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**Title:** Authorization to Execute Agreements with Great River Greening to Perform Vegetation Management at Three Sites

**Resolution number:** 20-068

**Prepared by:** Name: Janna Jonely  
Phone: 952.641.4523  
jjonely@minnehahacreek.org

**Reviewed by:** Name/Title: Tiffany Schaufler, Project and Land Manager

**Recommended action:** Board authorization to execute agreements with Great River Greening to perform vegetation management at the District's Diercks Property (Minnetrista), Broin Property (Minnetonka) and the Methodist Hospital conservation easement (St. Louis Park) in order to utilize legislative appropriations to Great River Greening via the Minnesota Outdoor Heritage Fund.

**Schedule:** Broin & Diercks Property Vegetation Maintenance Implementation: Fall 2020  
Methodist Hospital Easement Vegetation Maintenance Implementation: Spring 2021

**Budget considerations:** Fund name and code: Project Maintenance and Land Management: 2-2003  
Fund budget: \$854,762  
Expenditures to date: \$174,324.50  
Requested amount of funding: \$15,000  
MCWD Contributions:  
- Broin \$4,000,  
- Diercks \$6,000  
- Methodist Hospital \$5,000

**Past Board action:**

Res #: 18-024	Authorization to Submit Partnership Proposals with Great River Greening to Apply for Outdoor Heritage Fund and Environmental and Natural Resources Trust Grants
Res #: 18-034	Authorization to Execute and Agreement with Great River Greening to Perform Vegetation Management and Research at the Six Mile Marsh Prairie
Res #: 16-020	Authorization to Submit a Partnership Proposal with Great River Greening to Apply for a LCCMR Grant
Res #: 14-105	Authorization to Execute a Memorandum of Understanding with Great River Greening

**Background:**

In December 2014, the Minnehaha Creek Watershed District (District) Board of Managers authorized execution of a Memorandum of Understanding (MOU) with Great River Greening (GRG) to build broad collaborative partnerships to support vegetation restoration, management, and streambank stabilization on District lands and to support future natural resource management along the Minnehaha Creek and Six-Mile Creek corridors.

GRG has partnered with over 600 public and private entities, including cities, counties and community groups, empowering restoration and stewardship initiatives by providing matching funds, ecological expertise, project management, and community engagement. GRG also has the distinguishing core competencies of a highly trained ecological staff, a dynamic community and youth involvement program, and a collaborative philosophy. In addition, GRG is also able to leverage funds from sources including the State of Minnesota Environmental Trust Fund and the Outdoor Heritage Fund.

Since establishing the MOU in 2014, District and GRG staff have met regularly to review natural resource restoration opportunities on District lands (fee-title and conservation easements) and how they might align with the Minnesota Environmental Trust Fund and the Outdoor Heritage Fund grant monies.

Between 2016 and 2018, the District and GRG have partnered on five restoration and research projects and have leveraged approximately \$394,000 in Minnesota Environment and Natural Resources Trust and Outdoor Heritage Funds via GRG grant awards (see map in Attachment 4 for project locations):

- 2016: Minnehaha Creek Preserve (St. Louis Park), ~\$105,000 grant
- 2017: Waldera-Barkus, Chute, Rye Properties (Minnetrista), ~\$145,000 grant
- 2018: Six Mile Marsh Prairie (Minnetrista), ~ \$144,000 grant

Through resolution 18-024, the Board of Managers approved District staff to submit partnership proposals to apply for grants from the Minnesota Outdoor Heritage Fund (via GRG's Metro Big Rivers Partnership) and Environmental and Natural Resources Trust Fund (via GRG's Metro Conservation Corridors Partnership). Through these two major conservation partnerships, GRG is able to secure funding resources to protect, restore, and enhance priority habitat for wildlife and the public.

In 2018, District and GRG staff reviewed the restoration goals and natural resource objectives for various District properties. Through this review, the District's Natural Resource Management Plans for the Broin (Minnetonka), Diercks (Minnetrista) and the District held conservation easement for Methodist Hospital (St Louis Park), were identified as being aligned with the grant funding request for the Outdoor Heritage Fund and therefore GRG applied for grant monies via the Metro Big Rivers partnership.

#### **Summary:**

GRG has received appropriations from the 2019 and 2020 Outdoor Heritage Fund, Metro Big Rivers Habitat (Phase 9 & 10), and is proposing to allot a portion of this grant funding for two District properties: Broin, Diercks, and the District held conservation easement at Methodist Hospital (see map in Attachment 4 for property locations). These grant monies will allow the District and GRG to continue its partnership to restore and enhance the natural systems within a Mississippi River tributary via Minnehaha Creek, as designated by the Metro Big Rivers Habitat Partnership.

Restoration work at these three District project sites will be guided by the attached agreements with GRG (Attachments 1, 2, & 3), which outline grant terms, financial obligations of both parties, and the scope of work to be implemented. GRG's grant agreement with the Outdoor Heritage Fund requires that management decisions follow natural resources management plans, which MCWD has previously developed for its properties and GRG will update as part of the scope of work.

The total cost for the restoration work at these three sites is estimated to be \$144,000, of which the District will contribute a match of approximately 10% of the total cost of the work with a not to exceed amount of \$15,000:

- Broin: GRG will contribute \$23,000 towards the project (Attachment 1) and MCWD will contribute \$4,000
- Diercks: GRG will contribute \$50,000 towards the project (Attachment 2) and MCWD will contribute \$6,000
- Methodist Hospital Easement: GRG will contribute \$56,000 towards the project (Attachment 3) and MCWD will contribute \$5,000

**Supporting documents:**

Attachment 1: DRAFT Great River Greening Agreement – Broin Project

Attachment 2: DRAFT Great River Greening Agreement – Diercks Project

Attachment 3: DRAFT Great River Greening Agreement – Methodist Hospital Project

Attachment 4: Minnehaha Creek Watershed District & Great River Greening Grant Partnership Project Sites



**RESOLUTION**

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**Resolution number: 20-068**

**Title: Authorization to Execute Agreements with Great River Greening to Perform Vegetation Management at Three Sites**

WHEREAS, the Minnehaha Creek Watershed District has invested substantial public resources in targeted creek corridors to acquire conservation rights, restore riparian lands and establish natural riparian corridors in order to pursue and achieve the District's water quality and water resource protection goals;

