure and maintain pursuant to paragraphs 7 and 9 of this Contract shall be issued by an insurance provider licensed to do business in the State of Minnesota and acceptable to Seller. The insurance shall be maintained by Purchaser at all times while any amount remains unpaid under this Contract. Purchaser shall provide to Seller not less than thirty (30) days written notice before any cancellation, non-renewal, termination or change in coverage, and Purchaser shall deliver to Seller a duplicate original or certificate of such insurance policy or policies.

11. Condemnation. If all or any part of the Property is taken in condemnation proceedings instituted under power of eminent domain or is conveyed in lieu thereof under threat of condemnation, the money paid pursuant to such condemnation or conveyance in lieu thereof shall be applied to the payment of the amounts payable by Purchaser under this Contract, even if such amounts are not then due to be paid. Such amounts shall be applied in the same manner as a prepayment as provided in paragraph 5 of this Contract. Such payments shall not postpone the due date of the installments to be paid pursuant to this Contract or change the amount of such installments. The balance, if any, shall be the property of Purchaser.

12. Waste, Repair, and Liens. Purchaser shall not commit or allow waste of the Property. Purchaser shall maintain the Property in good condition and repair. Purchaser shall not create or permit to accrue liens against the Property which constitute a lien against Seller's interest in the Property. Purchaser shall pay to Seller all amounts, costs and expenses, including reasonable attorneys' fees, incurred by Seller to remove any liens not permitted by this Contract.

13. Compliance with Laws. Purchaser shall comply or cause compliance with all laws and regulations of any governmental authority which affect the Property or the manner of using or operating the same, and with all restrictive covenants, if any, affecting title to the Property or the use thereof.

14. Recording of Contract; Deed Tax. Seller may, at Purchaser's expense, record this Contract in the Office of the County Recorder or Registrar of Titles in the county in which the Property is located within thirty (30) days after the date hereof. Purchaser shall pay any penalty imposed under Minn. Stat. 507.235 for failure to timely record the Contract. Purchaser shall pay the deed tax due upon the recording of the Deed to be delivered by Seller.

15. Notice of Assignment. Neither party may assign its interest in the Property or this Contract without the prior approval of the other party.

16. Protection of Interests. If Purchaser fails to pay any sum of money required under the terms of this Contract or fails to perform any of the Purchaser's obligations as set forth in this Contract, and such failure is not cured within fifteen (15) days of Seller's written notice to Purchaser of such failure, Seller may, at Seller's option, pay the same or cause the same to be performed, or both, and the amounts so paid by Seller and the cost of such performance shall be payable at once, with interest at the rate of ten percent (10%) per annum, as an additional amount due Seller under this Contract. If Seller hereafter creates, suffers or permits to accrue, any mortgage, contract for deed, lien or encumbrance against the Property which is not herein expressly assumed by Purchaser, and provided Purchaser is not in default under this Contract, Seller shall timely pay all amounts due thereon, and if Seller fails to do so, Purchaser may, at Purchaser's option, pay any such delinquent amounts or take any actions

reasonably necessary to cure defaults there under and deduct the amounts so paid together with interest at the rate provided in this Contract from the payments next coming due under this Contract.

