

**Minnehaha Creek Watershed District**

**REQUEST FOR BOARD ACTION**

**MEETING DATE:** July 26, 2018

**TITLE:** Authorization to reimburse City of Orono for Casco Point Shoreline Improvement Project

**RESOLUTION NUMBER:** 18-075

**PREPARED BY:** Telly Mamayek, Director of Communications and Education

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

**TELEPHONE:** 952-641-4508

**REVIEWED BY:**  Administrator  Counsel  Program Mgr. (Name): \_\_\_\_\_  
 Board Committee  Engineer  Other

**WORKSHOP ACTION:**

- |   |   |
|---|---|
| <input checked="" 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 type="checkbox"/> Other (specify): _____                           |   |

**PURPOSE or ACTION REQUESTED:**

Authorize reimbursement for Casco Point shoreline improvement project in Orono.

**PROJECT/PROGRAM LOCATION:**

Casco Point, Orono  
PIDs: 2011723420001, 2011723420002, 2011723420003

**PROJECT TIMELINE:**

- 8/10/2010: CAC recommendation to approve funding
- 4/28/2011: MCWD Board of Managers approved funding
- 4/5/2013: Funding agreement fully executed
- 12/20/2017: City of Orono submitted request for reimbursement
- 4/5/2018: Funding agreement expired
- 6/6/2018: MCWD inspection

**PROJECT/PROGRAM COST:**

Fund name and number: Cost Share Fund 4005  
 Current Budget: \$861,187  
 Expenditures to date: \$210,881.07  
 Requested amount of funding: \$34,500  
 Is a budget amendment requested? No  
 Is additional staff requested? No

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

**PAST BOARD ACTION:**

4-28-2011: MCWD Board of Managers approved cost share agreement, funding 50% of eligible project costs not to exceed \$34,500.

**SUMMARY:**

The MCWD's Shoreline/Streambank Stabilization Grant Program served as a vehicle to cooperatively partner with local communities to address issues of mutual concern through cost-shared improvements to streams, ditches and shorelines.

This project, by the City of Orono, was intended to fix an erosion problem on private property along Carman's Bay. The erosion, caused by wave action, lack of native plants due to shading by invasive buckthorn and poor soils, had reduced the shoreline by 1,800 square feet and was threatening to expose the city's sanitary sewer line.

To address the problem, the city proposed a restoration to stabilize the shoreline and provide adequate protection of the sewer line. The project utilized a combination of rock, compost and native plantings. Rock toe boulders were used as structural support for the poor soils at the site and native plantings were installed in compost that was placed in the gaps among the rocks. A similar design was used the MCWD's shoreline demonstration project in Tonka Bay. The project also removed buckthorn and established a 15-20 foot native buffer.

The estimated cost of the project was \$69,000. The Citizens Advisory Committee recommended 50% funding of total eligible costs, not to exceed \$34,500, which the Board of Managers approved on April 28, 2011. The funding agreement, which was fully executed on April 3, 2013, stipulated the agreement expires five years after being fully executed or when reimbursement has been paid, whichever occurs first. The agreement also provided, incorrectly, that MCWD would reimburse up to \$34,500 (i.e., instead of "50 percent, not to exceed \$34,500.")

On December 22, 2017, MCWD received an email from the City of Orono providing notification of completion of the project and requesting reimbursement. Due to the prolonged winter conditions, MCWD staff was not able to inspect the project prior to the expiration of the cost share agreement on April 3, 2018.

MCWD staff's inspection of the project on June 6, 2018, determined the project was implemented as designed and is now well-vegetated and has minimal weed issues. Staff did note a moderate amount of garlic mustard and Canada thistle and a minimal amount of reed canary grass within the project area that could be managed by hand pulling and herbicide treatment. Staff also noted some beaver or muskrat activity and offered to provide the city with contact information for trappers licensed by the DNR.

The inspection report was provided to the City of Orono, which has affirmed its obligation to maintain the site in perpetuity according to terms and conditions of the declaration that was recorded on the subject property in accordance with the funding agreement. The necessary documentation of project completion and costs incurred has been submitted, showing total costs of \$68,597.58 – just shy of the projected cost of \$69,000.

**STAFF RECOMMENDATION:**

Given the effective achievement of project goals notwithstanding the nominal shortfall from agreement specifics. MCWD staff is recommending the Board of Managers approve the full reimbursement of \$34,500 for the Casco Point Shoreline Improvement Project.

**ATTACHMENTS:**

1. RBA 11-035 Authorization to execute a cost share agreement for Casco Point Shoreline Stabilization Project
2. 4-28-2011 MCWD Board of Managers meeting minutes
3. Casco Point Shoreline Improvement Project Funding Agreement, including recordation of easements and maintenance declaration
4. Documentation of project costs
5. Notice of project completion
6. 6-6-2018 MCWD inspection report and photos

**RESOLUTION**

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**RESOLUTION NUMBER:**    18-075

**TITLE:**        **Authorization to reimburse City of Orono for Casco Point Shoreline Improvement Project**

- WHEREAS, the Shoreline/Streambank Stabilization Grant Program was established by the Minnehaha Creek Watershed District to support local communities in their efforts to address erosion and bank degradation throughout the watershed; and
- WHEREAS, the City of Orono submitted an application for cost share funding for a project to stabilize 350 feet of eroded shoreline on private property on Casco Point in the City of Orono in 2010; and
- WHEREAS, the application was reviewed by the Citizen Advisory Committee (CAC) on August 26, 2010, and the CAC made a recommendation to the Board to provide funding for the project; and
- WHEREAS, the Board of Managers approved Resolution 11-035 on April 28, 2011, authorizing the District Administrator to execute an agreement with the City of Orono and the property owner to provide 50% funding for the project not to exceed \$34,500; and
- WHEREAS, the Casco Point Shoreline Improvement Project Funding Agreement was fully executed on April 3, 2013, providing for funding not to exceed \$34,500; and
- WHEREAS, the City of Orono notified the MCWD of project completion and requested reimbursement on December 20, 2017; and
- WHEREAS, MCWD staff completed an inspection of the project site on June 6, 2018 and found that the project had been constructed in a manner that has achieved the project goals and the site is now well vegetated with minimal weeds; and
- WHEREAS, the agreement has expired, but the City of Orono has provided the documentation of costs incurred required in the funding agreement for reimbursement totaling \$68,597.58;
- NOW, THEREFORE, BE IT RESOLVED, that the Minnehaha Creek Watershed District Board of Managers authorizes the reimbursement of \$34,500 to the City of Orono for the Casco Point Shoreline Improvement Project in accordance with the terms and conditions in the funding agreement.

Resolution Number 18-075 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

\_\_\_\_\_  
Secretary

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

**RESOLUTION**

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**RESOLUTION NUMBER:** 11 -035

**TITLE: Authorization to Execute a Cost Share Agreement for the Casco Point Shoreline Stabilization Project**

WHEREAS, the Shoreline/Streambank Stabilization Grant Program was established by the Minnehaha Creek Watershed District to support local communities in their efforts to address erosion and bank degradation throughout the watershed; and

WHEREAS, the City of Orono has submitted an application for cost share funding for a project to stabilize 350 feet of eroded shoreline on private property on Casco Point in the City of Orono and has applied for a District permit for the project; and

WHEREAS, the Minnehaha Creek Watershed District did include funds in its 2011 budget for this program; and

WHEREAS, the application was reviewed by the Citizen Advisory Committee (CAC) on August 26, 2010, and the CAC made a recommendation to the Board to provide funding for the project; and

WHEREAS, the Board expressed conceptual, non-binding approval to allocate \$34,500.00 from the Shoreline/Streambank Stabilization Grant fund for construction of the project on October 14, 2010; and

WHEREAS, MCWD staff has reviewed the proposal and the CAC's recommendation, finds the proposal to be consistent with the goals of the Shoreline/Streambank Stabilization Cost Share Program and recommends funding of 50% of the total project cost, not to exceed \$34,500, from the Shoreline/Streambank Stabilization Cost Share fund;

WHEREAS, at the April 14, 2011 board workshop Manager Miller moved, Manager Olson seconded, and the Board unanimously voted to forward the proposal to the April 28, 2011 board meeting consent agenda; and

WHEREAS the Minnehaha Creek Watershed District Board of Managers have considered both staff's and the CAC's recommendations;

NOW, THEREFORE, BE IT RESOLVED, that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to execute an agreement on advice of counsel with the City of Orono and the property owner which outlines the rights and responsibilities of each party and the terms of reimbursement of 50 percent of total project costs, not to exceed \$34,500, and conditions reimbursement on compliance with applicable District permit requirements.

