

Cooperative Cost-Share Agreement Between Brown's Creek Watershed District and the City of Stillwater

This cost-share agreement is made by and between the City of Stillwater, a Minnesota municipal corporation (Stillwater), and Brown's Creek Watershed District, a special purposes governmental entity of the State of Minnesota with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (BCWD), for purposes of BCWD's contribution of technical and financial support to Stillwater for improvement of the 62nd Street Trail to mitigate flood risk to private residential properties in the city and watershed.

1. Location. Stillwater owns in fee simple two parcels of certain real property identified by Washington County property identification numbers 31.030.20.44.0004 and 31.030.20.42.0010, consisting of, respectively, 6.9 and 15.1 acres of land, more or less, and has an easement for the use for utility and nonmotorized trail purposes, over certain real property identified by Washington County property identification number 31.030.20.41.0054 located in the City of Stillwater, Washington County, Minnesota. (The two fee parcels and easement area are referred together herein as "the Project Site.")

2. Scope of Work. Stillwater will reconstruct and lower the elevation of the 62nd Street trail on the Project Site to reduce risk of flooding from the adjacent 62nd Street Pond and otherwise to residential properties adjacent to the Project Site, in accordance with the design and plans prepared by Stillwater and attached to and incorporated into this agreement as a term thereof as Exhibit A (the 62nd Street Trail Project). Stillwater is responsible for obtaining all required permits and approvals, including a BCWD permit if required, for the 62nd Street Trail Project and for complying with all laws, including laws requiring location of buried utilities prior to land disturbance. BCWD representatives may enter the Project Site at reasonable times to inspect the work, assess the performance of the 62nd Street Trail Project and ensure compliance with this agreement.

Stillwater will maintain a copy of the final design and plans and other records concerning the 62nd Street Trail Project for six years from the date construction of the 62nd Street Trail Project is completed. BCWD may examine, audit or copy any such records on reasonable notice to Stillwater.

3. Contractor. Stillwater has selected a contractor or contractors for the 62nd Street Trail Project and ensure construction of the 62nd Street Trail Project in conformity with Exhibit A. In contracting for construction of the 62nd Street Trail Project, Stillwater will ensure that no person is excluded from full employment rights or participation in or benefits of any program, service, or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public-assistance status or national origin, and that no person protected by applicable federal or state laws, rules or regulations against discrimination is subject to discrimination.

4. Reimbursement. BCWD, on receipt from Stillwater of receipts, invoices or other documentation reasonably requested by BCWD, along with documentation of Stillwater's payment of the costs of the 62nd Street Trail Project will reimburse Stillwater 50 percent of the cost of construction of the 62nd Street Trail Project, not to exceed a total \$10,000. Stillwater is responsible for any costs beyond this reimbursement amount incurred in completing the 62nd Street Trail Project.

5. Signage. Stillwater will permit BCWD, at its cost and discretion, to place reasonable signage on Stillwater's property informing the general public about the 62nd Street Trail Project and BCWD generally.

6. Maintenance. Stillwater will maintain the 62nd Street Trail Project for at least 10 years from the date reconstruction is complete to ensure continued efficacy of the 62nd Street Trail Project as a flood-risk mitigation measure. If Stillwater does not perform maintenance obligations, BCWD will have a right to reimbursement of all amounts paid to Stillwater, unless BCWD determines that the failure to maintain the BMP was caused by reasons beyond Stillwater's control. BCWD and its representatives may enter the Project Site at reasonable times to inspect the condition of the 62nd Street Trail Project and confirm proper maintenance.

7. Timeline and Term; Survival of Obligations. This agreement is effective when executed by all parties and expires three years thereafter. Stillwater's obligations that have come into being before termination, specifically including obligations under paragraph 6, will survive expiration. BCWD retains the right to void the agreement if the 62nd Street Trail Project is not completed by June 1, 2025. After BCWD notifies Stillwater that it intends to void this agreement because of Stillwater's failure to complete, Stillwater will not be eligible to receive reimbursement for work subject to the agreement unless BCWD extends, in writing, the 62nd Street Trail Project-completion period.

8. Notices. Any written communication required under this Agreement shall be addressed to the other party as follows:

Stillwater:
Assistant City Engineer
City of Stillwater
(651) 430-8834
rabdullah@ci.stillwater.mn.us

BCWD:
Administrator
Brown's Creek Watershed District
651-331-8316
kkill@wcdmn.org

9. BCWD Role; Indemnification. BCWD's role under this agreement is solely to provide funds to support the 62nd Street Trail Project. Review of any design or installation by BCWD or its representative is solely for the purpose of establishing accountability for BCWD funds expended. Stillwater remains fully responsible for the means, method and manner of designing, constructing and operating the 62nd Street Trail Project. Neither the Stillwater nor Stillwater's contractor acts as the agent or representative of BCWD in any manner. Stillwater will hold BCWD, its officers, board members, employees and agents harmless, and will defend and indemnify BCWD, with respect to all actions, costs, damages and liabilities of any nature arising from: (a) Stillwater's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty; or (b) a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by Stillwater to BCWD. No action or inaction of BCWD or Stillwater under this agreement creates a duty of care on the part of BCWD or Stillwater for the benefit of any third party.

10. Waiver and Rights. BCWD's failure to insist on the performance of any obligation under this agreement does not waive its right in the future to insist on strict performance of that or any other obligation. Notwithstanding any other term of this agreement, BCWD waives no

immunities in tort. This agreement creates no rights in and waives no immunities, defense or liability limit with respect to any third party.

Intending to be bound, the parties hereto execute and deliver this agreement.

City of Stillwater

Brown's Creek Watershed District

Ted Kozlowski, Mayor

Klayton Eckles, President

Date: _____

Date: _____

Attest

Approved as to form and execution

Beth Wolf
City Clerk

BCWD counsel

DRAFT

Exhibit A
62nd Street Trail Project Plans and Design

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