17. **Defaults and Remedies.** The time of performance by Purchaser of the terms of this Contract is an essential part of this Contract. If Seller has not delivered the Deed upon execution of this Contract, and if Purchaser fails to timely perform any term of this Contract within fifteen (15) days after receipt from Seller of written notice of such failure, Seller may, at Seller's option, elect to declare this Contract cancelled and terminated by notice to Purchaser in accordance with applicable law or elect any other remedy available at law or in equity; provided, however, that if such failure cannot reasonably be cured within such fifteen (15) day period, the deadline to complete such cure shall be extended so long as Purchaser is diligently and continuously prosecuting such cure to completion. If Seller elects to terminate this Contract and Seller has not delivered the Deed to Purchaser, all right, title, and interest acquired under this Contract by Purchaser shall then cease and terminate, and all improvements made upon the Property and all payments made by Purchaser pursuant to this Contract (including escrow payments, if any) shall belong to Seller as liquidated damages for breach of this Contract. Neither the extension of the time for payment of any sum of money to be paid hereunder nor any waiver by Seller of Seller's rights to declare this Contract forfeited by reason of any breach shall in any manner affect Seller's right to cancel this Contract because of defaults subsequently occurring, and no extension of time shall be valid unless agreed to in writing. After service of notice of default and failure to cure such default within the period prescribed by this Contract, Purchaser shall, upon demand, surrender possession of the Property to Seller, but Purchaser shall be entitled to possession of the Property until the expiration of such period. Failure by Seller to exercise one or more remedies available under this paragraph 17 shall not constitute a waiver of the right to exercise such remedy or remedies thereafter. Notwithstanding anything herein to the contrary, Purchaser acknowledges and agree that Seller may, in its sole election, exercise its rights and remedies under that certain Promissory Note dated _____, 2017 by Purchaser in favor of Seller or this Contract. Following a default and Seller's exercise of its remedies under this Contract, Seller shall have the right, at its sole election, to elect to retain any and all improvements constructed and/or installed on the Property by or on behalf of Purchaser or cause Purchaser, at its sole cost and expense, to remove such improvements and repair any damage to the Property caused by such removal.

18. **Hazardous Substances.** Purchaser shall not bring, store, generate, or treat hazardous wastes or substances or petroleum products upon the Property. Purchaser hereby agrees to indemnify, defend and hold Seller harmless from any and all claims, demands, actions, causes of action, liabilities or rights which may be asserted against Seller with respect to such substances, or products, it being understood and agreed that this obligation will survive the cancellation of this Contract or the delivery of the Deed pursuant to the terms hereof.

19. **Binding Effect.** The terms of this Contract shall run with the land and bind the parties hereto and their successors in interest.

21. **Headings.** Headings of the paragraphs of this Contract are for convenience only and do not define, limit, or construe the contents of such paragraphs.

22. **Counterparts:** This Contract may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed original, but all such counterparts together shall constitute but one and the same instrument.

[Remainder of page intentionally left blank.]

PURCHASER:

SELLER:

CITY OF VICTORIA

MINNEHAHA CREEK WATERSHED DISTRICT

By: _____
Its: Mayor

By: _____
Its: _____

By: _____
Its: City Clerk

Dated: _____

Dated: _____

State of Minnesota, County of _____

This instrument was acknowledged before me on _____, 2017, by _____ of **MINNEHAHA CREEK WATERSHED DISTRICT**, a public body with power set forth at Minnesota Statutes Chapter 103B and 103D, on behalf of the public body.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

State of Minnesota, County of _____

This instrument was acknowledged before me on _____, 2017, by _____ and _____ the Mayor and City Clerk, respectively, of CITY OF VICTORIA, a statutory city and political subdivision of the State of Minnesota, on behalf of the city.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
Dorsey & Whitney LLP (LKG)
50 South Sixth Street
Suite 1500
Minneapolis, MN 55402
(612) 340-2600

TAX STATEMENTS FOR THE REAL
PROPERTY DESCRIBED IN THIS
INSTRUMENT SHOULD BE SENT TO:
City of Victoria

Note: Failure to record this contract for deed may give other parties priority over Purchaser's interest in the property

EXHIBIT D

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 requiring grant of 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

By: _____

Its: City Clerk

**STATE OF MINNESOTA
COUNTY OF CARVER**

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by _____ and _____ the Mayor and City Clerk, respectively, 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 C: Easement Area

Figure Pending

Attachment D: Carver County Master Finance Agreement

MINNEHAHA CREEK WATERSHED DISTRICT CAPITAL IMPROVEMENT AND
LAND CONSERVATION PROGRAM
MASTER FINANCE AGREEMENT

This Agreement is made and entered into this 11th day of October, 2018 by and between MINNEHAHA CREEK WATERSHED DISTRICT (the "District") and CARVER COUNTY (the "County").