Resolution Number 11-035 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_.  
Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: \_\_\_\_\_.

\_\_\_\_\_  
Secretary

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

**MINUTES OF THE REGULAR MEETING OF  
THE MINNEHAHA CREEK WATERSHED DISTRICT  
BOARD OF MANAGERS**

April 28, 2011

**CALL TO ORDER**

The regular meeting of the Minnehaha Creek Watershed District Board of Managers was called to order by Manager Jim Calkins at 6:55 p.m. at the District offices, 18202 Minnetonka Boulevard, Deephaven, Minnesota.

**MANAGERS PRESENT**

James Calkins, Richard Miller, Brian Shekleton, Lee Keeley, Pamela Blixt, Jeffrey Casale, William Olson.

**MANAGERS ABSENT**

None.

**OTHERS PRESENT**

Eric Evenson, District Administrator; Becky Houdek, District Planning Technician; James Wisker, District Planner/Program Coordinator; Michael Panzer, District Consulting Engineer; Michael Welch, Assistant District Counsel.

**MATTERS FROM THE FLOOR**

None.

**Approval of Agenda**

Mr. Evenson requested the addition of a proposed contribution to the Lake Minnetonka watercraft inspection program of \$7,500 as item 11.5. Mr. Evenson also noted several items of information added to the Board packet, namely an article on management of water resources in the context of development and information on the Minnesota Association of Watershed Districts (MAWD) summer tour. He pointed also to the revised minutes of the April 14 meeting, which included resolution statements for the matters approved at that meeting. Manager Calkins requested a review of the aquatic invasive species (AIS) pilot program in Minnewashta and Christmas lakes as item 12.3. *Manager Blixt moved, seconded by Manager Olson, to approve the amended as amended. Upon vote, the motion carried.*

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Minnehaha Creek Watershed District  
Board of Managers  
4-28-2011

Introduction

At Mr. Evenson's direction, Mr. Welch introduced Paige Stradley, a second-year law student at the University of Minnesota whom Mr. Welch is mentoring this semester. The Board welcomed Ms. Stradley.

CONSENT AGENDA

Manager Calkins requested the removal of item 7.3, the approval of the milfoil weevil study. *Manager Keeley moved, seconded by Manager Olson, to approve the consent agenda, consisting of:*

The petty cash, surety and checking registers, the last including checks number 30656 to 30745 for a total of \$424,963.11.

Approval of permit 11-059 – Cargill, 15615 McGinty Road, Minnetonka, approved on the condition that the applicant reimburse mailing cost and submit a receipt of recordation of a declaration for maintenance of wetland buffers and culverts.

Adoption of resolution 11-035 – Casco Point Shoreline Stabilization Grant Program:

*NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to execute an agreement on advice of counsel with the City of Orono and the property owner which outlines the rights and responsibilities of each party and the terms of reimbursement of 50 percent of total project costs, not to exceed \$34,500, and conditions reimbursement on compliance with applicable District permit requirements.*

Adoption of resolution 11-037 – Semi-Annual Payment of Property Taxes:

*NOW, THEREFORE, BE IT RESOLVED that for parcels in District ownership bearing semi-annual property taxes of \$5,000 or more, the Minnehaha Creek Watershed District Board of Managers hereby authorizes the District Administrator to make the first semi-annual payments for 2011 by the May 16, 2011 deadline, and the second payment by the October 17<sup>th</sup>, deadline. Accordingly, be it further resolved that the Board of Managers:*

- 1. authorizes two semi-annual payments of tax in the amount of \$12,314.58 in satisfaction of 2011 county property tax owed for the parcel at 415 Blake Rd. N., with the first payment to be made by May 16<sup>th</sup> and the second by October 17<sup>th</sup>, 2011;*
- 2. authorizes two semi-annual payments of tax in the amount of \$12,241.31 in satisfaction of 2011 county property tax owed for the parcel at 427 Blake Rd.*

Minutes of the Regular Meeting  
Minnehaha Creek Watershed District  
Board of Managers  
4-28-2011

- N., with the first payment to be made by May 16<sup>th</sup> and the second by October 17<sup>th</sup>, 2011; and*
- 3. authorizes two semi-annual payments of tax in the amount of \$9,749.16 in satisfaction of 2011 county property tax owed for the parcel at 7252 Excelsior Blvd., with the first payment to be made by May 16<sup>th</sup> and the second by October 17<sup>th</sup>, 2011.*

### **REGULAR AGENDA**

#### **Committee and Task Force Reports**

Mr. Evenson reported on the April 21 Personnel Committee meeting, at which committee members Shekleton, Keeley and Blixt discussed the new benefits program, as well as the education support position and the hydrodata position, both of which are now open.

*(Manager Miller arrived at this time, 7:05 p.m.)*

Manager Blixt reported that at the Citizens Advisory Committee (CAC) meeting the cost-share applications were reviewed and the process for review of such applications was discussed. She stated that she believes it is important for the Board to get the same materials the CAC gets on the cost-share applications. She also stated that the CAC needs to get more up to speed with the Board's goals for the cost-share program. The CAC also needs a subgroup to review cost-share applications prior to review by the full group because a large number of applications is anticipated.

Manager Calkins reported that the Hydrodata Committee met and discussed how to manage the summer sampling season in light of the departure of Udai Singh. Mr. Evenson noted that Wenck will be providing a proposal in May to recommend changes to ecosystem monitoring to be integrated into the budgeting process. At Manager Blixt's initiation, it was agreed that planning for hiring the new hydrodata staff person should begin in August, when the Board's direction for the budget will be known.

Manager Olson reported on the August 19, 2011, meeting of the Metro MAWD. He said the group reviewed the revisions to the metropolitan watershed rules, the phase II Clean Water Act permit, annual watershed organizations reports, which are due April 30, and the AIS legislation being advanced by the Department of Natural Resources (DNR). The managers discussed the need to timely submit the District's annual report to the Board of Water and Soil Resources (BWSR).

Manager Keeley stated that she attended the Ice Out/Loon In event recently.

Manager Casale reported on the Southwest Corridor Hennepin County Works Planning Task Force meeting, stating that the group discussed the receipt by the Southwest LRT project of the largest transportation grant ever in Minnesota. He noted that a council



FUNDING AGREEMENT  
CASCO POINT SHORELINE IMPROVEMENT PROJECT

Minnehaha Creek Watershed District, City of Orono, and  
the Estate of James W. Lupient and the  
James W. Lupient Irrevocable Trust for the Benefit of Richard Lupient

This Agreement is entered into by and among the Minnehaha Creek Watershed District, a special purpose district of the State of Minnesota with powers set forth at Minnesota Statutes Chapters 103B and 103D (District); the City of Orono, a statutory city and political subdivision of the State of Minnesota (City); and the Estate of James W. Lupient and the James W. Lupient Irrevocable Trust for the Benefit of Richard Lupient (Owners) (together, the Parties).

The Agreement is entered into to provide for District reimbursement to the City for costs incurred by the City to add shoreline improvements (the Project) on Casco Point in Orono, Minnesota, comprising three parcels, fee title to which is owned by Owners and identified by Hennepin County property identification numbers 20-117-23 42 0001, 20-117-23 42 0002 and 20-117-23 42 0003 (the Property).

The District has determined the amount of funding that it will contribute to the Project on the basis of the water-quality protection and improvement, public education and demonstration benefits that will be realized by completion of the Project, which is undertaken by the City to stabilize 350 feet of eroded shoreline approximately and establish 15 to 20 feet of upland native buffer to reduce phosphorus loading, erosion and sedimentation on adjacent to Lake Minnetonka, a public water and major recreational water body.

The District commits to reimburse the City in accordance with the terms and on satisfaction of conditions of this Agreement.

1. Shoreline Protection Project Design and Construction

Plans and specifications for the Project are attached as Exhibits A, B, C, D & E (the Designs) and incorporated herein. City will obtain and Owner will provide to City the access and construction easements necessary for the construction

and maintenance of Project by the City, and City will construct and complete the Project in accordance with the Designs. City will maintain a copy of the Designs and other records concerning the Project for six (6) years from the date City receives or completes certification of the Project as complete for the intended purposes. The District and the State Auditor may examine, audit or copy any such records upon reasonable notice to the City.