WHEREAS, MCWD and Great River Greening have entered into a Memorandum of Understanding (MOU) which has established mutual goals and a cooperative framework within which the potential for beneficial and cost-effective projects and programs may be explored;

WHEREAS, within the MOU both parties expressed their interest in integrating their strengths and capacities in order to develop and carry out a program to preserve, enhance, and extend the District's conservation property through expertise, partnership, community capacity building, and creative funding;

WHEREAS, the District submitted partnership proposals with Great River Greening applying for grant funding to restore and enhance vegetation and habitat on the District's properties (Diercks, Broin) and conservation easement (Methodist Hospital) via resolution 18-024;

WHEREAS, Great River Greening has received an appropriation from the 2019 Outdoor Heritage Fund, Metro Big Rivers Habitat; Phase 9 for the District properties, Broin and Diercks, to work with landowners and easement holders to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area;

WHEREAS, Great River Greening has received an appropriation from the 2020 Outdoor Heritage Fund, Metro Big Rivers Habitat; Phase 10 for the District held conservation easement at Methodist Hospital, to work with landowners and easement holders to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area;

WHEREAS, District staff proposes to partner with Great River Greening with the support of this funding through these agreements to implement vegetation management at Broin, Diercks, and Methodist Hospital;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the Administrator, on the advice of counsel, to execute agreements with Great River Greening to perform vegetation management at the District properties of Broin and Diercks and the conservation easement held over Methodist Hospital and to supply the local cost-share element for that work, not to exceed \$15,000.

Resolution Number 20-068 was moved by Manager \_\_\_\_\_, seconded by Manager \_\_\_\_\_. Motion to adopt the resolution \_\_\_ ayes, \_\_\_ nays, \_\_\_ abstentions. Date: 9/10/2020

\_\_\_\_\_  
 Secretary Date: September 10, 2020

**AGREEMENT BETWEEN  
MINNEHAHA CREEK WATERSHED DISTRICT and  
GREAT RIVER GREENING**

**Broin Project**  
GRG Project:  
GRG Agreement #:

This agreement is entered into by the Minnehaha Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD), and Great River Greening, a non-profit corporation located in St. Paul, MN (GRG). In consideration of the terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged, MCWD and GRG agree as follows:

1. Scope of Work

GRG will perform the work described in the Scope of Services attached as Exhibit A (hereinafter, the "Services"). Exhibit A is incorporated into this agreement and its terms and schedules are binding on GRG as a term hereof.

2. Independent Contractor

GRG is an independent contractor under this agreement. GRG will select the means, method and manner of performing the Services. Nothing herein contained is intended or should be construed to constitute GRG as the agent, representative or employee of MCWD in any manner. Personnel performing the Services on behalf of GRG or a subcontractor will not be considered employees of MCWD and will not be entitled to any compensation, rights or benefits of any kind from MCWD.

The Services are to be funded in part by Minnesota Outdoor Heritage Fund (MOHF) appropriations that GRG has received under Minnesota Laws 2019, chapter 2, article 1, section 2, subd 5(b) Metro Big Rivers Phase 9, from the fund to the commissioner of natural resources for an agreement to acquire land in fee and permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026. GRG is responsible to comply with any terms imposed by the governing legislation or the MnDNR related to the MOHF funding. The MCWD has responsibilities under this agreement only as explicitly stated herein.

3. Subcontract and Assignment

GRG will not assign any obligation or interest in this agreement or any of the Services. Before subcontracting any of the Services, GRG will advise MCWD of its intent and obtain MCWD consent, not to be unreasonably withheld. Notice and consent will be by electronic mail or in other written form. MCWD consent to any subcontracting does not relieve GRG of its responsibility to perform the Services or any part thereof, nor in any respect its duty of care, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services.

#### 4. Duty of Care; Indemnification

GRG will perform the Services with due care. GRG will indemnify, defend and hold harmless MCWD, its board members, employees and agents from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of GRG's or a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty. This obligation to indemnify, defend and hold harmless includes, but is not limited to, any act, cost, damage or liability to which the MCWD, its board members, employees or agents is subject by virtue of any obligation the MCWD assumes toward the State of Minnesota, its agents, and employees as a consequence of LCCMR funding. For any claim subject to indemnification under this paragraph by an employee of GRG or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for GRG or the subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

If MCWD finds the Services performed by GRG result in the decline of the ecological quality of the property, MCWD reserves the right to enter the treatment areas delineated by Exhibit C (Site Map) and perform management at MCWD cost to maintain or correct the ecological quality of the property.

MCWD will indemnify, defend and hold harmless GRG, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of MCWD's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty.

#### 5. Funding

Great River Greening has received as an appropriation under Minn. Laws 2019, Regular Session, Chapter 2, Article 1, Section 2, Subd 5(b) Metro Big Rivers Phase 9, \$1,061,000 is from the fund to the commissioner of natural resources for an agreement to acquire land in fee and permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026. As a recipient of this funding, the MCWD is subject to the terms as described in Exhibit A

GRG desires to contribute \$23,000 towards the partnership project; and the MCWD desires to contribute \$4,000 towards the partnership project; and the MCWD seeks to enter into an agreement with GRG for the purpose of detailing partnership contributions and the provision of Technical Services in support of the Broin Property Enhancement.

#### 6. Compensation and Terms of Payment

The Parties agree that GRG will complete or arrange for services to be completed under this Agreement. The cost of such services will be funded by joint contributions of the parties.

The MCWD's contributions/compensation under this agreement shall be paid to GRG for expenses and costs necessary to complete the project described in the Scope of Work.

GRG shall contribute \$23,000 match to the MCWD's contribution over the course of the project. After the MCWD's contribution, GRG shall assume fiscal responsibility for all services completed under this agreement. GRG's financial obligation, as set out above, shall be in accordance with the 2019 Outdoor Heritage Fund Metro Big Rivers Habitat – Phase 9 which is attached and incorporated herein as **Exhibit B**.

The MCWD agrees to contribute \$4,000 of match to GRG. GRG will invoice the MCWD on a monthly basis upon completion of work.

GRG will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. GRG agrees that any authorized MCWD representative or the state auditor may have access to and the right to examine, audit and copy any such records during normal business hours.

7. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until **June 30, 202X**.

Insurance obligations; duty of care; obligations to defend, indemnify and hold harmless; and document-retention requirements will survive the completion of the Services and the term of this agreement.

8. Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this agreement, or to exercise any option, remedy or right herein, will not waive or relinquish such party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this agreement, MCWD waives no immunity, defense or liability limit in tort. Nothing in this agreement creates a right in or waives an immunity, defense or liability limit with respect to any third party.

9. Insurance

At all times during the term of this Agreement, GRG will have and keep in force the following insurance coverages:

- A. Commercial general liability: \$1.5 million per occurrence and aggregate for bodily injury and property damages, on an occurrence basis. Before GRG retains any subcontractor, it will ensure that its coverage includes contract liability coverage and will provide a certificate to the MCWD indicating the same.

B. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles, on an occurrence basis.

C. Workers' compensation: in accordance with legal requirements applicable to GRG.

Policy limits may be satisfied by a combination of primary and umbrella/excess coverage. GRG will not commence work until it has filed with MCWD a certificate of insurance clearly evidencing the required coverages and naming MCWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing primary coverage on a noncontributory basis. The certificate will name MCWD as a holder and will state that MCWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as GRG.

10. Compliance With Laws

GRG will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services and will procure all licenses, permits and other rights necessary to perform the Services.

In performing the Services, GRG will ensure that no person 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; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

11. Materials

GRG will not claim or register a copyright in any materials obtained or generated by GRG in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the materials are contained, documented or memorialized. MCWD may immediately inspect, copy or take possession of any materials on written request to GRG. On termination of the agreement, GRG may maintain a copy of some or all of the materials except for any materials designated by MCWD as confidential or non-public under applicable law, a copy of which may be maintained by GRG only pursuant to written agreement with MCWD specifying terms.

12. Data Practices; Confidentiality

If GRG receives a request for data pursuant to the Data Practices Act, Minnesota Statutes chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) GRG possesses or has created as a result of this agreement, it will inform MCWD immediately and transmit a copy of the request. If the request is addressed to MCWD, GRG will not provide any information or documents, but will direct the inquiry to MCWD. If the request is addressed to GRG, GRG will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are, but will notify and consult with MCWD and its legal counsel before replying. Nothing in the preceding sentence supersedes GRG's obligations under this agreement with respect to protection of MCWD data, property rights in data or confidentiality. Nothing in this section constitutes



a determination that GRG is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

GRG agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by MCWD and so denominated by MCWD. GRG will not use any such materials for any purpose other than performance of the Services without MCWD written consent. This restriction does not apply to materials already possessed by GRG or that GRG received on a non-confidential basis from MCWD or another party.

13. MCWD Property

All property furnished to or for the use of GRG or a subcontractor by MCWD and not fully used in the performance of the Services, including but not limited to equipment, supplies, materials and data, both hard copy and electronic, will remain the property of MCWD and returned to MCWD at the conclusion of the performance of the Services, or sooner if requested by MCWD. GRG further agrees that any proprietary materials are the exclusive property of MCWD and will assert no right, title or interest in the materials. GRG will not disseminate, transfer or dispose of any proprietary materials to any other person or entity unless specifically authorized in writing by MCWD. Any property including but not limited to materials supplied to GRG by MCWD or deriving from MCWD is supplied to and accepted by GRG as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness.

14. Notices

Any written communication required under this agreement to be provided in writing will be directed to the other party as follows:

To MCWD:

Janna Jonely  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka, MN 55345

Re: Broin Project

To GRG:

Todd Rexine  
Great River Greening  
251 Starkey Street, Suite 2200  
Saint Paul, MN 55107

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

15. Choice of Law

This agreement will be construed under and governed by the laws of the State of Minnesota.

16. Whole Agreement

Exhibit B, Grant Specific Information or Agreement. State of Minnesota – 2019 Outdoor Heritage Fund, Metro Big Rivers Habitat – Phase 9, is attached hereto and incorporated herein. This agreement, including Exhibits A, B, and C (site map), constitutes the entire agreement between the two parties and this agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this agreement is valid only when reduced to writing as an amendment to the agreement and signed by the parties hereto. MCWD may amend this agreement only by action of the Board of Managers acting as a body.

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

**GREAT RIVER GREENING**

By \_\_\_\_\_  
Keith Parker, Executive Director

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

Finance Director: \_\_\_\_\_

Director of Operations: \_\_\_\_\_

Grant Manager: \_\_\_\_\_

*Approved as to Form and Execution*

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

By \_\_\_\_\_  
James Wisker, Administrator

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

**Exhibit A**  
**Scope of Services**

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## **EXHIBIT A: Scope of Services**

### **BROIN PROPERTY**

**Background:** The Broin Property is a 6.5-acre old field/pasture that has succeeded to an upland shrub savanna that abuts Minnehaha Creek in Minnetonka. The site includes both streambank buffers and small areas (0.1 acre total) that are part of the floodplain of Minnehaha Creek. The site is bordered on the south and west by residential lots and management of the site must be communicated to adjacent landowners. Land to the north and east is owned by the City of Minnetonka.

**Recent Management:** During the growing seasons of 2014-2018, the site was managed with mowing of annual weeds and spot spraying of perennial invasive species.

**Existing Conditions:** Buckthorn management on the site was conducted in 2011, but considerable re-sprouting occurred and additional invasive woody species have become established on the site. Grassy openings on the site are dominated by smooth brome and bird's-foot trefoil. There exists two large areas with dense common burdock and musk thistle is common throughout the site. The floodplain and streambank areas are dominated by hybrid cattail and reed canary grass.

#### **Site Standards:**

- Minimum of 70% native species cover site-wide
- Maximum of 30% invasive species cover site-wide
- Control invasive species before flowering
- Re-establish native plant communities through invasive species control and revegetation

#### **Broin Property Site Deliverables:**

Greening agrees to provide the following list of services:

- a) Floodplain, old field, and mesic meadow enhancement (6.5 acres)
- b) Mow and seed mesic conversion
- c) Treat and control remaining and re-sprouting buckthorn (6.5 acres)
- d) Herbicide treatment of invasive species (2 applications/year over a 2-year period)
- e) Project oversight and grant reporting by Great River Greening staff ecologist
- f) Natural Resource Management Plan review and update

**Exhibit B**  
**Terms of Metro Big Rivers Habitat - Phase 9**  
**2019 Outdoor Heritage Fund Appropriation**

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**EXHIBIT B: GRANT Specific Information or Agreement  
State of Minnesota – 2019 Outdoor Heritage Fund  
Metro Big Rivers Habitat – Phase 9**

**Grantee**

Great River Greening  
251 Starkey St, Suite 2200  
Saint Paul, MN 55107  
(651) 665-9500

**Landowner**

Minnehaha Creek Watershed District  
15320 Minnetonka Blvd  
Minnetonka, MN 55345  
952-471-0590

Great River Greening has received as an appropriation under Minn. Laws 2019, Regular Session, Chapter 2, Article 1, Section 2, Subd 5(b) Metro Big Rivers Phase 9, \$1,061,000 is from the fund to the commissioner of natural resources for an agreement to acquire land in fee and permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026.