WHEREAS, the District has instituted a Capital Improvement and Land Conservation Program (the "Program") under which the District plans to construct water resource improvements and to acquire real property interests for environmental and conservation purposes;

WHEREAS, the District has adopted a watershed management plan under Minnesota Statutes, Section 103B.231 (the "Watershed Plan") and, as provided in Section 103B.231, Subd. 6, has included a capital improvement program as part of the Watershed Plan;

WHEREAS, Minnesota Statutes, Section 103B.231, Subd. 7(c) provides that the Carver County Board of Commissioners may either approve or disapprove those projects in the capital improvement program which may require County funding under Section 103B.251;

WHEREAS, under Minnesota Statutes, Section 103B.241, Subd. 1, the District has authority to levy property taxes to pay for capital improvements, the proceeds of which are to be deposited in a separate fund for such purposes;

WHEREAS, Minnesota Statutes, Section 103B.251 sets forth a procedure by which the cost of a capital improvement which has been approved by the County may be certified to the County for payment;

WHEREAS, Section 103B.251, Subd. 7 permits the County to issue general obligation bonds to pay the costs of approved capital improvements certified to it, which bonds, as provided by Section 103B.251, Subd. 8, are payable primarily from taxes on taxable property within the watershed district or a subwatershed unit for which the bonds are to be issued;

WHEREAS, Minnesota Statutes, Section 103B.253, provides that any taxes levied to fund a project under Section 103B.241 or to pay County bonds issued under Section 103B.251 are not included in the County's levy certified under Section 275.07, Subd. 1, paragraph (a), but instead are extended as a special taxing district levy;

WHEREAS, in lieu of the issuance of County bonds as the immediate source of funding of capital improvements or the levy of taxes on District property to pay the entire cost of the Program in Carver County, the District will issue shorter term notes and the County

will provide permanent financing as provided herein;

WHEREAS, the District and the County are entering into this Agreement to establish procedures for the coordinated financing of the projects of the District's Program in Carver County;

NOW, THEREFORE, the County and District agree as follows:

1. Capital Improvement Program. The District shall include the Capital Improvement and Land Conservation Program within its capital improvement program as part of the Watershed Plan. The District shall determine at the time of ordering a capital improvement or land acquisition whether it may wish to finance the project or acquisition through the permanent financing provisions of this Agreement. If the District determines to seek such permanent financing for such a project or acquisition, it shall provide written notice to the County. Such notice will include the amount to be financed hereunder, the project to be constructed or parcels or property interests to be acquired, the cost thereof and the estimated amount of sale proceeds which may be derived from any anticipated sale of all or a portion of the acquired property interests. The County Board of Commissioners may elect to hold a public hearing at which a District representative will appear to provide a description and answer questions about the proposed project or acquisition. The County shall approve, deny, request more information, and/or request an extension of more time to make a decision on providing permanent financing for the proposed project or acquisition and communicate this decision to the District in writing within sixty (60) days of receiving notice from the District.

2. Financing Requests. The notice provided under paragraph 1 shall be accompanied by (a) a certified resolution of the Board of Managers of the District which requests permanent financing in a specific amount for capital improvement costs or acquisition of specified parcels or other property interest in accordance with the terms of this Agreement and pledges the full faith and credit and taxing powers of the District to the payment of the permanent financing bonds to be issued hereunder, (b) an opinion of counsel to the District to the effect that the acquisition is included in the plan and no further plan amendments are required, and (c) a statement of the facts relevant to a determination of whether the interest on any County obligations to be issued hereunder, if issued separately for each acquisition transaction, would be exempt from federal and Minnesota income taxation.