2. Funding

Within 30 days of certification of substantial completion of the Project as described and specified by the Designs, submission of an invoice or invoices for the Project by the City, and submission by the City of a receipt of recordation of the access and construction easements and maintenance declaration required by this Agreement and District rules, the District will reimburse the City \$34,500 of documented construction costs. The invoice(s) will be accompanied by documentation of costs incurred in the construction and implementation of the Project and such other documentation as the District reasonably may request. The District may independently inspect the Project to confirm material conformance to the plans and specifications. No reimbursement will be provided for partial construction of the Project.

3. Maintenance of the Project

City agrees to maintain the shoreline stabilization components of the Project and associated upland buffer in perpetuity in accordance with the terms and conditions of the Declaration, attached to and incorporated herein as Exhibit F, recorded as a condition of approval of District permit 11-048. If City fails to maintain the Project in accordance with Exhibit F, in addition to any other remedies, the District will have a right for five years from the date of certification of substantial completion of the Project to reimbursement by the City of all amounts paid by the District under this Agreement, unless the District determines that the City was prevented from maintaining the Project by causes beyond the City's control, other than failure to obtain necessary property rights (e.g., easements) for the Property.

4. Right of Access

Owner permits District representatives to enter the Property at reasonable times to inspect the work, ensure compliance with this Agreement and monitor or take

samples for the purposes of assessing the performance of the Project and compliance with the terms of this Agreement. Nothing in this Agreement will be construed to create a right of public access to the Property. The right of access created by this Agreement is independent of the District's authority to enter and inspect property under Minnesota Statutes section 103D.335, subdivision 14.

5. Acknowledgment and Publicity

City, at its cost and in consultation with District staff, will create informational and educational signage, associated supporting structures of a reasonable size at a location on the Property visible to the boating public. Any publicly distributed or displayed printed or electronic documents or other text display regarding the Project will acknowledge the funding provided by the District. City and Owner will cooperate with the District to seek publicity and media coverage of the Project and will cooperate with District education efforts related to the Project.

6. Independent Relationship

The District's role under this Agreement is solely to provide funds to support the use, maintenance, demonstration and dissemination of information about innovative approaches to shoreline restoration and stabilization. The District has not had and does not have any authority to select, or role in selecting, the design, means, method or manner of performing any work or the person or firm who performed the work. No employee, representative, contractor or consultant of any party to this Agreement has acted or may act in any respect as the agent or representative of any other party. Any right to review or approve a design, work in progress or constructed facility under this Agreement by the District or its agent, representative or consultant is solely for the District's own purpose of accounting for District funds expended. No party to this Agreement agrees to be responsible for the acts or omissions of another party, within the meaning of Minnesota Statutes section 471.59, subdivision 1a.

City and Owner each must identify, determine the applicability of and conform to legal requirements and constraints applicable to its activity under this Agreement, including any District permit requirements.

7. Remedies; Immunities

Only contractual remedies are available for a party's failure to fulfill the terms of this Agreement. Notwithstanding any other term of this Agreement, the District and the City waive no immunities in tort. This Agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party or Owner.

8. Indemnification

City will hold harmless, defend and indemnify the District, its managers, employees, agents and representatives against any and all claims, costs, damages and liabilities resulting from the City's use of the Property under this Agreement, except to the degree the liability is created by the District's willful or gross negligence.

9. Effective Date; Expiration; Survival of Obligations

The Agreement is effective when fully executed by the parties and expires five (5) years thereafter or when reimbursement has been paid under paragraph 2, whichever occurs first. All obligations that have come into being before expiration of this Agreement, specifically including but not limited to obligations under paragraphs 3, 5, 7 and 8 shall survive expiration.

10. Equal Opportunity

In constructing the Project, City will ensure that no person was or is excluded from full employment rights or participation in or the benefits of any program, service or activity on the ground of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status or national origin; no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise has been or will be subjected to discrimination.

11. Notices

Any written communication required under this Agreement will be addressed to another party as follows, except that a party may change its address for notice by so notifying the other Parties in writing:

To District:

Administrator  
Minnehaha Creek Watershed District  
18202 Minnetonka Boulevard  
Deephaven, MN 55391

To City:

Administrator  
City of Orono  
2750 Kelley Parkway  
Orono, MN 55356

To Owner:

Ralph Strangis  
Kaplan, Strangis, and Kaplan, P.A.  
90 South Seventh Street  
5500 Wells Fargo Center  
Minneapolis, MN 55402

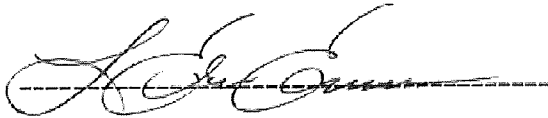
Barbara K. Lupient  
750 Pennsylvania Ave. South  
Minneapolis, MN 55426

## 12. Waiver

A party's failure to insist on the strict performance of any obligation under this Agreement, or to exercise any option, remedy or right herein, will not waive or relinquish that party's right in the future to insist on strict performance of that or any other obligation. A party's waiver of a breach of an obligation of this Agreement will not be construed as a waiver of any subsequent breach of that or any other obligation. A waiver must be in writing and signed by the party.