As a recipient of this funding, the Landowner is subject to the terms below:

**COMPLIANCE**

The Landowner acknowledges that these funds are proceeds from the State of Minnesota Outdoor Heritage Fund which is subject to certain legal restrictions and requirements, including Minnesota Statutes Chapter 116P. The Landowner is responsible for compliance with this and all other relevant state and federal laws and regulations in the fulfillment of the Project.

**LIABILITY**

The Landowner must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant agreement.

**ACCESS AND MONITORING**

The Landowner agrees to allow the Recipient and the State access at any time to conduct periodic site visits and inspections to ensure work progress in accordance with this grant agreement, including a final inspection upon program completion. At least one monitoring visit per grant period on all state grants of over \$50,000 will be conducted and at least annual monitoring visits on grants of over \$250,000.

Following closure of the program, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

**ACKNOWLEDGMENTS AND ENDORSMENT**

**Acknowledgment.** The Landowner must acknowledge financial support from the Outdoor Heritage Fund in program publications, signage and other public communication and outreach related to work completed using the appropriation. Acknowledgment may occur, as appropriate, through use of the fund logo or inclusion of language attributing support from the fund.

**Endorsement.** The Landowner must not claim that the State endorses its products or services.

**ECOLOGICAL AND RESTORATION PLAN**

For all restorations, the Grantee in coordination with the Landowner must prepare and retain an ecological restoration and management plan that, to the degree practicable, is consistent with current conservation science and ecological goals for the restoration site. Consideration should be given to soil, geology, topography, and other relevant factors that would provide the best chance for long-term success and durability of the restoration. The plan must include the proposed timetable for implementing the restoration, including, but not limited to, site preparation, establishment of diverse plant species, maintenance, and additional enhancement to establish the restoration; identify long-term maintenance and management needs of the restoration and how the maintenance, management, and enhancement will be financed; and use current conservation science to achieve the best restoration.

**LONG TERM MANAGEMENT**

As a partner with Great River Greening, the Landowner commits to maintaining the investment put forward over time.

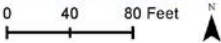
**Exhibit C  
Broin Site Map**

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**EXHIBIT C: Project Boundary**



**Broin**





**AGREEMENT BETWEEN  
MINNEHAHA CREEK WATERSHED DISTRICT and  
GREAT RIVER GREENING**

**Diercks Project**  
GRG Project:  
GRG Agreement #:

This agreement is entered into by the Minnehaha Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD), and Great River Greening, a non-profit corporation located in St. Paul, MN (GRG). In consideration of the terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged, MCWD and GRG agree as follows:

1. Scope of Work

GRG will perform the work described in the Scope of Services attached as Exhibit A (hereinafter, the "Services"). Exhibit A is incorporated into this agreement and its terms and schedules are binding on GRG as a term hereof.

2. Independent Contractor

GRG is an independent contractor under this agreement. GRG will select the means, method and manner of performing the Services. Nothing herein contained is intended or should be construed to constitute GRG as the agent, representative or employee of MCWD in any manner. Personnel performing the Services on behalf of GRG or a subcontractor will not be considered employees of MCWD and will not be entitled to any compensation, rights or benefits of any kind from MCWD.

The Services are to be funded in part by Minnesota Outdoor Heritage Fund (MOHF) appropriations that GRG has received under Minnesota Laws 2019, chapter 2, article 1, section 2, subd 5(b) Metro Big Rivers Phase 9, from the fund to the commissioner of natural resources for an agreement to acquire land in fee and permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026. GRG is responsible to comply with any terms imposed by the governing legislation or the MnDNR related to the MOHF funding. The MCWD has responsibilities under this agreement only as explicitly stated herein.

3. Subcontract and Assignment

GRG will not assign any obligation or interest in this agreement or any of the Services. Before subcontracting any of the Services, GRG will advise MCWD of its intent and obtain MCWD consent, not to be unreasonably withheld. Notice and consent will be by electronic mail or in other written form. MCWD consent to any subcontracting does not relieve GRG of its responsibility to perform the Services or any part thereof, nor in any respect its duty of care, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services.

#### 4. Duty of Care; Indemnification

GRG will perform the Services with due care. GRG will indemnify, defend and hold harmless MCWD, its board members, employees and agents from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of GRG's or a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty. This obligation to indemnify, defend and hold harmless includes, but is not limited to, any act, cost, damage or liability to which the MCWD, its board members, employees or agents is subject by virtue of any obligation the MCWD assumes toward the State of Minnesota, its agents, and employees as a consequence of LCCMR funding. For any claim subject to indemnification under this paragraph by an employee of GRG or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for GRG or the subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

If MCWD finds the Services performed by GRG result in the decline of the ecological quality of the property, MCWD reserves the right to enter the treatment areas delineated by Exhibit C (Site Map) and perform management at MCWD cost to maintain or correct the ecological quality of the property.

MCWD will indemnify, defend and hold harmless GRG, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of MCWD's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty.

#### 5. Funding

Great River Greening has received as an appropriation under Minn. Laws 2019, Regular Session, Chapter 2, Article 1, Section 2, Subd 5(b) Metro Big Rivers Phase 9, \$1,061,000 is from the fund to the commissioner of natural resources for an agreement to acquire land in fee and permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026. As a recipient of this funding, the MCWD is subject to the terms as described in Exhibit A

GRG desires to contribute \$50,000 towards the partnership project; and the MCWD desires to contribute \$6,000 towards the partnership project; and the MCWD seeks to enter into an agreement with GRG for the purpose of detailing partnership contributions and the provision of Technical Services in support of the Diercks Property Restoration.

