



Title: Approving Programmatic Agreement with City of Shorewood for Maintenance of Stormwater Management Facilities and Wetland Buffers

Resolution number: 22-081

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Reviewed by: Chuck Holtman, District Attorney

Recommended action: Approval

Summary:

Under its Stormwater Management and Wetland Protection Rules, the Minnehaha Creek Watershed District (MCWD or District) requires a permittee to record a maintenance declarations that obligates the permittee and successor landowners to maintain stormwater management facilities and vegetated wetland buffers in perpetuity. In lieu of a recorded declaration, a public permittee may fulfill this requirement by executing a maintenance agreement with the District. Where the public entity requires District permits from time to time, it is efficient for the entity and the District to enter into a programmatic maintenance agreement that establishes standard maintenance terms. The agreement then is simply referenced in and incorporated into subsequent permits, rather than executing agreements on a project by project basis. The District has programmatic maintenance agreements in place with several cities and road authorities.

The City of Shorewood frequently plans and constructs projects that are regulated by MCWD Rules, and that therefore require long-term maintenance aligning with MCWD standards. The City also is subject to maintenance and reporting requirements under the City's Municipal Separate Storm Sewer System (MS4) permit from the Minnesota Pollution Control Agency. The proposed programmatic maintenance agreement with the City of Shorewood will memorialize terms of maintenance as required by the MCWD Stormwater Management and Wetland Protection rules. The terms regarding stormwater facility maintenance will align with the City's MS4 obligations.

The terms of the programmatic agreement are substantially the same as those in existing District programmatic agreements, with the following changes:

- Section 2.a.
 - Shorewood requested that standard terms be adjusted to provide for visual inspection of stormwater basins annually, inspection for sediment accumulation every 15-20 years, and when inspection finds the pond's wet storage to be less than 50%, cleanout within three years. The District programmatic maintenance agreement template requires an annual inspection of sediment accumulation. The change is to allow for the City to program the maintenance expenses into its Capital Improvement Program budget.
- Section 2.g.
 - Shorewood requested that standard terms be adjusted to stipulate inspection of grit chambers, sump catch basins and sump manholes annually, instead of three times per year as is required by the District

programmatic maintenance agreement template. This allows the City to align inspections with its current inspection schedule.

Staff consulted with the District Engineer to determine if these revisions to the District programmatic agreement template adequately meet maintenance goals and requirements, and has concluded that they do.

Supporting documents:

Programmatic Maintenance Agreement – City of Shorewood



RESOLUTION

Resolution number: 22-081

Title: Approving Programmatic Agreement with City of Shorewood for Maintenance of Stormwater Management Facilities and Wetland Buffers

WHEREAS pursuant to Minnesota Statutes § 103D.345, the MCWD has adopted and implements the Stormwater Management Rule and Wetland Protection Rule;

WHEREAS under the Stormwater Management Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner’s perpetual obligation to inspect and maintain stormwater-management facilities;

WHEREAS under the Wetland Protection Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner’s perpetual obligation to protect undisturbed buffer adjacent to wetland;

WHEREAS in each case, a public landowner, as an alternative to a recorded instrument, may meet the maintenance requirement by documenting its obligations in an unrecorded written agreement with the MCWD;

WHEREAS the city of Shorewood from time to time is subject to stormwater management and wetland buffer maintenance requirements pursuant to the terms of an MCWD permit; and

WHEREAS the parties concur that it is clearer and procedurally more efficient for the MCWD and CITY to agree at this time on standard requirements for stormwater management and wetland buffer protection, so that this agreement may be incorporated into future permits as applicable.

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby authorizes the Board President, on advice of counsel, to execute a programmatic maintenance agreement with the City of Shorewood

Resolution Number 22- 081 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date 12/15/2022

 Secretary Date: _____

PROGRAMMATIC MAINTENANCE AGREEMENT
Stormwater Management Facilities and Wetland Buffers
Between the Minnehaha Creek Watershed District
and the City of Shorewood

This programmatic maintenance agreement is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (MCWD), and the City of Shorewood, a Minnesota municipal corporation and political subdivision of the State of Minnesota (CITY).

Recitals and Statement of Purpose

WHEREAS pursuant to Minnesota Statutes § 103D.345, the MCWD has adopted and implements the Stormwater Management Rule, and Wetland Protection Rule;

WHEREAS under the Stormwater Management Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner's perpetual obligation to inspect and maintain stormwater-management facilities;

WHEREAS under the Wetland Protection Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner's perpetual obligation to protect undisturbed buffer adjacent to wetland;

WHEREAS in each case, a public landowner, as an alternative to a recorded instrument, may meet the maintenance requirement by documenting its obligations in an unrecorded written agreement with the MCWD;

WHEREAS CITY from time to time is subject to stormwater management and wetland buffer maintenance requirements pursuant to the terms of an MCWD permit;

WHEREAS CITY must implement an operations and maintenance program that prevents or reduces the discharge of pollutants from City-owned and operated facilities and operations per the City's authorization to discharge stormwater associated with small municipal separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES) / State Disposal System (SDS) program (Permit MNR040000) as administered by the Minnesota Pollution Control Agency (MPCA); and

WHEREAS the parties concur that it is clearer and procedurally more efficient for the MCWD and CITY to agree at this time on standard requirements for stormwater management and wetland buffer protection so that this agreement may be incorporated into future permits as applicable.

THEREFORE, MCWD and CITY agree as follows:

1. **WETLAND BUFFER AREAS.** CITY, at its cost, will maintain buffer areas in accordance with the following:
 - a. Buffer vegetation will not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for periodic cutting or burning that promotes the health of the buffer, actions to address disease or invasive species, mowing for purposes of public safety, temporary disturbance for placement or repair of buried utilities. Pesticides and

herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface will be placed within a buffer, except that construction of a trail or path of no more than 4 feet in width to provide riparian access through the buffer is acceptable. No fill, debris or other material will be excavated from or placed within a buffer.