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

MINNEHAHA CREEK WATERSHED DISTRICT

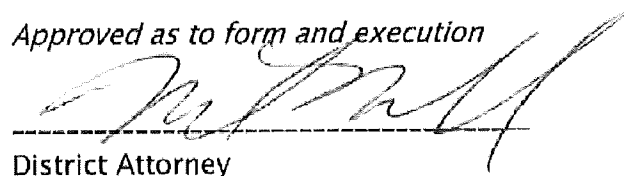


Date: 4-3-13

By: L. ERIC EVENSEN

Its: ADMINISTRATOR

*Approved as to form and execution*

  
District Attorney

CITY OF ORONO



Date: 2/27/12

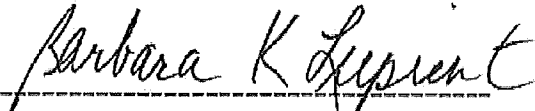
Lili Tod McMillan, Mayor




Date: 2/27/12

Linda S. Vee, City Clerk

OWNERS

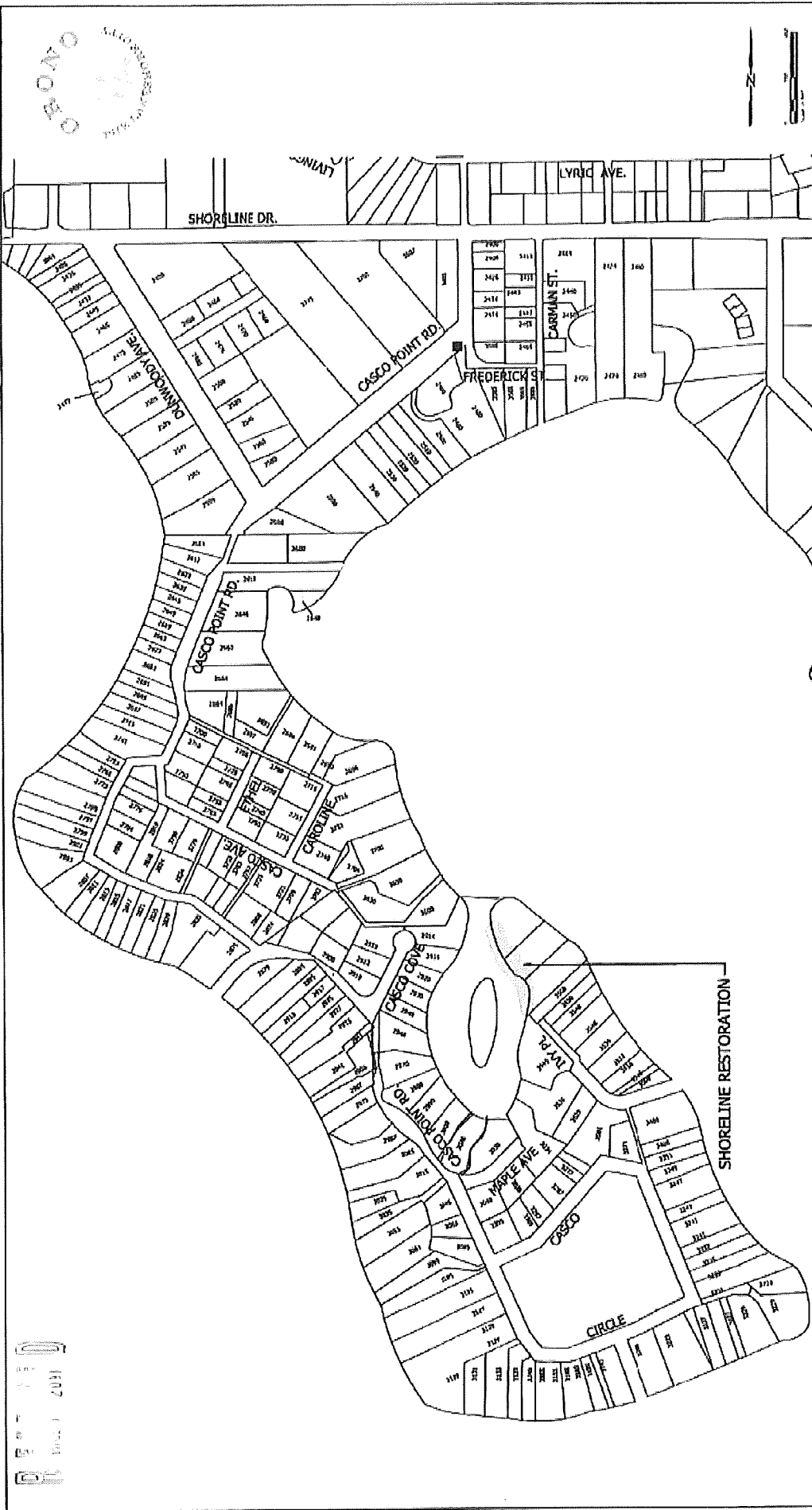
  
\_\_\_\_\_  
Barbara K. Lupient, Personal Representative  
Estate of James W. Lupient

Date: 4/23/2012

  
\_\_\_\_\_  
Ralph Strangis, for the Estate of James W. Lupient, as Personal Representative  
and for the James W. Lupient Irrevocable Trust for the Benefit of Richard Lupient,  
as Trustee.

Date: 4/12/12

# Exhibit A



SHORELINE RESTORATION

ORONDO, MINNESOTA

CARMAN BAY SHORELINE RESTORATION

000139060230\_FIGURE1.DWG

DATE: MARCH 10, 2011

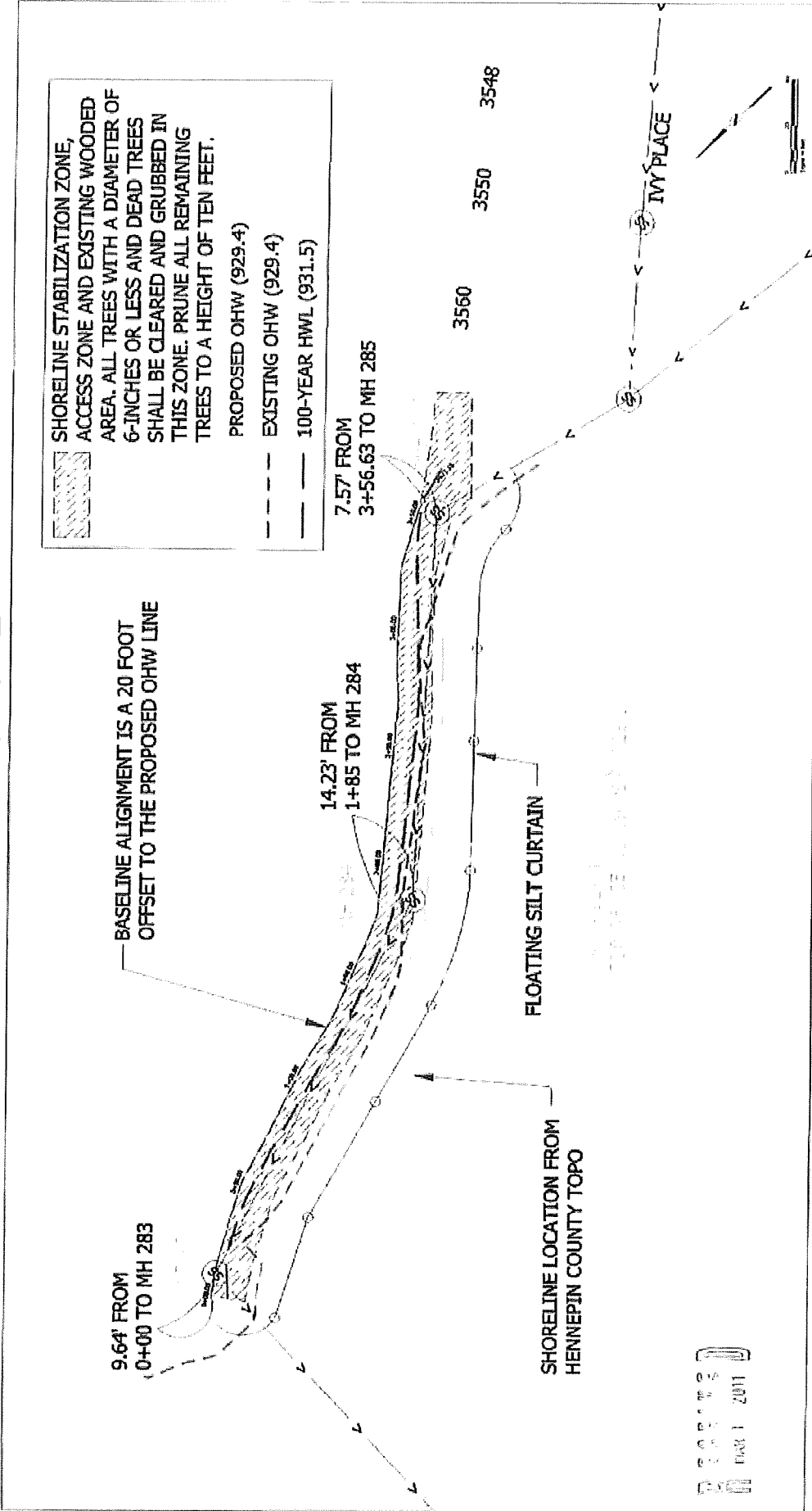
CONTRACT: 000139-10000-0



FIGURE 1



# Exhibit B



SHORELINE RESTORATION - PROPOSED PLAN

ORONO, MINNESOTA

CARMANS BAY SHORELINE RESTORATION

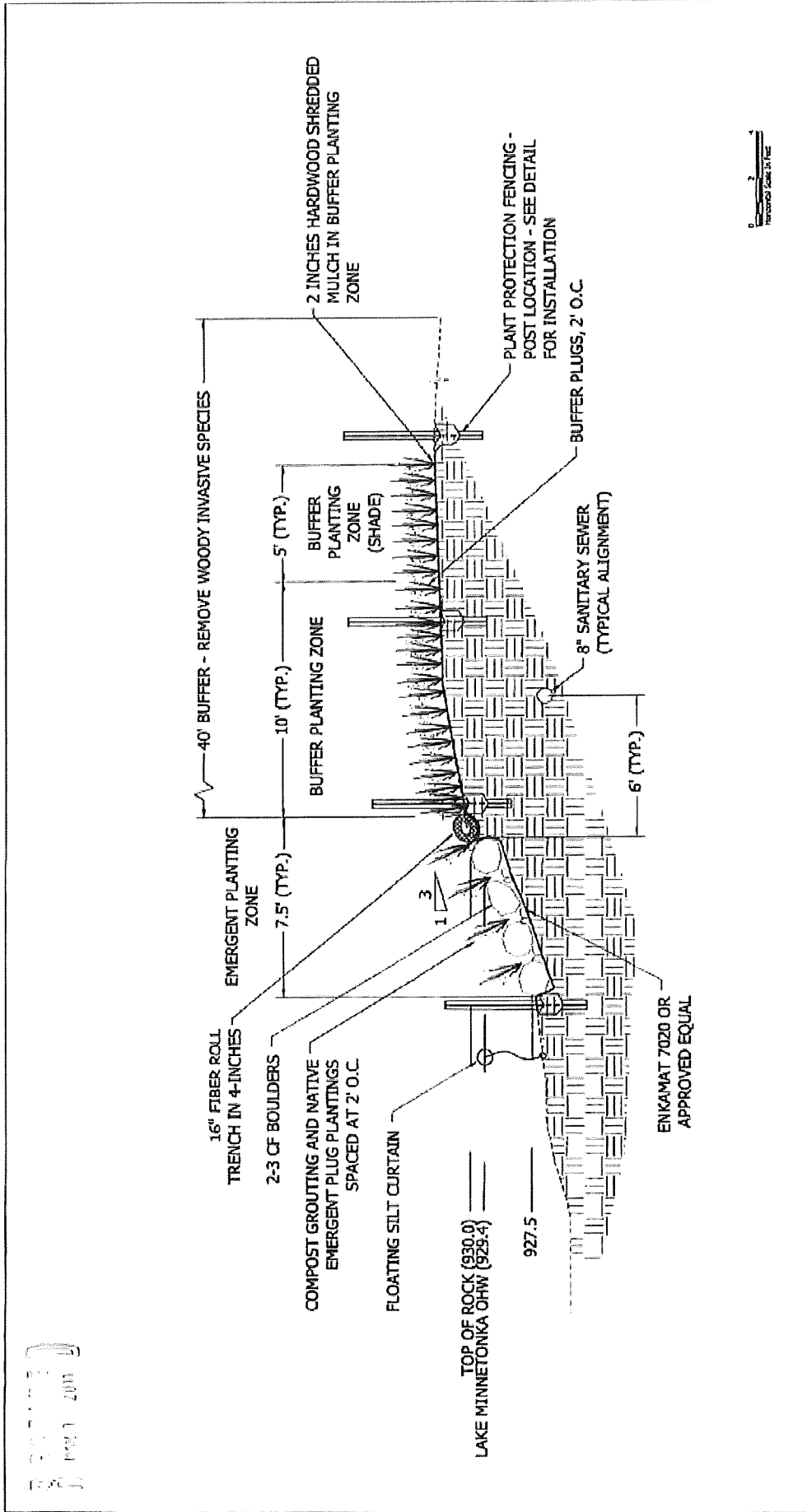
K:\1139\13909037\CADD\DWG\13909037CB02.DWG