#### 6. Compensation and Terms of Payment

The Parties agree that GRG will complete or arrange for services to be completed under this Agreement. The cost of such services will be funded by joint contributions of the parties.

The MCWD's contributions/compensation under this agreement shall be paid to GRG for expenses and costs necessary to complete the project described in the Scope of Work.

GRG shall contribute \$50,000 match to the MCWD's contribution over the course of the project. After the MCWD's contribution, GRG shall assume fiscal responsibility for all

services completed under this agreement. GRG's financial obligation, as set out above, shall be in accordance with the 2019 Outdoor Heritage Fund Metro Big Rivers Habitat – Phase 9 which is attached and incorporated herein as **Exhibit B**.

The MCWD agrees to contribute \$6,000 of match to GRG. GRG will invoice the MCWD on a monthly basis upon completion of work.

GRG will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. GRG agrees that any authorized MCWD representative or the state auditor may have access to and the right to examine, audit and copy any such records during normal business hours.

7. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until **June 30, 202X**.

Insurance obligations; duty of care; obligations to defend, indemnify and hold harmless; and document-retention requirements will survive the completion of the Services and the term of this agreement.

8. Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this agreement, or to exercise any option, remedy or right herein, will not waive or relinquish such party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this agreement, MCWD waives no immunity, defense or liability limit in tort. Nothing in this agreement creates a right in or waives an immunity, defense or liability limit with respect to any third party.

9. Insurance

At all times during the term of this Agreement, GRG will have and keep in force the following insurance coverages:

A. Commercial general liability: \$1.5 million per occurrence and aggregate for bodily injury and property damages, on an occurrence basis. Before GRG retains any subcontractor, it will ensure that its coverage includes contract liability coverage and will provide a certificate to the MCWD indicating the same.

B. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles, on an occurrence basis.

C. Workers' compensation: in accordance with legal requirements applicable to GRG.

Policy limits may be satisfied by a combination of primary and umbrella/excess coverage. GRG will not commence work until it has filed with MCWD a certificate of insurance clearly evidencing the required coverages and naming MCWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing primary coverage on a noncontributory basis. The certificate will name MCWD as a holder and will state that MCWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as GRG.

10. Compliance With Laws

GRG will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services and will procure all licenses, permits and other rights necessary to perform the Services.

In performing the Services, GRG will ensure that no person 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; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

11. Materials

GRG will not claim or register a copyright in any materials obtained or generated by GRG in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the materials are contained, documented or memorialized. MCWD may immediately inspect, copy or take possession of any materials on written request to GRG. On termination of the agreement, GRG may maintain a copy of some or all of the materials except for any materials designated by MCWD as confidential or non-public under applicable law, a copy of which may be maintained by GRG only pursuant to written agreement with MCWD specifying terms.

12. Data Practices; Confidentiality

If GRG receives a request for data pursuant to the Data Practices Act, Minnesota Statutes chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) GRG possesses or has created as a result of this agreement, it will inform MCWD immediately and transmit a copy of the request. If the request is addressed to MCWD, GRG will not provide any information or documents, but will direct the inquiry to MCWD. If the request is addressed to GRG, GRG will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are, but will notify and consult with MCWD and its legal counsel before replying. Nothing in the preceding sentence supersedes GRG's obligations under this agreement with respect to protection of MCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that GRG is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

GRG agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by MCWD and so denominated by MCWD. GRG will not use any such materials for any purpose other than performance of the Services without MCWD written consent. This restriction does not apply to materials already possessed by GRG or that GRG received on a non-confidential basis from MCWD or another party.

13. MCWD Property

All property furnished to or for the use of GRG or a subcontractor by MCWD and not fully used in the performance of the Services, including but not limited to equipment, supplies, materials and data, both hard copy and electronic, will remain the property of MCWD and returned to MCWD at the conclusion of the performance of the Services, or sooner if requested by MCWD. GRG further agrees that any proprietary materials are the exclusive property of MCWD and will assert no right, title or interest in the materials. GRG will not disseminate, transfer or dispose of any proprietary materials to any other person or entity unless specifically authorized in writing by MCWD. Any property including but not limited to materials supplied to GRG by MCWD or deriving from MCWD is supplied to and accepted by GRG as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness.

14. Notices

Any written communication required under this agreement to be provided in writing will be directed to the other party as follows:

To MCWD:

Janna Jonely  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka, MN 55345

Re: Diercks Project

To GRG:

Todd Rexine  
Great River Greening  
251 Starkey Street, Suite 2200  
Saint Paul, MN 55107

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

15. Choice of Law

This agreement will be construed under and governed by the laws of the State of Minnesota.

16. Whole Agreement

Exhibit B, Grant Specific Information or Agreement. State of Minnesota – 2019 Outdoor Heritage Fund, Metro Big Rivers Habitat – Phase 9, is attached hereto and incorporated herein. This agreement, including Exhibits A, B, and C (site map), constitutes the entire agreement between the two parties and this agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this agreement is valid only when reduced to writing as an amendment to the agreement and signed by the parties hereto. MCWD may amend this agreement only by action of the Board of Managers acting as a body.

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

**GREAT RIVER GREENING**

By \_\_\_\_\_  
Keith Parker, Executive Director

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

Finance Director: \_\_\_\_\_

Director of Operations: \_\_\_\_\_

Grant Manager: \_\_\_\_\_

*Approved as to Form and Execution*

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

By \_\_\_\_\_  
James Wisker, Administrator

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

**Exhibit A**  
**Scope of Services**

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## **EXHIBIT A: Scope of Services**

### **DIERCKS PROPERTY**

**Background:** The Diercks Property is a 19-acre parcel of woodland and small wetlands that lies to the east of Dutch Lake in Minnetrista. The Westonka Public Schools utilizes the site as an outdoor classroom in conjunction with a Three Rivers Park District Naturalist.

**Recent Management:** During the growing seasons of 2014-2018, the site was managed with mowing and spot spraying of garlic mustard and buckthorn.

