



BROWN'S CREEK RESTORATION PROJECT
PARKS AND TRAILS ADMINISTERED PROPERTY
COOPERATIVE AGREEMENT
BETWEEN
THE STATE OF MINNESOTA AND BROWN'S CREEK WATERSHED DISTRICT

This agreement, between the State of Minnesota, acting by and through the Commissioner of the Department of Natural Resources, hereinafter referred to as the "State," and Brown's Creek Watershed District, hereinafter referred to as "BCWD."

WITNESSETH:

WHEREAS, the Commissioner of Natural Resources has the authority, duty, and responsibility under Minnesota Statutes Section 85.015, sub. 23, to establish, develop, maintain, and operate the Brown's Creek State Trail; and

WHEREAS, the State and BCWD are authorized under Minnesota Statutes Section 471.59, to enter into agreements to jointly or cooperatively exercise common power; and

WHEREAS, BCWD has authority under chapters 103B and 103D to design and implement programs and projects to improve water quality and protect water resources within the Brown's Creek watershed; and

WHEREAS, the State owns land through which Brown's Creek flows for part of its course, as depicted in **Exhibit A** which is attached to and incorporated into this agreement and hereinafter referred to collectively as the "State Property"; and

WHEREAS, the State operates the Brown's Creek State Trail within the State Property hereinafter referred to as the "State Trail"; and

WHEREAS, BCWD has requested permission to access and use the State Property for the purpose of conducting creek restoration work and creek access improvements located on State Property and hereinafter referred to as the "Restoration Project," which is part of a larger project referred to herein as the "BCWD Project"; and

WHEREAS, the State and BCWD have determined that the completion of the proposed Restoration Project on the State Property is of benefit to the State and the BCWD; and

WHEREAS, the State is prepared to grant BCWD access to the State Property for the purposes of completing the Restoration Project and consistent with the final plans developed by BCWD, which are attached and incorporated into this agreement as **Exhibit B**; and

WHEREAS, BCWD is prepared to be the lead agency in the completion of the Restoration Project; and

WHEREAS, BCWD shall secure all local, state, and federal permits required for the completion of the Restoration Project; and

WHEREAS, the BCWD Board of Managers has ordered the BCWD Project in accordance with Minnesota Statutes section 103B.251; and

WHEREAS, upon completion of the Restoration Project, the BCWD will be responsible for maintenance of the Restoration Project; and

WHEREAS, a resolution and copy of the BCWD Board meeting minutes authorizing the BCWD to enter into this agreement are attached to and incorporated into this agreement as **Exhibit C**; and

NOW, THEREFORE, in consideration of the mutual benefit to be derived by the public bodies hereto and for the benefit of the public, the parties agree as follows:

I. STATE'S DUTIES AND RESPONSIBILITIES

- a. The State will review the plans and design for the BCWD Project and by the signature of its authorized representative below approves the project designs in Exhibit B with regard to compatibility with plans for the State Trail and management of the State Property.
- b. The State shall be permitted to review and approve any material revisions to the final plans for the Restoration Project as proposed by the BCWD during the term of this agreement. State approval shall be timely provided by the State's designated contact. The State's approval will not be unreasonably withheld.
- c. By the signature of its authorized representative below, the State authorizes BCWD to access and use the State Property for the purposes of completing and maintaining the Restoration Project. Maintenance shall be the sole responsibility of the BCWD.
- d. Upon completion of the Restoration Project, BCWD will provide the State with a copy of as-built drawings of the installed Restoration Project completed within the State Property.
- e. The State shall be permitted to review and approve the work completed by BCWD at the substantial completion of the Restoration Project activities to confirm material consistency with the approved plans and design in Exhibit B.
- f. Upon completion of the Restoration Project, the State Trail and the Restoration Project will continue to be solely owned by the State,
- g. Upon termination of this agreement, the BCWD shall restore the State Property to a condition as approved by the State, except to the extent that the State Property is improved by the Restoration Project.

II. BCWD'S DUTIES AND RESPONSIBILITIES

- a. The Restoration Project shall be completed under the supervision of a professional engineer registered in the State of Minnesota.
- b. BCWD is authorized by the State to complete the Restoration Project within the boundaries of the State Property. The final plans and specifications for the Restoration Project as developed by the BCWD shall meet all applicable requirements of the Americans With Disabilities Act and all applicable State regulatory requirements.
- c. The BCWD will ensure that the design and plans for the Projects are consistent with applicable BCWD regulatory standards and criteria.
- d. The BCWD will designate an authorized representative to serve as liaison to the State for purposes of coordinating inspection, construction oversight, construction engineering and maintenance of the Projects as provided in this agreement.
- e. BCWD shall perform all necessary construction administration and project oversight and on-site construction observation associated with the implementation of the Restoration Project.
- f. The BCWD shall be solely responsible for the construction of the Restoration Project.
- g. BCWD will inspect and maintain, at its cost, the Restoration Project during the term of this agreement. Maintenance of the Restoration Project will be performed by the BCWD according to a plan and schedule to be developed by the BCWD, mindful of the recreational purposes of the State Trail, and approved by the State.