DATE: FEBRUARY 2011      CORNAC: 020139-10000-0



FIGURE 3

# Exhibit C



SHORELINE RESTORATION - TYPICAL SECTION

ORONO, MINNESOTA  
 CARMANS BAY SHORELINE RESTORATION  
 K:\1394135\6627\CAD\DWG\11390937\C340.DWG

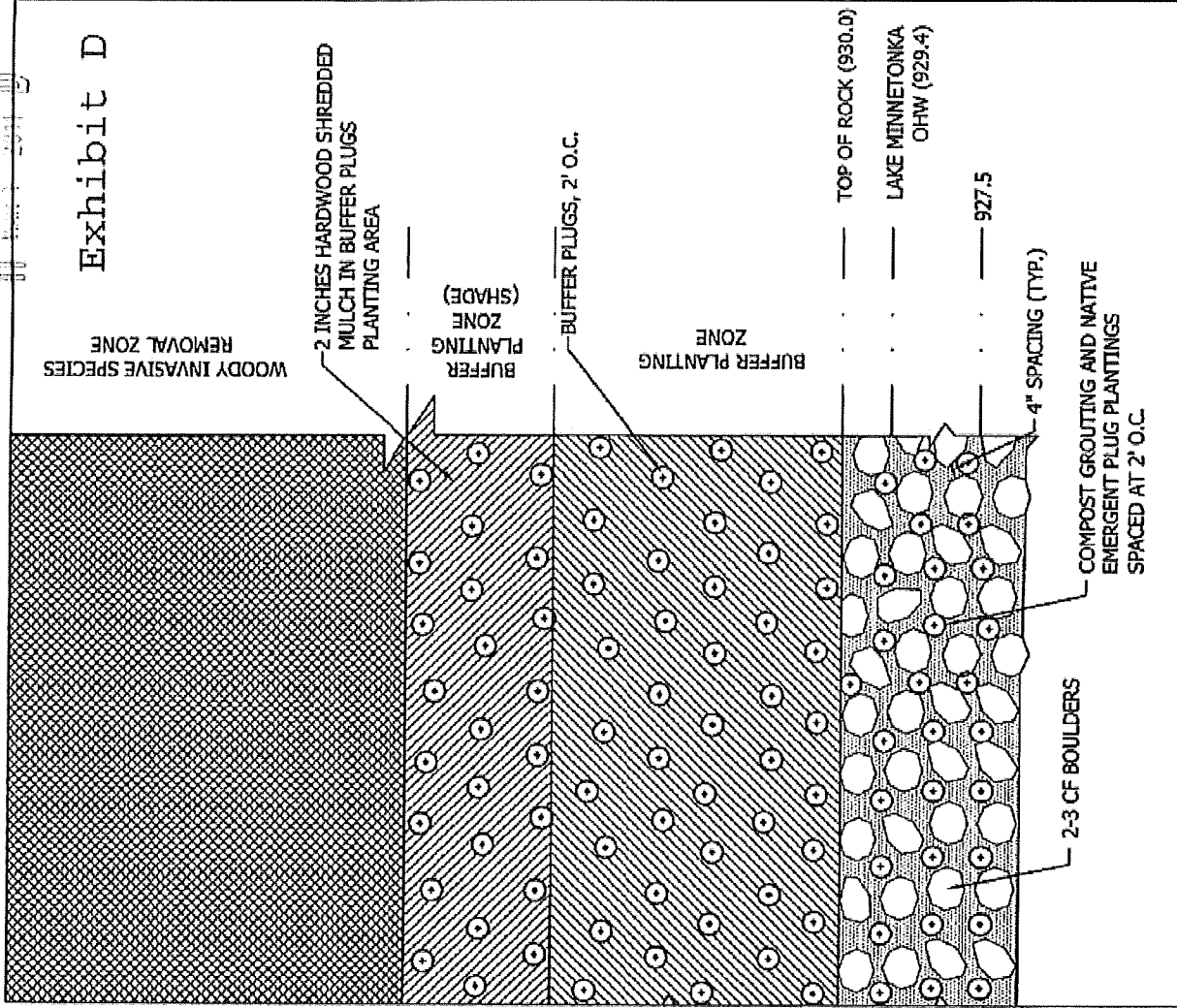
DATE: FEBRUARY 2011 CD:HC 000139-10000-0

FIGURE 4



11/13/11 11:39 AM

# Exhibit D



## SHORELINE RESTORATION - TYPICAL PLAN LAYOUT

ORONO, MINNESOTA

CARMANS BAY SHORELINE RESTORATION

K:\1139\113909037\CADD\DWG\113909037\FIGURE 5.DWG



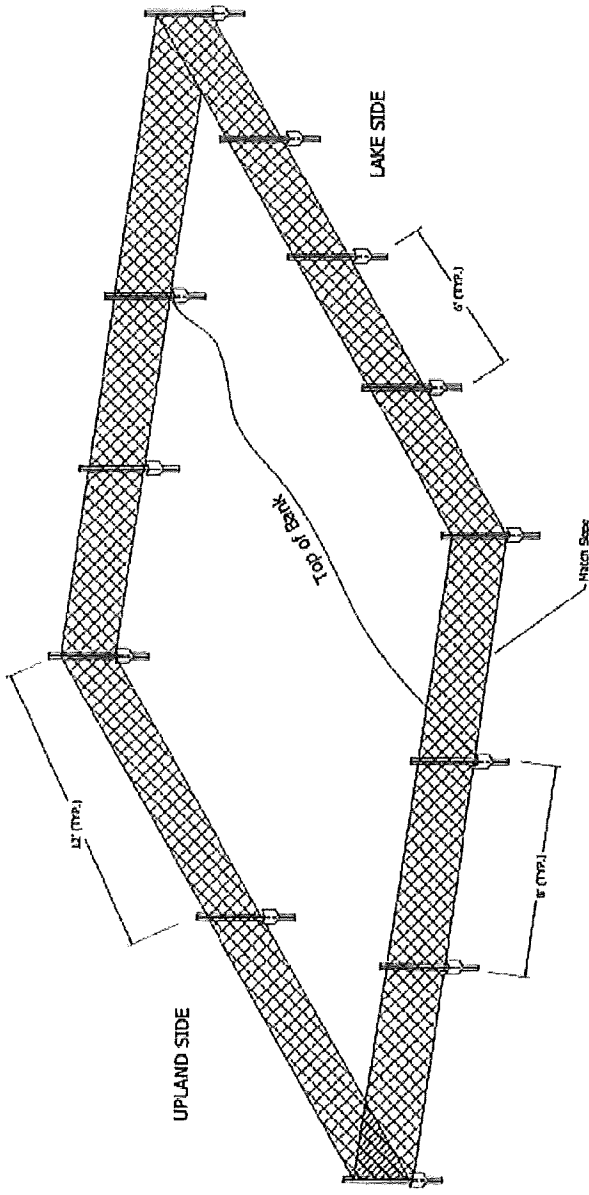
Bonestroo

FIGURE: 5

DATE: 3/9/11

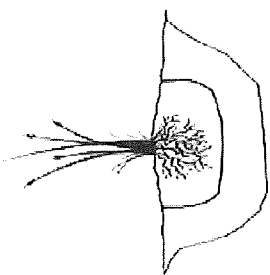
COMM: 000135-09037-0

# Exhibit E



## RODENT EXCLUSION FENCE

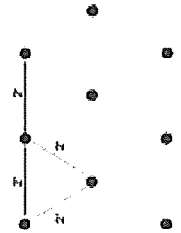
1. 6" STEEL "T" POST INSTALLED AT A MINIMUM 18" BELOW GRADE, PLACED PER PLAN
2. 3' HIGH TEMPORARY FENCE WITH ONE SQUARE INCH OR LESS OPENINGS SECURED TO POSTS INSTALLED WITH A MINIMUM OF THREE NON-PHOTODEGRADABLE NYLON CABLE TIES PER POST.
3. BOTTOM OF FENCE MUST MAKE CONTACT WITH GROUND SURFACE