**Existing Conditions:** The overstory is dominated by sugar maple and, to a lesser extent, basswood. The shrub layer is comprised of sugar maple seedlings, and the sparse herbaceous layer is made up of Pennsylvania sedge and jack-in-the-pulpit. Common buckthorn is becoming more dominant in the shrub layer especially on the north and east portions of the property. Garlic mustard is prevalent in the center of the site near the old foundation and along the north, south, and east property lines. Two wetlands on the north of the site are dominated by reed canary grass and hybrid cattail. The current focus is to reduce garlic mustard and buckthorn cover on the site and enhance diversity of the tree species and understory.

#### **Site Standards:**

- Minimum of 90% native species cover site-wide
- Maximum of 10% garlic mustard and buckthorn cover site-wide
- Control invasive species before flowering
- Re-establish native plant communities through invasive species control and planting enhancements

#### **Diercks Property Site Deliverables:**

Greening agrees to provide the following list of services:

- a) Maple basswood forest enhancement (19 acres)
- b) Selective thinning of sugar maples (9 acres)
- c) Tree planting – tree diversity enhancement installation with deer protection. Species will be determined by location (light level, moisture level). Understory enhancement to be decided on by MCWD and Greening staff based on tree planting needs.
- d) Foliar or basal treat remaining buckthorn (19 acres)
- e) Follow up herbicide spray during following growing season to treat resprouts and seedlings after initial buckthorn treatment
- f) Broadleaf invasive treatment targeting garlic mustard utilizing herbicide, hand pulling, or combination of techniques
- g) Coordination of one volunteer planting activity
- h) Project oversight and grant reporting by Greening staff ecologist
- i) Natural Resource Management Plan review and update



**Exhibit B**  
**Terms of Metro Big Rivers Habitat - Phase 9**  
**2019 Outdoor Heritage Fund Appropriation**

DRAFT

**EXHIBIT B: GRANT Specific Information or Agreement**  
**State of Minnesota – 2019 Outdoor Heritage Fund**  
**Metro Big Rivers Habitat – Phase 9**

**Grantee**

Great River Greening  
251 Starkey St, Suite 2200  
Saint Paul, MN 55107  
(651) 665-9500

**MCWD**

Minnehaha Creek Watershed District  
15320 Minnetonka Blvd  
Minnetonka, MN 55345  
952-471-0590

Great River Greening has received as an appropriation under Minn. Laws 2019, Regular Session, Chapter 2, Article 1, Section 2, Subd 5(b) Metro Big Rivers Phase 9, \$1,061,000 is from the fund to the commissioner of natural resources for an agreement to acquire land in fee and permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026.

As a recipient of this funding, the Landowner is subject to the terms below:

**COMPLIANCE**

The Landowner acknowledges that these funds are proceeds from the State of Minnesota Outdoor Heritage Fund which is subject to certain legal restrictions and requirements, including Minnesota Statutes Chapter 116P. The Landowner is responsible for compliance with this and all other relevant state and federal laws and regulations in the fulfillment of the Project.

**LIABILITY**

The Landowner must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant agreement.

**ACCESS AND MONITORING**

The Landowner agrees to allow the Recipient and the State access at any time to conduct periodic site visits and inspections to ensure work progress in accordance with this grant agreement, including a final inspection upon program completion. At least one monitoring visit per grant period on all state grants of over \$50,000 will be conducted and at least annual monitoring visits on grants of over \$250,000.

Following closure of the program, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

**ACKNOWLEDGMENTS AND ENDORSMENT**

**Acknowledgment.** The Landowner must acknowledge financial support from the Outdoor Heritage Fund in program publications, signage and other public communication and outreach related to work completed using the appropriation. Acknowledgment may occur, as appropriate, through use of the fund logo or inclusion of language attributing support from the fund.

**Endorsement.** The Landowner must not claim that the State endorses its products or services.

**ECOLOGICAL AND RESTORATION PLAN**

For all restorations, the Grantee in coordination with the Landowner must prepare and retain an ecological restoration and management plan that, to the degree practicable, is consistent with current conservation science and ecological goals for the restoration site. Consideration should be given to soil, geology, topography, and other relevant factors that would provide the best chance for long-term success and durability of the restoration. The plan must include the proposed timetable for implementing the restoration, including, but not limited to, site preparation, establishment of diverse plant species, maintenance, and additional enhancement to establish the restoration; identify long-term maintenance and management needs of the restoration and how the maintenance, management, and enhancement will be financed; and use current conservation science to achieve the best restoration.

**LONG TERM MANAGEMENT**

As a partner with Great River Greening, the Landowner commits to maintaining the investment put forward over time.

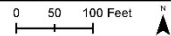
**Exhibit C  
Diercks Site Map**

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**EXHIBIT C: Project Boundary**



**Diercks**



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**AGREEMENT BETWEEN  
MINNEHAHA CREEK WATERSHED DISTRICT and  
GREAT RIVER GREENING**

**Methodist Hospital Project**

GRG Project:  
GRG Agreement #:

This agreement is entered into by the Minnehaha Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD), and Great River Greening, a non-profit corporation located in St. Paul, MN (GRG). In consideration of the terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged, MCWD and GRG agree as follows:

1. Scope of Work

GRG will perform the work described in the Scope of Services attached as Exhibit A (hereinafter, the "Services"). Exhibit A is incorporated into this agreement and its terms and schedules are binding on GRG as a term hereof.

2. Independent Contractor

GRG is an independent contractor under this agreement. GRG will select the means, method and manner of performing the Services. Nothing herein contained is intended or should be construed to constitute GRG as the agent, representative or employee of MCWD in any manner. Personnel performing the Services on behalf of GRG or a subcontractor will not be considered employees of MCWD and will not be entitled to any compensation, rights or benefits of any kind from MCWD.

The Services are to be funded in part by Minnesota Outdoor Heritage Fund (MOHF) appropriations that GRG has received under Minnesota Laws 2019, chapter 2, article 1, section 2, subd 5(b) Metro Big Rivers Phase 9, from the fund to the commissioner of natural resources for an agreement to acquire land in fee and permanent conservation easements and to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026. GRG is responsible to comply with any terms imposed by the governing legislation or the MnDNR related to the MOHF funding. The MCWD has responsibilities under this agreement only as explicitly stated herein.

3. Subcontract and Assignment

GRG will not assign any obligation or interest in this agreement or any of the Services. Before subcontracting any of the Services, GRG will advise MCWD of its intent and obtain MCWD consent, not to be unreasonably withheld. Notice and consent will be by electronic mail or in other written form. MCWD consent to any subcontracting does not relieve GRG of its responsibility to perform the Services or any part thereof, nor in any respect its duty of care, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services.