3. District Notes. In lieu of the issuance of County bonds as the immediate source of funding of capital improvements or the levy of taxes on District property to pay the entire cost of the Program in Carver County, and pursuant to Minnesota Statutes, Section 475.61, Subd. 6, which provides that the District may issue temporary obligations in anticipation of permanent financing, the District will issue negotiable notes for conservation purposes for a maximum term of thirty-six (36) months pursuant to Minnesota Statutes, Section 103D.335, Subd. 1 ("District Notes");

4. Permanent Obligations. The County shall, at such time prior to the maturity of the District Notes as the County deems practical, issue its bonds under Section 103B.251

on behalf of the District and for the benefit of the holders of the District Notes, in minimum amounts of \$1 million to provide permanent financing for the unpaid balance of such District Notes, but only upon satisfaction of the following conditions: (a) the District shall have issued to the County the General Obligation Promissory Note described in paragraph 5 hereof; b) if interest on the bonds is intended to be tax exempt, the County shall have received written undertakings of the District acceptable to the County relating to the maintenance of the tax exempt status of any such bonds; (c) if interest on the bonds is intended to be tax exempt, the County shall have received an opinion of the County's bond counsel that such bonds, if issued as a separate issue would be exempt from federal and state income taxation, and (d) the County determines to its satisfaction that any taxes levied or to be levied by the District for the County's permanent financing hereunder supplant, and do not supplement, the District's levy for its Capital Improvement and Land Conservation Program.

5. Aggregate Outstanding Principal. The aggregate outstanding principal amount permanent obligations hereunder shall not exceed \$25 million at any time. The County shall determine the maturity schedules and other terms of the permanent financing in consultation with the District and shall use its best efforts to provide the District with 20-year financing. The District shall pay a pro rata portion of the issuance costs of an issue of County bonds which provides the permanent financing. The bonds shall be payable primarily from payments to be made by the District on the dates and in the amounts sufficient to pay the County bonds when due. Such obligation shall be evidenced by a General Obligation Promissory Note of the District substantially in the form attached as Appendix A. As authorized by Minnesota Statutes, Section 475.79, the District has determined to exercise the powers of a municipality under Minnesota Statutes, Chapter 475, in connection with the Note, including the powers under Sections 475.553 and 475.61. The Note shall be a general obligation of the District for which the District has levied taxes on all taxable property in the District pursuant to Minnesota Statutes, Section 475.61 in the years and amounts sufficient to pay the County Bonds when due. If in the future the County so requests, the District shall appoint a bank acceptable to the County as paying agent for the Note and, as authorized by Minnesota Statutes, Section 475.553, Subd. 1, shall direct the county treasurers to remit any proceeds from the taxes levied for the payment of the Note directly to such paying agent. In the event of any actual or anticipated deficiency the District shall levy taxes on all taxable property in the District to provide for the full and prompt payment of the County bonds.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

COUNTY OF CARVER

By Gayle Depler
Chair, Carver County Board of
Commissioners

By [Signature]
County Administrator

Approved as to form and execution:

By [Signature] Assistant County Attorney

MINNEHAHA CREEK WATERSHED
DISTRICT

By Sherry Davis White President,
Board of Managers

Approved as to form and execution:

By [Signature] District Counsel

PROMISSORY NOTE

UNITED STATES OF AMERICA
STATE OF MINNESOTA
MINNEHAHA CREEK WATERSHED DISTRICT

Dated: _____ \$ _____

For value received, MINNEHAHA CREEK WATERSHED DISTRICT (the "District"), hereby acknowledges itself indebted to and promises to pay to the order of:

CARVER COUNTY

or registered assigns, the principal sum of _____ Dollars (\$ _____), and interest thereon in installments of principal and interest on or before the dates and in the amounts set forth in Appendix A attached hereto. Payments of principal and interest shall be made by the Treasurer to the address or account designated by the registered owner; provided, however, that at the request of the registered owner the District shall appoint a bank acceptable to the County as paying agent for this Note and, as authorized by Minnesota Statutes, Section 475.553, Subd. 1, shall direct the county treasurers to remit the proceeds of the taxes levied for the payment of this Note directly to such paying agent.

This Note is subject to prepayment in whole or in part at the option of the District on any date at par plus accrued interest on or after (the first call date of the County's bonds), and only with the consent of the County.

This Note is issued in accordance with the Master Loan Agreement by and between the District and Carver County, Minnesota dated _____, 20__ (the "Loan Agreement") to evidence the obligation of the District to provide for the payment of bonds issued by the County pursuant to the Loan Agreement.