### PLANTS & PLUGS

1. Remove seedling from container if container stock is used.
2. Prune roots from drying during acclimation process.
3. Clearly prune all damaged, diseased or designated roots and root ends.
4. Apply rodent protection when planting is completed.

### PERENNIAL PLANTING DETAIL



PLANTING DETAIL  
2' O.C.

## SHORELINE RESTORATION - DETAILS

ORONO, MINNESOTA  
CARMANS BAY SHORELINE RESTORATION  
K:\1139\113909037\06\DRAWING\GUL3909037 DETAILS.DWG

DATE: FEBRUARY 2011    CDM: 060139-1000B-0

FIGURE 6



①

10864168

### DECLARATION

**THIS DECLARATION** ("Declaration") is made this 23 day of April, 2012 by the Estate of James W. Lupient and the James W. Lupient Irrevocable Trust for the Benefit of Richard Lupient created by Trust Agreement dated February 1, 1991 (Declarant) and the City of Orono, a Minnesota municipal corporation (City) in favor of the Minnehaha Creek Watershed District (MCWD), a special purpose local unit of government with purposes and powers pursuant to Minnesota Statutes Chapters 103B and 103D.

### RECITALS

**WHEREAS**, Declarant owns real property within the City of Orono, Hennepin County, Minnesota, platted and legally described as:

Lots 1, 2 and 3, Block 1, CASCO POINT ADDITION, according to  
the recorded plat thereof, Hennepin County, Minnesota ✓

(the Property) and no one other than Declarant, has any right, title or interest in the Property; and

**WHEREAS**, the Property constitutes the entirety of the land to which MCWD Permit #11-048 applies; and

**WHEREAS**, Declarant desires to subject the Property to certain conditions and restrictions imposed by the MCWD as a condition to issuance of Permit #11-048 for the mutual benefit of the MCWD and the owners of the Property; and

**WHEREAS**, Declarant has granted the City an easement (the Easement) for the portions of the Property subject to this Declaration and referred to hereinafter as the shoreline stabilization area and legally described in Exhibit F attached hereto; and

**WHEREAS**, City agrees to perform all shoreline stabilization activities and maintenance as noted herein, and Declarant agrees to allow City to perform all such shoreline stabilization activities and maintenance.

**NOW, THEREFORE,** Declarant makes this Declaration and hereby declares that this Declaration shall constitute covenants to run with the Property in perpetuity, and further declares that the Property shall be owned, used, occupied and conveyed subject to the covenants, restrictions, easements, charges and liens set forth in this Declaration, all of which shall be binding on all persons owning or acquiring any right, title or interest in the Property, and their heirs, successors, personal representatives and assigns.

**1. Shoreline Stabilization.** The City shall perform all shoreline stabilization area activity as shown in Attachments A, B, C, D & E, attached hereto and incorporated herein, and the City will maintain the shoreline stabilization area as follows:

YEAR 1

- a. Watering will occur as needed to ensure new plantings receive 1-2" of water per week. When feasible, watering will occur early in the morning and avoided from 12:00 pm to 5:00 pm.
- b. The project area will be inspected for weeds at least once every two weeks during the growing season. Weeds will be hand pulled or spot treated with aquatic formulations of herbicide according to instructions on the herbicide label.
- c. Mulch will be added to the project area as needed throughout the growing season to prevent soil erosion, weed growth, and to hold in soil moisture.
- d. Wave barriers and fencing to keep out predators (if applicable) will be maintained as necessary as plants become established.
- e. The City will submit to the MCWD a brief written report that describes the maintenance activities performed, including dates, locations of inspection, maintenance activities performed; notes on successful species, weed problems, disturbances issues (animal or human) and management needs; and photographs of the project area.

YEAR 2

- a. Watering will occur as needed to ensure plantings receive 1" of water per week. When feasible, watering will occur early in the morning and avoided from 12:00 pm to 5:00 pm.
- b. The project area will be inspected for weeds at least once every three weeks during the growing season. Weeds will be hand pulled or spot treated with aquatic formulations of herbicide according to instructions on the herbicide label.
- c. Mulch will be added to the project area as needed throughout the growing season to prevent soil erosion, weed growth, and to hold in soil moisture.

- d. Upland and shoreland plantings will be replaced and seeded areas will be reseeded as necessary in the spring and fall.
- e. Any wave barriers will be removed within 2 years of the installation.
- f. The City will submit to the MCWD a brief written report that describes the maintenance activities performed, including dates, locations of inspection, maintenance activities performed; notes on successful species, weed problems, disturbances issues (animal or human) and management needs; and photographs of the project area.

### YEAR 3

- a. The project area will be inspected for weeds at least once a month during the growing season. Weeds will be hand pulled or spot treated with aquatic formulations of herbicide according to instructions on the herbicide label.
- b. Mulch will be added to the project area as needed throughout the growing season to prevent soil erosion, weed growth, and to hold in soil moisture.
- c. Upland and shoreland plantings will be replaced and seeded areas will be reseeded as necessary in the spring and fall.
- d. The City will submit to the MCWD a brief written report that describes the maintenance activities performed, including dates, locations of inspection, maintenance activities performed; notes on successful species, weed problems, disturbances issues (animal or human) and management needs; and photographs of the project area.

### ONGOING

- a. The project area will be inspected at least annually and any erosion or structural problems observed will be corrected within 30 days of inspection to establish and maintain a naturalized, ecologically healthy shoreline that is structurally stable and resistant to erosion.
- b. Removal of invasive species will occur on an ongoing basis. Weeds will be hand pulled or spot treated with aquatic formulations of herbicide according to instructions on the herbicide label.
- c. All planted and seeded areas will be maintained in perpetuity free from mowing or other vegetative disturbance, except as specified herein, fertilizer application, yard or other waste disposal, and the placement of structures or any other alteration that impedes the function of the shoreline in protecting water quality, shading the riparian edge, moderating flow into any adjacent wetland or waterbody, or providing wildlife habitat.





STATE OF MINNESOTA )  
 )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 12 day of April, 2012, by Ralph Strangis, as personal representative of the Estate of James W. Lupient, on behalf of the Estate, and as Trustee of the James W. Lupient Irrevocable Trust for the Benefit of Richard Lupient, on behalf of the Trust.



Julie A. Daleiden  
Notary Public

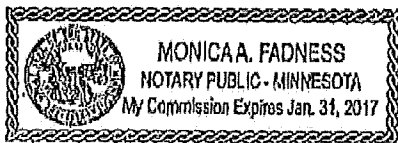
CITY OF ORONO

By: Lili Tod McMillan  
Lili Tod McMillan, Mayor

By: Jessica Loftus  
Jessica Loftus, City Administrator

STATE OF MINNESOTA )  
 )ss  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 27 day of February, 2012, by Lili Tod McMillan and Jessica Loftus, respectively the Mayor and City Administrator of the City of Orono, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council, Mortgage.