#### 4. Duty of Care; Indemnification

GRG will perform the Services with due care. GRG will indemnify, defend and hold harmless MCWD, its board members, employees and agents from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of GRG's or a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty. This obligation to indemnify, defend and hold harmless includes, but is not limited to, any act, cost, damage or liability to which the MCWD, its board members, employees or agents is subject by virtue of any obligation the MCWD assumes toward the State of Minnesota, its agents, and employees as a consequence of LCCMR funding. For any claim subject to indemnification under this paragraph by an employee of GRG or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for GRG or the subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

If MCWD finds the Services performed by GRG result in the decline of the ecological quality of the property, MCWD reserves the right to enter the treatment areas delineated by Exhibit C (Site Map) and perform management at MCWD cost to maintain or correct the ecological quality of the property.

MCWD will indemnify, defend and hold harmless GRG, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of MCWD's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty.

#### 5. Funding

Great River Greening has received \$366,000 under Minn. Laws 2020, Regular Session, Ch. 104, Art. 1, Sec. 2, subd 5(b), Metro Big Rivers Phase 10, \$6,473,000 is to the fund to the commissioner of natural resources for agreements to acquire lands in fee and permanent conservation easements and to restore and enhance natural habitat systems associated with the Mississippi, Minnesota, and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026. As a recipient of this funding, MCWD is subject to the terms as described in Exhibit B.

GRG desires to contribute \$56,000.00 towards the partnership project; and the MCWD desires to contribute \$5,000.00 towards the partnership project; and the MCWD seeks to enter into an agreement with GRG for the purpose of detailing partnership contributions and the provision of Technical Services in support of the Methodist Property Restoration.

#### 6. Compensation and Terms of Payment

The Parties agree that GRG will complete or arrange for services to be completed under this Agreement. The cost of such services will be funded by joint contributions of the parties.

The MCWD's contributions/compensation under this agreement shall be paid to GRG for expenses and costs necessary to complete the project described in the Scope of Work.

GRG shall contribute \$56,000 match to the MCWD's contribution over the course of the project. After the MCWD's contribution, GRG shall assume fiscal responsibility for all

services completed under this agreement. GRG's financial obligation, as set out above, shall be in accordance with the 2020 Outdoor Heritage Fund Metro Big Rivers Habitat – Phase 10 which is attached and incorporated herein as **Exhibit B**.

The MCWD agrees to contribute \$5,000 of match to GRG. GRG will invoice the MCWD on a monthly basis upon completion of work.

GRG will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. GRG agrees that any authorized MCWD representative or the state auditor may have access to and the right to examine, audit and copy any such records during normal business hours.

7. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until **June 30, 202X**.

Insurance obligations; duty of care; obligations to defend, indemnify and hold harmless; and document-retention requirements will survive the completion of the Services and the term of this agreement.

8. Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this agreement, or to exercise any option, remedy or right herein, will not waive or relinquish such party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this agreement, MCWD waives no immunity, defense or liability limit in tort. Nothing in this agreement creates a right in or waives an immunity, defense or liability limit with respect to any third party.

9. Insurance

At all times during the term of this Agreement, GRG will have and keep in force the following insurance coverages:

A. Commercial general liability: \$1.5 million per occurrence and aggregate for bodily injury and property damages, on an occurrence basis. Before GRG retains any subcontractor, it will ensure that its coverage includes contract liability coverage and will provide a certificate to the MCWD indicating the same.

B. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles, on an occurrence basis.

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Policy limits may be satisfied by a combination of primary and umbrella/excess coverage. GRG will not commence work until it has filed with MCWD a certificate of insurance clearly evidencing the required coverages and naming MCWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing primary coverage on a noncontributory basis. The certificate will name MCWD as a holder and will state that MCWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as GRG.

10. Compliance With Laws

GRG will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services and will procure all licenses, permits and other rights necessary to perform the Services.

In performing the Services, GRG will ensure that no person 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; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

11. Materials

GRG will not claim or register a copyright in any materials obtained or generated by GRG in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the materials are contained, documented or memorialized. MCWD may immediately inspect, copy or take possession of any materials on written request to GRG. On termination of the agreement, GRG may maintain a copy of some or all of the materials except for any materials designated by MCWD as confidential or non-public under applicable law, a copy of which may be maintained by GRG only pursuant to written agreement with MCWD specifying terms.

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GRG agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by MCWD and so denominated by MCWD. GRG will not use any such materials for any purpose other than performance of the Services without MCWD written consent. This restriction does not apply to materials already possessed by GRG or that GRG received on a non-confidential basis from MCWD or another party.

13. MCWD Property

All property furnished to or for the use of GRG or a subcontractor by MCWD and not fully used in the performance of the Services, including but not limited to equipment, supplies, materials and data, both hard copy and electronic, will remain the property of MCWD and returned to MCWD at the conclusion of the performance of the Services, or sooner if requested by MCWD. GRG further agrees that any proprietary materials are the exclusive property of MCWD and will assert no right, title or interest in the materials. GRG will not disseminate, transfer or dispose of any proprietary materials to any other person or entity unless specifically authorized in writing by MCWD. Any property including but not limited to materials supplied to GRG by MCWD or deriving from MCWD is supplied to and accepted by GRG as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness.

14. Notices

Any written communication required under this agreement to be provided in writing will be directed to the other party as follows:

To MCWD:

Janna Jonely  
Minnehaha Creek Watershed District  
15320 Minnetonka Boulevard  
Minnetonka, MN 55345

Re: Methodist Hospital Project

To GRG:

Todd Rexine  
Great River Greening  
251 Starkey Street, Suite 2200  
Saint Paul, MN 55107

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

15. Choice of Law

This agreement will be construed under and governed by the laws of the State of Minnesota.

16. Whole Agreement

Exhibit B, Grant Specific Information or Agreement. State of Minnesota – 2019 Outdoor Heritage Fund, Metro Big Rivers Habitat – Phase 9, is attached hereto and incorporated herein. This agreement, including Exhibits A, B, and C (site map), constitutes the entire agreement between the two parties and this agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this agreement is valid only when reduced to writing as an amendment to the agreement and signed by the parties hereto. MCWD may amend this agreement only by action of the Board of Managers acting as a body.