- b. Permanent wetland buffer monuments or markers will be maintained in the locations shown on the approved site plan for any applicable project. Monument or marker language will indicate the purpose of the buffer, restrictions and the name and phone number of the Minnehaha Creek Watershed District.

2. **STORMWATER FACILITIES.** CITY, at its cost, will maintain stormwater facilities in accordance with the following:

- a. **Stormwater retention and treatment basin(s).** Stormwater retention and treatment basin(s) must be inspected visually at least once a year to determine if the basin's retention and treatment characteristics are adequate and continue to perform per design. Culverts and outfall structures must be inspected at least annually and kept clear of any obstructions or sediment accumulation. Sediment accumulation in stormwater retention and treatment basins will be measured between 15 years and 20 years of the systems operation. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent of its original design volume. Based on this inspection, if the stormwater basin(s) is identified for sediment cleanout, the basin(s) will be restored to its original design contours and vegetation in disturbed areas restored within three years of the inspection date.
- b. **Raingardens, infiltration basins and filtration basins.** Raingardens, infiltration basins and filtration basins will be inspected visually at least once a year to ensure continued live storage capacity at or above the design volume. Invasive vegetation, excess sediment and debris will be removed as needed and healthy plant growth will be maintained to ensure that the facilities continue to perform per design.
- c. **Iron-enhanced sand filters.** Iron-enhanced sand media must be inspected every three years to determine if the iron's binding capacity has been reached. The phosphorus binding capacity of the iron-sand bed is exhausted and must be replaced to the original specifications when the total-phosphorus-to-total-iron ratio exceeds 5 milligrams of phosphorus per 1 gram of elemental iron or when the total phosphorus at the outlet of the iron-sand filter consistently exceeds 60 to 70 micrograms per liter.
- d. **Vegetated swales.** Vegetated swales may be mowed for public safety, but otherwise must remain free from vegetative disturbance, fertilizer application, yard or other waste disposal, the placement of structures unless approved within the permit, or any other alteration that impedes function.
- e. **Pervious pavement and permeable pavers.** Pervious pavement or pavers will be inspected at least one per year after a major storm event and otherwise annually to ensure continuing performance per design. Surface openings will be vacuumed at least annually at the end of winter in dry weather to remove dry, encrusted sediment as necessary. Broken units that impair the structural integrity of the surface will be replaced. If water

stands for an extended period of time, the base materials will be removed and replaced.

- f. **Underground storage facilities.** Underground storage facilities will be inspected at least annually to ensure continuing performance per design. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of the original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be kept clear of any flow impediments.
 - g. **Grit chambers, sump catch basins and sump manholes.** Grit chambers, sump catch basins and sump manholes will be inspected annually. All sediment and debris will be removed as needed such that the stormwater facilities operate as designed and permitted. During annual inspection the approximate depth of material that is accumulated in the structures during cleanout will be measured and reported to the District.
 - h. **Reuse systems.** Runoff-management systems relying on capture and reuse of stormwater (e.g., for irrigation) must be operated and maintained in accordance with terms of permit approval and the manufacturer's or installer's specifications for any proprietary equipment.
 - i. **Proprietary stormwater facilities.** Proprietary stormwater facilities will be inspected at least annually and maintained as specified or recommended by the manufacturer and/or installer. Current manufacturer's and/or installer's maintenance specification must be maintained on file at both the MCWD office and appropriate CITY office.
 - j. **Reporting.** The Declarant will submit to the MCWD annually a brief written report that describes stormwater facility maintenance activities performed under this agreement, including dates, locations of inspections and the maintenance activities performed.
3. Any MCWD permit may contain additional maintenance conditions specific to a project in accordance with MCWD rules, as they may be amended from time to time.
 4. If CITY conveys into private ownership a fee interest in any property that has become subject to this agreement, it must require as a condition of sale, and enforce: (a) that the purchaser record a declaration on the property incorporating the maintenance requirements of this agreement; and (b) that recordation occur either before any other encumbrance is recorded on the property or, if after, only as accompanied by a subordination and consent executed by the encumbrance holder ensuring that the declaration will run with the land in perpetuity. If CITY conveys into public ownership a fee interest in any property that has become subject to this agreement, it must require as a condition of the purchase and sale agreement that the purchaser accept an assignment of all obligations vested under this agreement.
 5. CITY may enter into contracts with third parties for the performance of its responsibilities under this agreement. CITY may assign its responsibilities to another governmental unit, with prior or concurrent written notice to MCWD. Such agreements notwithstanding, CITY will remain liable to MCWD for compliance with the terms and requirements of any permit that explicitly applies this agreement.
 6. This agreement may only be amended by a writing signed by the parties.

7. This agreement is in force for five years from the date on which it has been fully executed and, and unless terminated by a party, will renew automatically for five year terms. Either party may terminate the agreement on 30 days' written notice to the other. Any obligations vested in CITY through incorporation into an issued permit before the effective date of termination will survive expiration.
8. The recitals above are incorporated into and made a part of this agreement.
9. The individuals below by their execution represent that they have the authority to enter into this agreement on behalf of the respective parties and to bind the parties to the terms herein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

MINNEHAHA CREEK WATERSHED DISTRICT

By _____ Date:
 President, Board of Managers

APPROVED AS TO FORM and EXECUTION

By _____ Date:
 Its Attorney

CITY OF CITY

By: _____ Date:
 Its Mayor

By: _____ Date:
 Its Administrator

APPROVED AS TO FORM and EXECUTION

By: _____ Date:
 City Attorney