This Note is issued pursuant to and in conformity with the Constitution and Laws of the State of Minnesota, including Minnesota Statutes, Section 103D.335, Subd. 1 and Chapter 475, and is payable from ad valorem taxes on all taxable property in the District which the District shall levy as part of its capital improvement program under Minnesota Statutes, Section 103B.241, Subd. 1, without limit as to rate or amount. Taxes have been levied by the District in the years and amounts sufficient to pay principal and interest when due pursuant to Minnesota Statutes, Section 475.61.

The representations and warranties of the District as set forth in the Loan Agreement are incorporated by reference herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and laws of the State of Minnesota to be done, to happen and to be performed precedent to and in the issuance of this Note have been done, have happened and have been performed in regular and due form, time and manner as required by law and that this Note, together with all other indebtedness of the District outstanding on the date of its issuance, does not exceed any constitutional or statutory limitation of indebtedness.

IN WITNESS WHEREOF, said MINNEHAHA CREEK WATERSHED DISTRICT, in the State of Minnesota, by its Board of Managers, has caused this Note to be executed by the President of said Board, on the date of this Note.

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Its President

RBA Attachment B: Initial Cooperative Agreement

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

Ben Landhauser, Comm. dev. director
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 (ACTING)

Date: 5/26/2017

By 
Its City Manager

Date: 5/24/2017

Approved for form and execution:

