

MEETING DATE: October 27, 2016

TITLE: Authorization to Execute an Agreement with Great River Greening to Perform Vegetation Restoration within the Minnehaha Creek Preserve

RESOLUTION NUMBER: 16-080

PREPARED BY: Laura Domyancich

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TELEPHONE: 952-641-4582

REVIEWED BY: Administrator Counsel Program Director:
 Board Committee Engineer Other

WORKSHOP ACTION:

<input checked="" type="checkbox"/> Advance to Board mtg. Consent Agenda.	<input type="checkbox"/> Advance to Board meeting for discussion prior to action.
<input type="checkbox"/> Refer to a future workshop (date): _____	<input type="checkbox"/> Refer to taskforce or committee (date): _____
<input type="checkbox"/> Return to staff for additional work.	<input type="checkbox"/> No further action requested.
<input type="checkbox"/> Other (specify):	

PURPOSE or ACTION REQUESTED:

Authorization to execute an agreement with Great River Greening (Attachment 1) to perform invasive species removal within the Minnehaha Creek Preserve (Reach 20) project site pursuant to a legislative appropriation earmarked to Great River Greening under the Minnesota Outdoor Heritage Fund.

PROJECT/PROGRAM LOCATION:

Minnehaha Creek Preserve (Reach 20), St. Louis Park.

PROJECT TIMELINE:

November 2016 – June 30, 2019 Project implementation.

PROJECT/PROGRAM COST:

Fund name and number: Project Maintenance & Land Management, 2003

Current budget: \$546,429

Expenditures to date: \$115,164.94

Requested amount of funding: \$17,500 (MCWD match)

PAST BOARD ACTIONS:

December 11, 2014 – Resolution 14-105: Authorization to execute a Memorandum of Understanding with Great River Greening

February 26, 2015 – Resolution 15-018: Authorization to submit Partnership Proposals with Great River Greening to apply for Outdoor Heritage Fund and Environmental & Natural Resources Trust Fund grants

March 10, 2016 – Resolution 16-020: Authorization to Submit a Partnership Proposal with Great River Greening to apply for a LCCMR Grant

SUMMARY:

In December 2014, the Board of Managers authorized execution of a Memorandum of Understanding with Great River Greening. Great River Greening 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.

Great River Greening has the distinguishing core competencies of highly trained ecological staff, a dynamic community and youth involvement program, and a collaborative philosophy. In addition, they are able to help leverage funds from sources including the State of Minnesota Environmental Trust Fund and the Outdoor Heritage Fund.

At Minnesota Laws 2014, chapter 256, article 1, section 2, the legislature earmarked an appropriation to Great River Greening under the Outdoor Heritage Fund. The appropriation is administered and disbursed by the Minnesota Department of Natural Resources, for the purpose of restoring and enhancing natural systems associated with the Mississippi, Minnesota and St. Croix Rivers. Willing landowners or easement holders supply 20 percent of the cost of the restoration work while the remaining 80 percent is supplied by the appropriated funds. This proposed agreement arose out of the District's partnership with Great River Greening and would make use of this Outdoor Heritage Fund appropriation.

The project will be invasive species removal conducted at the Minnehaha Creek Preserve (Reach 20) project site. This work will be guided by this agreement, which details timing, financial obligations of both parties, and the scope of work to be implemented.

RESOLUTION

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WHEREAS, the MCWD Board requested that they be notified of grant opportunities and, when time allows, authorize staff to apply for grants; and

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; and

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; and

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; and

WHEREAS, Great River Greening has received funding under the Minnesota Outdoor Heritage Fund in the form of 80 percent cost share to work with landowners and easement holders to restore and enhance natural systems associated with the Mississippi, Minnesota and St. Croix Rivers.; and

WHEREAS, District staff proposes to partner with Great River Greening with the support of this funding through this Agreement to implement invasive species removal at the Minnehaha Creek Preserve;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the Board President, on the advice of counsel, to execute an Agreement with Great River Greening to perform invasive species removal within the Minnehaha Creek Preserve and to supply the local cost-share element for that work.

Resolution Number 16-080 was moved by Manager _____, seconded by Manager _____.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: _____.

