



## MEMORANDUM

**To:** MCWD Board of Managers  
**From:** Anna Brown  
**Date:** July 23, 2018  
**Re:** Wassermann West Project Update

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### **Purpose:**

At the July 26, 2018 Policy & Planning Committee (PPC) staff will provide an update on Wassermann West Park design and implementation planning in Victoria, MN.

### **Background:**

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

In February of 2017, the District entered into a purchase agreement for the property (herein referred to as "Wassermann West"). Subsequently, in May of 2017, the City and District entered into a cooperative agreement to establish coordinated planning and implementation of a park and

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natural resource improvement on site, as well as establish a collaborative ownership structure. The cooperative agreement established the following terms:

- The City would acquire fee title of the property from the District through a promissory note with a five-year payout, with the District retaining easement over the natural resource areas.
- The City and District would collaboratively develop a preliminary design for a park and restoration project. The preliminary design would include:
  - A park layout with defined areas of hard surface, improved areas, and natural/restored areas
  - A project cost estimate
  - A construction phasing and funding plan
- Following the mutual acceptance of the preliminary design, the City would lead final design and construction of the park improvements, and the District would lead the same for natural resource improvements.

In November of 2017, the Board and Council approved a design scope for completion of the preliminary plans. Since then, the City and District have been working through a design process which has included two public open houses, coordination with the City's Park and Recreation Committee, and environmental investigation on site. At this stage, the requirements of the preliminary plans are nearing completion and the City and District are discussing the next phases of design and implementation planning.

**Next Steps:**

At the July 26 PPC meeting, staff will provide a briefing on the status of the preliminary plans, and discuss work underway to develop a funding and implementation approach with the City.

Following the July 26 PPC meeting, the District is scheduled to participate in a joint meeting with the City Park and Recreation Committee, The Finance Committee and City Council to discuss project implementation and financing on August 13, 2018. Following that discussion, both the District Board and City Council will review preliminary plans to advance towards closing on the property.

If there are questions in advance of the meeting, please contact: Anna Brown at 952-641-4522 or [abrown@minnehahacreek.org](mailto:abrown@minnehahacreek.org)

Attachment 1: Cooperative Agreement

Attachment 2: Preliminary Design

Attachment 3: Project Cost Estimate

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**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

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

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

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

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

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

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

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

**CITY OF VICTORIA**

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

Date:

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

Date:

***Approved for form and execution:***

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

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

Date:

**ATTACHMENT A  
CONCEPT FOR PUBLIC PARK**



**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 1<sup>st</sup>, 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*



**CONCEPT PLAN**

	City Cost	District Cost	Units			
			cost/unit	unit	Length	width
<b>Design (Proposed)</b>						
Preliminary design (ETD)	\$21,000	\$21,000				
Phase I-III, except Architect Architecture (Structures)	\$75,000 100%	\$75,000 0%				
<b>Total budget:</b>	TBD	\$91,000				
<b>Total combined (C&amp;D):</b>	\$180,000	not yet including Architecture				
<b>Phase I</b>						
<b>Trail</b>						
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	
<b>Parking and Entry</b>						
Entry Road and parking	\$130,000					
Parking entry sign	\$8,000					
stormwater	\$65,000					
<b>Natural Resources</b>						
Planting	\$94,000	\$15,000				
Alum Treatment		\$90,000				
Stream Stabilization		\$20,000				
Wetland Restoration		\$137,560				
<b>Other</b>						
Grading	\$50,000					
site furnishings	\$15,000					
Utilities	\$150,000					
<b>Phase I total</b>	<b>\$590,000</b>	<b>\$262,560</b>				
Contingency Costs (20%)	\$118,000					
<b>Total budget:</b>	<b>\$708,000</b>					
<b>Total combined (C&amp;D):</b>	<b>\$970,560</b>					
<b>Phase II</b>						
<b>Boardwalk</b>						
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
<b>Trail</b>						
upland trail	\$10,500		\$30	linear ft	350	
<b>Natural Resources</b>						
Planting		\$73,000				
<b>Other</b>						
fishing pier	\$50,000					
site furnishings	\$15,000					
<b>Total Phase II</b>	<b>\$550,100</b>	<b>\$73,000</b>				
Contingency Costs (20%)	\$110,020					
<b>Total budget:</b>	<b>\$660,120</b>					
<b>Total combined (C&amp;D):</b>	<b>\$733,120</b>					
<b>Phase III</b>						
<b>Structures</b>						
shelter and restroom	\$450,000					
island overlook	\$30,000					
<b>Natural Resources</b>						
Phase III Plantings	\$52,040					
<b>Other</b>						
Kayak launch/lookout dock	\$8,000					
Children's area	\$20,000					
site furnishings	\$10,000					
<b>Total: Phase III</b>	<b>\$570,040</b>					
Contingency Costs (20%)	\$114,008					
<b>Total budget:</b>	<b>\$684,048</b>					
<b>Total combined (C&amp;D):</b>	<b>\$684,048</b>					
<b>TOTAL</b>						
	City	District				
Capital Costs	\$1,710,140	\$335,560				
Contingency Costs (20%)	\$342,028					
<b>Total budget:</b>	<b>\$2,052,168</b>					
<b>Total combined (C&amp;D):</b>	<b>\$2,387,728</b>					