Monica A. Fadness  
Notary Public

This Instrument Was Drafted By:  
Minnehaha Creek Watershed District  
18202 Minnetonka Blvd  
Deephaven, MN 55391

**EXHIBIT "F"**  
**TO**  
**DECLARATION**

Public Drainage and Shoreline Stabilization Easement Area Description:

A permanent easement for public drainage and shoreline stabilization purposes over, under, and across those parts of Lots 1 thru 3, Block 1, CASCO POINT ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota, described as follows:

Commencing at the North quarter corner of Section 20, Township 117, Range 23, said Hennepin County; thence North 89 degrees 45 minutes 01 seconds East, assumed bearing along the north line of the Northeast Quarter of said Section 20, a distance of 147.51 feet; thence South 00 degrees 14 minutes 50 seconds East, 3031.61 feet to the point of beginning of the easement to be described; thence North 89 degrees 31 minutes 13 seconds West, 33.91 feet; thence South 35 degrees 00 minutes 39 seconds East, 48.79 feet; thence South 14 degrees 55 minutes 16 seconds East, 68.04 feet; thence South 23 degrees 24 minutes 27 seconds East, 66.56 feet; thence South 40 degrees 37 minutes 43 seconds East, 27.18 feet; thence South 38 degrees 43 minutes 33 seconds East, 45.85 feet; thence South 43 degrees 18 minutes 36 seconds East, 61.26 feet; thence South 35 degrees 37 minutes 45 seconds East, 25.51 feet; thence South 08 degrees 57 minutes 09 seconds East, 15.28 feet; thence North 89 degrees 28 minutes 50 seconds East, 25.16 feet; thence North 07 degrees 50 minutes 37 seconds West, 19.39 feet; thence North 30 degrees 09 minutes 20 seconds West, 28.35 feet; thence North 44 degrees 48 minutes 40 seconds West, 54.19 feet; thence North 40 degrees 05 minutes 33 seconds West, 88.89 feet; thence North 22 degrees 08 minutes 13 seconds West, 49.44 feet; thence North 14 degrees 34 minutes 50 seconds West, 30.09 feet; thence North 17 degrees 38 minutes 10 seconds West, 47.65 feet; thence North 25 degrees 58 minutes 43 seconds West, 36.23 feet to the point of beginning.

Said permanent easement contains  $\pm 8,499$  square feet ( $\pm 0.20$  acres).

CTF# 1086468

Refile  
\$200



Doc No T5006928

Certified, filed and/or recorded on  
10/26/12 12:08 PM

Office of the Registrar of Titles  
Hennepin County, Minnesota

Rachel Smith, Acting Registrar of Titles  
Mark V. Chapin, County Auditor and Treasurer

Deputy 21

Pkg ID 874391C

**Doc Name: Letters**

Document Recording Fee \$46.00

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**Document Total** \$46.00

**Existing Certs**

**New Certs**

525297

① 525297

Minn. Stat. 524.3-601

STATE OF MINNESOTA DISTRICT COURT  
PROBATE DIVISION  
COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Court File No. 27-PA-PR-11-1029

Estate of LETTERS  
 TESTAMENTARY  
 OF GENERAL ADMINISTRATION

James W. Lupient also known as James Wallace Lupient  
Decedent

1. The Decedent died on August 14, 2011
2. Barbara Lupient and Ralph Strangis have been appointed Co-Personal Representatives of Decedent's Estate in  an unsupervised  ~~supervised~~ administration and are now qualified to act as Co-Personal Representatives of the Estate and has authority to administer the Estate according to law.



*Julie Peterson* 9/12/2011  
Judge/Registrar Date  
Julie Peterson

State of Minnesota, County of Hennepin  
Certified to be a true and correct copy of the  
original on file and of record in my office and  
further certify said letters are in full force and  
effect.

OCT 26 2011

Testamentary  of General Administration Letters

Dist. Ct. Administrator  
By *[Signature]* Deputy

CITY OF CROWD  
CRYSTAL BAY, MN 55323  
INVOICE  
PR #7 & FINAL

AMOUNT

105149

SUNRAM CONSTRUCTION INC.  
COMMENTS

final pr#7 retainage/carmen bay/shoreline

108136  
09/11/2017

**108151**  
INVOICE TOTAL

651-20800

2,195.15

BUSINESS FORMS & SYSTEMS • 1-800-383-1696



TOTAL AMOUNT

2,195.15



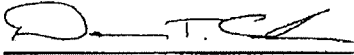
Owner: City of Orono, P. O. Box 66, Crystal Bay, MN 55323	Date: June 2, 2017
For Period: 11/6/2015 to 6/2/2017	Request No 7 & FINAL
Contractor: Sunram Construction, Inc., 20010 - 75th Ave. N., Corcoran, MN 55340	

**CONTRACTOR'S REQUEST FOR PAYMENT**  
**CARMEN BAY SHORELINE RECONSTRUCTION**  
**STANTEC PROJECT NO. 193800277**

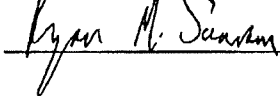
**SUMMARY**

1	Original Contract Amount		\$	<u>76,357.00</u>
2	Change Order - Addition	\$	<u>0.00</u>	
3	Change Order - Deduction	\$	<u>0.00</u>	
4	Revised Contract Amount	\$	<u>76,357.00</u>	
5	Value Completed to Date	\$	<u>68,597.58</u>	
6	Material on Hand	\$	<u>0.00</u>	
7	Amount Earned	\$	<u>68,597.58</u>	
8	Less Retainage 0%	\$	<u>0.00</u>	
9	Subtotal	\$	<u>68,597.58</u>	
10	Less Amount Paid Previously	\$	<u>66,402.43</u>	
11	Liquidated damages -	\$	<u>0.00</u>	
12	AMOUNT DUE THIS REQUEST FOR PAYMENT NO. <u>7 &amp; FINAL</u>	\$	<u>2,195.15</u>	

Recommended for Approval by:  
**STANTEC**

  
 \_\_\_\_\_

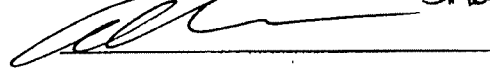
Approved by Contractor:  
**SUNRAM CONSTRUCTION, INC.**

  
 \_\_\_\_\_

651-20600

Final PR #7 Retainage  
 Carmen Bay  
 Shoreline

Approved by Owner:  
**CITY OF ORONO**

  
 \_\_\_\_\_

DR. PUBLIC WORKS

Specified Contract Completion Date:

\_\_\_\_\_

Date:

11 SEP 17

**PROJECT PAYMENT STATUS**

OWNER CITY OF ORONO  
STANTEC PROJECT NO. 193800277  
CONTRACTOR SUNRAM CONSTRUCTION, INC.

**CHANGE ORDERS**

No.	Date	Description	Amount
<b>Total Change Orders</b>			

**PAYMENT SUMMARY**

No.	From	To	Payment	Retainage	Completed
1	06/01/2012	07/03/2012	40,172.31	2,114.33	42,286.64
2	07/04/2012	08/02/2012	9,752.44	2,627.62	52,552.37
3	08/03/2012	10/03/2012	10,710.54	3,191.33	63,826.62
4	10/04/2012	07/19/2013	1,760.54	3,283.99	65,679.82
5	07/20/2013	09/29/2014	1,175.87	3,345.88	66,917.58
6	09/30/2014	11/05/2015	2,830.73	1,355.15	67,757.58
7	11/06/2015	06/02/2017	2,195.15		68,597.58

**Material on Hand**

Total Payment to Date	\$68,597.58	Original Contract	\$76,357.00
Retainage Pay No. 7 & FINAL		Change Orders	
Total Amount Earned	\$68,597.58	Revised Contract	\$76,357.00