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

**GREAT RIVER GREENING**

By \_\_\_\_\_  
Keith Parker, Executive Director

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

Finance Director: \_\_\_\_\_

Director of Operations: \_\_\_\_\_

Grant Manager: \_\_\_\_\_

*Approved as to Form and Execution*

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

**MINNEHAHA CREEK WATERSHED DISTRICT**

By \_\_\_\_\_  
James Wisker, Administrator

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

**Exhibit A**  
**Scope of Services**

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## EXHIBIT A: Scope of Services

### METHODIST HOSPITAL

**Background:** The Methodist Hospital Wetland Restoration was constructed in 2005 in cooperation with Minnehaha Creek Watershed District and included a remeander of this section of Minnehaha Creek, restoration of wetland vegetation, and the construction of a boardwalk throughout the western portion of the hospital campus. MCWD then coordinated with Methodist Hospital (Park Nicollet Health Systems) to undertake a wetland and upland restoration project within the northern half of this area to serve as floodplain mitigation for their construction of a floodwall in 2017. The project warranty period ended in 2019 and the entire site will now be managed as one contract. Refer to the Site Plan (Exhibit C) for full delineation of the project area.

**Vegetation:** The southern portion of the site had received annual vegetation management through 2013, which primarily included spot herbicide application and remedial seeding. The borders of the site include small upland areas with native prairie. Native emergent species on-site include river bulrush, arrowhead, burred and sedges exist, however hybrid cattail, reed canary grass, and purple loosestrife continue to require management as the dominant invasive species on site. The northern portion of the site has undergone management since 2017 and has focused on wetland management of hybrid cattail, reed canary grass, and purple loosestrife in addition to other weedy species.

**Recent Management:** Vegetation management of the southern portion resumed in 2018 and included a combination of mowing and spot spraying invasive species. Low water conditions in the late summer of 2018 allowed for a comprehensive cattail herbicide treatment in both the northern and southern areas of the site. High water conditions throughout 2019 limited management as the site was fully inundated the majority of the season. Vegetation management of this site is contracted with Landbridge Ecological through 2021 and focuses on invasive species management.

**Existing Conditions:** While some pockets of native vegetation exist, the site is currently dominated by hybrid cattail and, to a lesser extent, reed canary grass and purple loosestrife. Upland areas will require woody invasive species management, primarily for buckthorn and honeysuckle, in addition to treatment of perennial weedy species, such as Canada thistle, burdock, and nightshade.

#### **Methodist Hospital Restoration Site Deliverables:**

Greening agrees to provide the following list of services:

- a) Vegetation enhancement as coordinated by Great River Greening staff ecologist and MCWD project manager
- b) Coordinate one volunteer planting event
- c) Project oversight and grant report by Great River Greening staff ecologist

**Exhibit B**  
**Terms of Metro Big Rivers Habitat - Phase 10**  
**2020 Outdoor Heritage Fund Appropriation**

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**EXHIBIT B: GRANT Specific Information or Agreement**  
**State of Minnesota – 2020 Outdoor Heritage Fund**  
**Metro Big Rivers Habitat – Phase 10**

**Grantee**

Great River Greening  
251 Starkey St, Suite 2200  
Saint Paul, MN 55107  
(651) 665-9500

**MCWD**

Minnehaha Creek Watershed District  
15320 Minnetonka Blvd  
Minnetonka, MN 55345  
952-471-0590

Great River Greening has received **\$366,000** under Minn. Laws 2020, Regular Session, Ch. 104, Art. 1, Sec. 2, subd 5(b), Metro Big Rivers Phase 10, \$6,473,000 is to the fund to the commissioner of natural resources for agreements to acquire lands in fee and permanent conservation easements and to restore and enhance natural habitat systems associated with the Mississippi, Minnesota, and St. Croix Rivers and their tributaries in the metropolitan area and as provided in Minnesota Statutes, section 84.026.

As a recipient of this funding, the Landowner is subject to the terms below:

**COMPLIANCE**

The Landowner acknowledges that these funds are proceeds from the State of Minnesota Outdoor Heritage Fund which is subject to certain legal restrictions and requirements, including Minnesota Statutes Chapter 116P. The Landowner is responsible for compliance with this and all other relevant state and federal laws and regulations in the fulfillment of the Project.

**LIABILITY**

The Landowner must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant agreement.

**ACCESS AND MONITORING**

The Landowner agrees to allow the Recipient and the State access at any time to conduct periodic site visits and inspections to ensure work progress in accordance with this grant agreement, including a final inspection upon program completion. At least one monitoring visit per grant period on all state grants of over \$50,000 will be conducted and at least annual monitoring visits on grants of over \$250,000.

Following closure of the program, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

**ACKNOWLEDGMENTS AND ENDORSMENT**

Acknowledgment. The Landowner must acknowledge financial support from the Outdoor Heritage Fund in program publications, signage and other public communication and outreach related to work completed using the appropriation. Acknowledgment may occur, as appropriate, through use of the fund logo or inclusion of language attributing support from the fund.

Endorsement. The Landowner must not claim that the State endorses its products or services.

**ECOLOGICAL AND RESTORATION PLAN**

For all restorations, the Grantee in coordination with the Landowner must prepare and retain an ecological restoration and management plan that, to the degree practicable, is consistent with current conservation science and ecological goals for the restoration site. Consideration should be given to soil, geology, topography, and other relevant factors that would provide the best chance for long-term success and durability of the restoration. The plan must include the proposed timetable for implementing the restoration, including, but not limited to, site preparation, establishment of diverse plant species, maintenance, and additional enhancement to establish the restoration; identify long-term maintenance and management needs of the restoration and how the maintenance, management, and enhancement will be financed; and use current conservation science to achieve the best restoration.

**LONG TERM MANAGEMENT**

As a partner with Great River Greening, the Landowner commits to maintaining the investment put forward over time.

**Exhibit C**  
**Methodist Hospital Site Map**

DRAFT

**EXHIBIT C: Project Boundary**



**Methodist Hospital Wetland Easement**





# Minnehaha Creek Watershed District & Great River Greening Grant Partnership Project Sites

## LEGEND

- MCWD Legal Boundary
- MCWD Hydrologic Boundary
- County Boundary
- City Boundary

## Great River Greening Grant Project Sites

- 2016
- 2017
- 2018
- 2019
- 2020