Secretary Date: _____

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

**Minnehaha Creek Greenway Project
GRG Project HBIG28
GRG Agreement #: CA0816BIG28-MCWD**

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 2014, chapter 256, article 1, section 2, through the Commissioner, Minnesota Department of Natural Resources (MnDNR), for the purpose of restoring and enhancing natural systems associated with the Mississippi, Minnesota and St. Croix Rivers. 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 and with due professional care with respect to matters requiring professional expertise. 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 MOHF 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.

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. Compensation

GRG will invoice the MCWD no more frequently than monthly for staff costs in performing the Services, according to the hourly rates stated in Exhibit A. The MCWD will pay undisputed invoiced amounts within 30 days of receipt, to an aggregate of \$17,500.

On completion of the Services, GRG will document the cost of the Services. If the MCWD has paid less than \$17,500, the MCWD will pay an additional amount up to \$17,500 or 20 percent of the cost of the Services, whichever less. If MCWD payment has exceeded 20 percent of the cost of the Services, GRG will refund the excess.

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.

6. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until June 30, 2019.

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.

7. 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.

8. 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, and including contract liability coverage.
- 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.

9. 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.

10. 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.

11. 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.

12. 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. However, GRG's duty of professional care under paragraph 4, above, does not extend to materials provided to GRG by MCWD or any portion of the Services that is inaccurate or incomplete as the result of GRG's reliance on those materials.

13. Notices

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

To MCWD:

Laura Domyancich
Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345

Re: Minnehaha Creek Greenway Project

To GRG:

Todd Rexine
Great River Greening
35 Water Street, Suite 201
Saint Paul, MN 55107

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

14. Choice of Law, Venue and Jurisdiction

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

15. Whole Agreement

Exhibit B, Terms of Metro Big Rivers Habitat - Phase VII, is attached hereto and incorporated herein. This agreement, including Exhibits A and B, 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 _____
Deborah Karasov, Executive Director

Date: _____

Approved as to Form and Execution

MCWD Attorney

MINNEHAHA CREEK WATERSHED DISTRICT

By _____
Lars Erdahl, Administrator

Date: _____

Exhibit A: Scope of Services

Great River Greening – MCWD Partnership Minnehaha Creek Preserve (Reach 20) Natural Resource Enhancement

1. **PURPOSE:** Implement invasive species management and native vegetation restoration in targeted areas of the Minnehaha Creek Preserve (Reach 20) Project Site. Site is located in St. Louis Park and Hopkins, MN and contains over 30 acres of upland, wetland, and riparian habitat.
2. **GENERAL BACKGROUND:** In an effort to improve a degraded stretch of Minnehaha Creek in St. Louis Park and Hopkins, MCWD constructed a stream remeander, which lengthened the creek by 1600 feet. The restored uplands, wetlands, and ponds treat stormwater from over 80 acres of surrounding area that previously entered the creek untreated. 39 acres of green space are now accessible, and the project provides a range of water quality and community benefits. Vegetation restoration throughout the construction and early establishment phase was focused on target areas with the highest public visibility and with existing high-quality vegetation.

3. **SITE DESCRIPTION:**

Background: Specific floodplain forest and upland woodland portions of the site were targeted for woody invasive species removal during the construction and establishment period (2014-2016) both to provide water quality benefits through improved vegetative structure and to increase habitat availability. Managing vegetation across a large site led MCWD to focus invasive species control in target areas with the intention of expanding vegetation management in future phases.

Recent Management: Removal and herbicide treatment of common buckthorn and glossy buckthorn has been recently focused in close proximity to the trail alignment within the site. After three years of management, the opportunity exists to expand the areas of buckthorn treatment to allow for improved plant diversity and overall site stability.

Existing Conditions: Great River Greening (GRG) has worked with MCWD staff to identify areas of expanded buckthorn management along the existing trail alignment and outward from these areas. Buckthorn within these expanded areas ranges from large multi-stemmed trees to smaller understory trees and saplings. Woody and herbaceous plant diversity is very low in these areas. GRG and MCWD have estimated costs for removal and follow-up treatment, determined the appropriate timeline, and identified potential opportunities for area residents to participate in volunteer events to complete a portion of the proposed management.