No.	Item	Unit	Contract Quantity	Unit Price	Current Quantity	Quantity to Date	Amount to Date
<b>BASE BID:</b>							
1	MOBILIZATION	LS	1	3650.49		1	\$3,650.49
2	TEMPORARY WOOD/MULCH CONSTRUCTION ENTRANCE	EA	1	700.00		1	\$700.00
3	REMOVE EXISTING TREE, DIA. 6 IN. OR GREATER	EA	5	400.00		7	\$2,800.00
4	CLEAR AND GRUB, DIA. LESS THAN 6 IN.	LS	1	1200.00		1	\$1,200.00
5	WOODY INVASIVE SPECIES REMOVAL	LS	1	1500.00		1	\$1,500.00
6	COMMON EXCAVATION (EV)	CY	100	25.75		20	\$515.00
7	COMMON BORROW (LV)	CY	120	26.20		273	\$7,152.60
8	IMPROVED PIPE FOUNDATION	CY	40	56.40		20	\$1,128.00
9	SHORELINE GRADING/SHAPING	LS	1	3450.00		1	\$3,450.00
10	GEOTEXTILE STABILIZATION MAT	SY	625	5.90		403	\$2,377.70
11	FIELD STONE BOULDERS, 2-3 CF	CY	100	104.00		100	\$10,400.00
12	COMPOST GROUTING	CY	150	49.50		100	\$4,950.00
13	DECIDUOUS TREE 2" CAL. B&B	EA	5	410.00		5	\$2,050.00
14	PLANTINGS	EA	2458	4.52		2458	\$11,110.16
15	HARDWOOD SHREDDED MULCH	CY	140	58.00		85	\$4,930.00
16	VEGETATIVE MAINTENANCE, 3 YR	EA	3	840.00	1	3	\$2,520.00
17	RODENT PROTECTION FENCING	LF	770	2.63		761	\$2,001.43
18	FIBER LOG	LF	375	5.50		363	\$1,996.50
19	FILTER LOG BARRIER	LF	375	3.15		0	\$0.00
20	SILT FENCE, HEAVY DUTY	LF	50	4.00		0	\$0.00
21	TREE PROTECTION FENCE	LF	150	2.10		0	\$0.00
22	WOODLAND EDGE SEED MIX W/STRAW MULCH, TYPE I	SY	1110	1.00		860	\$860.00
23	MNDOT 270 SEED MIXTURE W/ CATEGORY 3 BLANKET AND FERTILIZER	SY	150	2.10		77	\$161.70
24	FLOTATION SILT CURTAIN, STILL WATER	LF	420	8.00		393	\$3,144.00
	TOTAL BASE BID:						\$68,597.58

TOTAL BASE BID:  
TOTAL WORK COMPLETED TO DATE

\$68,597.58  
\$68,597.58





## Contractor Affidavit Submitted

Thank you, your Contractor Affidavit has been approved.

### Confirmation Summary

Confirmation Number: 1-012-120-384  
Submitted Date and Time: 9-Jun-2017 9:10:08 AM  
Legal Name: SUNRAM CONSTRUCTION INC  
Federal Employer ID: 41-1728948  
User Who Submitted: Sunram  
Type of Request Submitted: Contractor Affidavit

### Affidavit Summary

Affidavit Number: 2122227712  
Minnesota ID: 1870470  
Project Owner: CITY OF ORONO  
Project Number: 193800277  
Project Begin Date: 15-May-2012  
Project End Date: 02-Jun-2017  
Project Location: CARMEN BAY SHORELINE - ORONO  
Project Amount: \$76,357.00

### Subcontractor Summary

Name	ID	Affidavit Number
NEATON BROTHERS EROSION LLC	4990862	1745788928

### Important Messages

A copy of this page must be provided to the contractor or government agency that hired you.

### Contact Us

If you need further assistance, contact our Withholding Tax Division at 651-282-9999, (toll-free) 800-657-3594, or (email) [withholding.tax@state.mn.us](mailto:withholding.tax@state.mn.us). Business hours are 8:00 a.m. - 4:30 p.m. Monday - Friday.

Please [print this page](#) for your records using the print or save functionality built into your browser.



## Contractor Affidavit Submitted

Thank you, your Contractor Affidavit has been approved.

### Confirmation Summary

Confirmation Number: 1-022-737-216  
Submitted Date and Time: 8-Jun-2017 2:31:06 PM  
Legal Name: NEATON BROTHERS EROSION LLC  
Federal Employer ID: 41-1976698  
User Who Submitted: NeatonBro  
Type of Request Submitted: Contractor Affidavit

### Affidavit Summary

Affidavit Number: 1745708928  
Minnesota ID: 4990862  
Project Owner: CITY OF ORONO  
Project Number: CARMEN BAYS SHORELINE  
Project Begin Date: 01-Jul-2012  
Project End Date: 01-Apr-2017  
Project Location: ORONO  
Project Amount: \$23,573.65  
Subcontractors: No Subcontractors

### Important Messages

A copy of this page must be provided to the contractor or government agency that hired you.

### Contact Us

If you need further assistance, contact our Withholding Tax Division at 651-282-9999, (toll-free) 800-657-3594, or (email) [withholding.tax@state.mn.us](mailto:withholding.tax@state.mn.us). Business hours are 8:00 a.m. - 4:30 p.m. Monday - Friday.

Please [print this page](#) for your records using the print or save functionality built into your browser.

RECEIPT AND WAIVER OF MECHANICS' LIEN RIGHTS

- N.D. - It is important that the following directions be closely followed as otherwise the receipt WILL NOT BE ACCEPTED:
1. This is a LEGAL INSTRUMENT and must be executed accordingly by officers of corporation and by partners in co-partnerships.
  2. It is important that ALL the blanks be completed and the AMOUNT PAID BE SHOWN.
  3. If payment is not in full to date, so state, SHOW UNPAID RETAINAGE OF \$2,357.36
  4. A receipt similar to this or legal waiver of lien rights will be required for all plumbing, heating and plastering materials, etc.
  5. NO ERASURES OR ALTERATIONS MUST BE MADE.

6/5/2017 (Date)

The undersigned acknowledges having received payment of TWENTY THREE THOUSAND

FIVE HUNDRED SEVENTY SIX AND 65/100 Dollars, \$23,573.65 (Amount Paid)

From SUNRAM CONSTRUCTION INC in FULL payment of (Name of Payor)

all PLANTINGS, MULCH, FENCING, FILTER LOGS (Kind of Material or Labor)

by the undersigned delivered or furnished to (or performed at)

CARMAN BAY SHORELINE RESTORATION PROJECT - CITY OF ORONO (Street Address of Legal Description)

and for value received hereby waives all rights which may have been acquired by the undersigned to file mechanics' lien against said premises for labor, skill or material furnished to said premises prior to the date hereof but payment has been made by check and this lien waiver is not valid until said check has cleared all banks.

Neaton Brothers Erosion (Company Name)

(Signature)

Chris Neaton - Owner (Printed Name and Title)

P.O. Box 879 (Address)

Watertown, MN 55388 (City/State/Zip Code)

PLEASE SIGN & RETURN TO:  
SUNRAM CONSTRUCTION INC  
20010 75TH AVE NORTH  
CORCORAN MN 55340

OFFICE (763)420-2140  
FAX (763)494-3951



Stantec Consulting Services Inc.  
2335 Highway 36 West  
St. Paul MN 55113  
Tel: (651) 636-4600  
Fax: (651) 636-1311

June 22, 2017

Mike Gaffron  
Senior Planner  
City of Orono  
2750 Kelley Parkway  
Orono, MN 55356

Re: Carman Bay Shoreline Reconstruction  
City of Orono  
Stantec Project No. 193800277

Dear Mr. Gaffron,

Sunram Construction has completed the Carman Bay Shoreline Reconstruction project. Final items in 2017 included weed control and removal of the rodent and waterfowl fencing. The project was completed according to the plans and specifications and we recommend that project can be closed out.

Should you have any questions regarding this project or require additional information for watershed project reimbursement, please feel free to call me at 651-604-4894.

Sincerely,  
STANTEC

A handwritten signature in black ink, appearing to read "D. T. Amundsen".

Darren T. Amundsen

Enclosure

cc: Ron Olson, City of Orono

Casco Point Shoreline Improvement Project  
MCWD Inspection 6-6-2018

MCWD staff performed an inspection of the Casco Point Shoreline Restoration on June 6 to determine its condition and readiness for reimbursement through MCWD Cost Share funding.

Overall the site is well-vegetated and has minimal weed issues. There are a few items that the City may want to address within the shoreline restoration to ensure its long-term function.

Staff noted a moderate amount of garlic mustard and Canada thistle within the shoreline restoration that should be managed and a minimal amount of reed canary grass that could be managed at the same time. The second-year garlic mustard plants have already dropped their seed this year. First-year plants (those with basal leaves only) could be spot treated with herbicide until the fall. The Canada thistle and reed canary grass should be mowed with a weed whip soon to prevent seed dispersal and spot treated with herbicide in the late summer or early fall. The herbicide should be labeled safe for aquatic use because of the site's proximity to open water.

We also noted two small trees that had been chewed down by beavers and some paths to the water being used by beaver or muskrat. If tree loss or damming in the area becomes an issue, we could provide you with some contacts of people who are licensed by the DNR for trapping.

**Laura Domyancich** || **Planner – Project Manager** || [www.minnehahacreek.org](http://www.minnehahacreek.org)

Minnehaha Creek Watershed District || 15320 Minnetonka Blvd, Minnetonka, MN 55345 || 952.641.4582