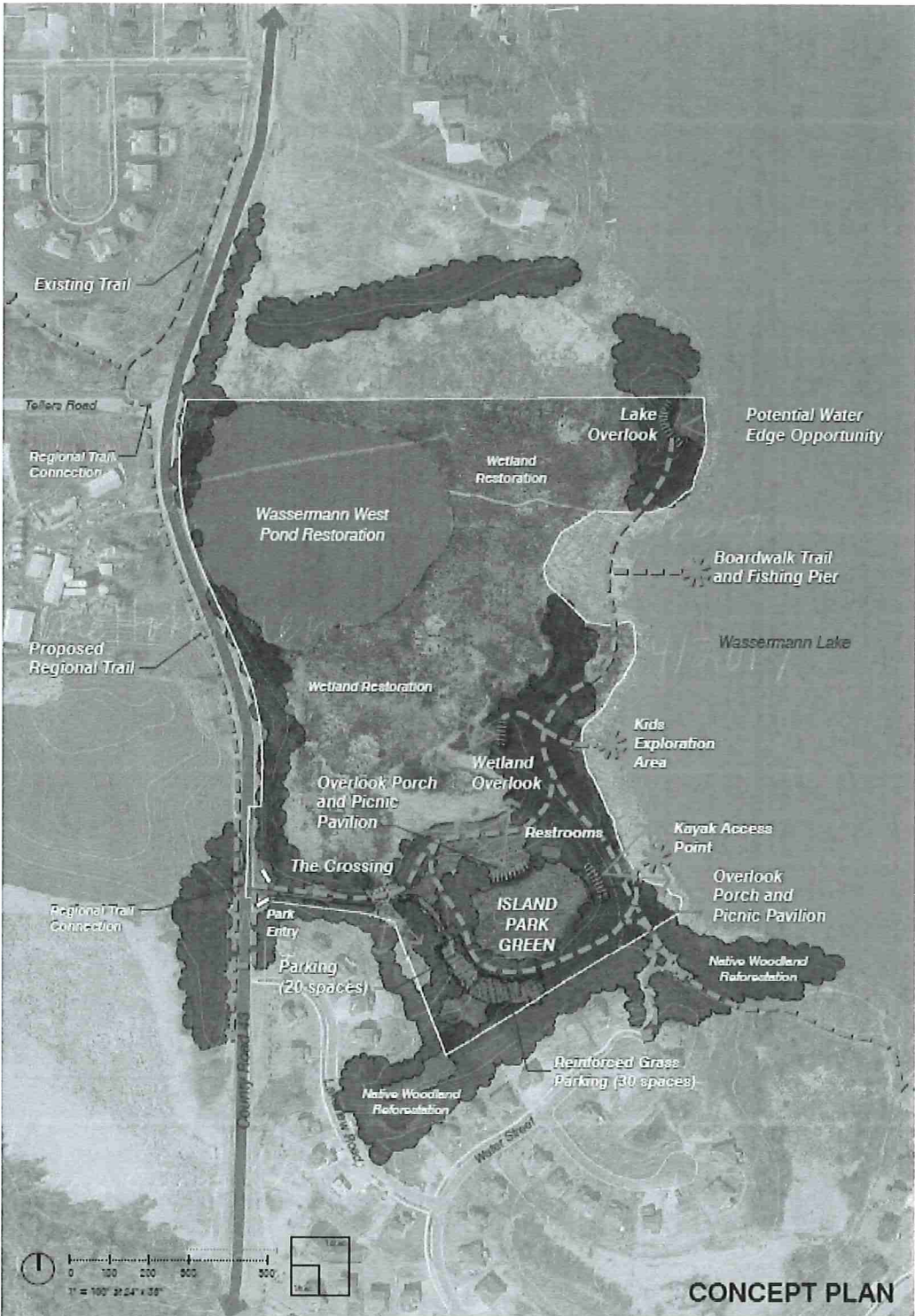

MCWD Counsel

MINNEHAHA CREEK WATERSHED DISTRICT

By 
Its President

Date: 6-8-17

**ATTACHMENT A
CONCEPT FOR PUBLIC PARK**



CONCEPT PLAN

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

RBA Attachment C: Project Cost Estimate

	City Cost	District Cost	Units			
			cost/unit	unit	Length	width
Design (Proposed)						
Preliminary design (ETD)	\$21,000	\$21,000				
Phase I-III, except Architect Architecture (Structures)	\$100,000 100%	\$100,000 0%				
Total budget:	TBD	\$91,000				
Total combined (City and District):	\$180,000	not yet including Architecture				
Phase I						
Trail						
Primary Loop	\$ 48,000.00		\$30	linear ft	1600	
single loaded peninsula trail	\$ 15,000.00		\$30	linear ft	500	
stream crossing	\$ 15,000.00		\$15,000	lump sum	1	
Parking and Entry						
Entry Road and parking	\$130,000					
Parking entry sign	\$8,000					
stormwater	\$65,000					
Natural Resources						
Planting	\$94,000	\$15,000				
Alum Treatment		\$90,000				
Stream Stabilization		\$20,000				
Wetland Restoration		\$137,560				
Other						
Grading	\$50,000					
site furnishings	\$15,000					
Utilities	\$150,000					
Phase I total	\$590,000	\$262,560				
Contingency Costs (20%)	\$118,000					
Total budget:	\$708,000					
Total combined (C&D):	\$970,560					
Phase II						
Boardwalk						
Peninsula to island	\$106,400		\$38	ft2	400	7
wetland circuit	\$186,200		\$38	ft2	700	7
Helical piers - peninsula	\$66,000		\$1,000	each	400	66
Helical piers - wetland	\$116,000		\$1,000	each	700	116
Trail						
upland trail	\$10,500		\$30	linear ft	350	
Natural Resources						
Planting		\$73,000				
Other						
fishing pier	\$50,000					
site furnishings	\$15,000					
Total Phase II	\$550,100	\$73,000				
Contingency Costs (20%)	\$110,020					
Total budget:	\$660,120					
Total combined (C&D):	\$733,120					
Phase III						
Structures						
shelter and restroom	\$450,000					
island overlook	\$30,000					
Natural Resources						
Phase III Plantings	\$52,040					
Other						
Kayak launch/lookout dock	\$8,000					
Children's area	\$20,000					
site furnishings	\$10,000					
Total: Phase III	\$570,040					
Contingency Costs (20%)	\$114,008					
Total budget:	\$684,048					
Total combined (C&D):	\$684,048					
TOTAL						
	City	District				
Capital Costs	\$1,710,140	\$335,560				
Contingency Costs (20%)	\$342,028	\$67,112				
Total budget:	\$2,052,168	\$402,672				
Total combined (C&D):	\$2,387,728					