4. SITE DELIVERABLES:

Site Standards:

- Eliminate or greatly reduce common and glossy buckthorn in specified target areas within existing trail alignments.
- Support the expansion of existing pockets of recovering native vegetation within trail alignments and allow for future replanting.
- Protect existing restoration areas from non-target removal and non-target herbicide application.
- Protect trail surfaces from damage by equipment.

Proposed Work:

a) **Buckthorn cutting and treating:** Cut common and glossy buckthorn from specified target areas within existing trail alignments in winter 2016-2017. Treat stumps with 25% glyphosate solution or Garlon 4 with blue marker dye. Chip and remove all cut material from site.

b) **Coordination:** GRG staff will coordinate with MCWD staff to determine best specific management practices, assess management progress, adapt techniques based on timing and weather conditions, and determine specific priority areas. Any changes to the agreed Scope of Services must be communicated to and approved by MCWD staff.

c) **Volunteer activities:** GRG staff will coordinate with MCWD staff to explore opportunities to organize volunteers to complete portions of the vegetation management, which may include cutting buckthorn with small hand tools and stacking cut material. GRG will be responsible for training, equipping, supervision and safety of volunteers.

d) **Monitoring and Reporting:** GRG shall inspect the site during the work period to assess site conditions and provide periodic reports summarizing the site conditions and management carried out. All herbicide application records must be sent electronically to MCWD within 2 weeks of application.

GRG staff Hourly Rates:

Project Manager/Ecologist	\$80/hour
Volunteer Coordinator	\$60/hour
Field Coordinator	\$55/hour
Field Technician	\$45/hour

EXHIBIT B: Terms of Metro Big Rivers Habitat – Phase VII 2016 Outdoor Heritage Fund appropriation

This exhibit contains additional terms of the agreement between Great River Greening (Minnesota Outdoor Heritage Fund Recipient) and Minnehaha Creek Watershed District (Landowner)

Great River Greening has received as an appropriation under Minn. Laws 2014, Regular Session, Chapter 256, Article 1, Section 2, Subd 5(d) Metro Big Rivers Habitat – Phase VII, \$400,000 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 as provided in Minnesota Statutes, section 84.026.

COMPLIANCE

The Landowner acknowledges that these funds are proceeds from the State of Minnesota Outdoor Heritage Fund. Per section 2 of the agreement, Recipient is responsible for compliance with legal requirements imposed thereby except as the agreement explicitly provides.

LIABILITY

Recipient 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 Recipient or Recipient's agents or employees. This clause will not be construed to bar any legal remedies Recipient 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, Recipient 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 Recipient, the Landowner acknowledges the long term maintenance and enhancement needs of the restoration process to achieve restoration goals. The Landowner agrees to maintain restoration for a minimum of 10 years. The Recipient agrees to make reasonable good faith effort to significantly contribute to the successful maintenance of the project.

PROTECTED LAND

Landowner testifies that the restoration project is on land permanently protected by a conservation easement or public ownership or in public waters as defined in Minnesota Statutes, section 103G.005, subdivision 15; and will provide reasonable written documentation of such protection.

POLLINATOR BEST MANAGEMENT PRACTICES

Habitat restorations and enhancements conducted on any lands using state funds are subject to pollinator best management practices and habitat restoration guidelines pursuant to Minnesota Statutes, section 84.973. Practices and guidelines ensure an appropriate diversity of native species to provide habitat for pollinators through the growing season. Current specific practices and guidelines are to follow MN DNR Pollinator BMP Guidelines (December 2014 version).

http://files.dnr.state.mn.us/natural_resources/npc/2014_draft_pollinator_bmp_guidelines.pdf

INVASIVE SPECIES PREVENTION

During habitat restoration and enhancement activities steps will be taken to prevent or limit the introduction, establishment, and spread of invasive species. Current practices and guidelines are to follow MN DNR Operation Order 113.

http://files.dnr.state.mn.us/assistance/backyard/treecare/forest_health/invasive/guidelines-tis-forestry.pdf