- h. BCWD shall install and maintain the Restoration Project in compliance with Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species during activities on public waters and DNR-administered lands. Operational Order 113 is incorporated into this agreement by reference and can be found at http://files.dnr.state.mn.us/assistance/grants/habitat/heritage/oporder_113.pdf.
- i. At the termination of this agreement, the BCWD will, at its cost, remove the trail connection component of the Restoration Project from the State Property if directed to do so in writing by the State. If the State elects to have the trail connection removed, BCWD will restore the associated State Property to a condition agreed to by the State and BCWD, except to the extent that the State Property is improved by the Restoration Project.

III. FUNDING

The State shall provide funding for its responsibilities under Article I (a)(b)(c)(d)(e)(f)(g)(h) above through the standard internal purchasing process including, but not limited to, a separate requisition in which funds will be encumbered. The obligation of the State is also limited to the amount of funds legislatively appropriated and administratively allocated to this project.

The State shall provide funding for its responsibilities under Article I (a)(b)(c)(d)(e)(f)(g)(h) above through the standard internal purchasing process including, but not limited to, a separate requisition in which funds will be encumbered. The total obligation of the State is limited to the amount of funds legislatively appropriated and administratively allocated to this project.

IV. TERM

- a. *Effective Date:* **March 20, 2024** or the date that the State obtains all required signatures under Minnesota Statutes Section 16C.05, Subdivision 2. BCWD shall not begin work under this agreement until it is fully executed and BCWD has been authorized by the State's authorized representative to begin the work.
- b. *Expiration Date:* **March 20, 2049**, except as otherwise agreed to in writing by both parties. This agreement shall renew at the end of the term for an additional five-year period unless a party gives three (3) months written notice to the other party to terminate the agreement. This agreement shall continue to automatically renew at the end of each five-year period unless the required given notice is given.

V. LIABILITY

Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, and other applicable law. BCWD's liability shall be governed by Minnesota Statutes Sections 466.01 - 466.15, and other applicable law.

VI. AUDIT

Under Minnesota Statutes Section 16C.05, sub. 5, the books, records, documents and accounting procedures and practices of BCWD relevant to the agreement shall be subject to examination by the Commissioner of Natural Resources, the Legislative Auditor and the State Auditor for a minimum of six (6) years from the end of this agreement.

VII. ANTITRUST

BCWD hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations that arose under the antitrust laws of the United States and the antitrust laws of the State of Minnesota

VIII. FORCE MAJEURE

Neither party shall be responsible to the other or considered in default of its obligations within this Agreement to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of inability to perform and take all necessary steps to bring about performance as soon as practicable.

IX. CANCELLATION

This agreement may be cancelled by the State at any time with cause upon thirty (30) days written notice to BCWD.

This Agreement may also be cancelled by BCWD at any time with or without cause upon thirty (30) days written notice to the State.

X. GOVERNMENT DATA PRACTICES

BCWD and the State must comply with the Minnesota Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by BCWD under this agreement. The civil remedies of Minn. Stat. 13.08 apply to the release of the data referred to in this clause by either BCWD or the State.

XI. PUBLICITY AND ELECTRONIC ACCESSIBILITY

Any publicity regarding the subject matter of this agreement must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for BCWD individually or jointly with others, or any subcontractors, with respect to the program and services provided from this agreement.

All publicity shall be provided in an accessible format per Minnesota Statute 16E.03, sub. 9. State of Minnesota guidelines for creating accessible electronic documents can be found at the following URL: <https://mn.gov/mnit/programs/accessibility/>.

XII. COMPLETE AGREEMENT

This agreement contains all negotiations and agreements between the State and BCWD. No other understanding regarding this agreement, whether written or oral, may be used to bind either party. Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

XIII. AUTHORIZED REPRESENTATIVES

Any notice, demand or communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, or by email to:

The State's Authorized Representative is Rachel Henzen, Parks and Trails Division Area (3B) Supervisor, Minnesota Department of Natural Resources, 1200 Warner Road, St. Paul MN 55106, Rachel.Henzen@state.mn.us, or her successor.

BCWD's Authorized Representative is NAME, TITLE, ADDRESS, PHONE ,EMAIL or his/her successor.

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IN WITNESS WHEREOF, the parties have caused the Agreement to be duly executed intending to be bound thereby.

DEPARTMENT OF NATURAL RESOURCES

BROWN'S CREEK WATERSHED DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

DEPARTMENT OF ADMINISTRATION
Delegated to Materials Management Division

BROWN'S CREEK WATERSHED DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

(Effective Date)

STATE ENCUMBERANCE VERIFICATION

Individual certifies that funds have been encumbered as req. by Minn. Stat. 16A.15 and 16C.05.

Signed: _____

Date: _____

Contract: _____

EXHIBIT A

Description of Property

EXHIBIT B
Restoration Plan

EXHIBIT C
BCWD Resolution and Minutes