

**Second Amendment to Agreement Dedicating a Land-Use License
for the Brown's Creek Restoration Project
Between the City of Stillwater and
Brown's Creek Watershed District**

This amends for the second time the March 19, 2024, agreement (Agreement) 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), first amended May 8, 2024, (the Amended Agreement) to add certain vegetative-management work to the scope of the project.

Recitals

- A. Stillwater and BCWD entered into the Agreement to provide BCWD with rights to access the Brown's Creek Nature Preserve, 10.8 acres of certain real property owned in fee by Stillwater at the southwest corner of McKusick Road North and Neal Avenue North in the City of Stillwater, to construct "the Project," a creek-restoration construction and improvement defined and specified in the Agreement.
- B. The Agreement defined and provided an illustration of the "Project Area," the area within which the Project would be constructed.
- C. Stillwater and BCWD amended the agreement May 8, 2024, to reconfigure the access route BCWD's contractor would use for construction and implementation of the Project.
- D. Stillwater also owns in fee simple certain real property adjacent to the Project Area and designed by the following Washington County property identification numbers:
 - 19-030-20-41-0005;
 - 19-030-20-41-0012.

(The two parcels together are referred to herein as the "Buckthorn Properties.")

- E. BCWD and Stillwater have determined that winter removal of invasive common and glossy buckthorn and preservation of quality aspen, cottonwood, birch, elm, walnut, silver maple, boxelder and alder trees on approximately 5 acres of area within the Project Area and on the Buckthorn Properties (the Habitat Improvements) would improve woodland habitat buffering Brown's Creek, enhancing the resource-improvement benefits achieved by the implementation of the Project, and Stillwater has obtained quotes for completion of the Habitat Improvements, including two years' of followup vegetation maintenance.

- F. The parties wish to again amend the Agreement to provide for the completion of the Habitat Improvements to the scope of the Project and provide for cooperative implementation of the work.
- G. Stillwater and BCWD are authorized by Minnesota Statutes section 471.59 to enter into this amendment to add the Habitat Improvements to the scope of the Project.

Amendment

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and made a part of this second amendment, and to facilitate the Project and Habitat Improvement for the benefit of the public, the parties agree as follows:

1. Implementation of the Habitat Improvements.

- A. Plans and designs for the Habitat Improvements have been prepared by Stillwater and are attached hereto and incorporated herein as Exhibit CC. By the signature of its authorized officials hereunder, BCWD approves the plans and design in Exhibit CC. Stillwater makes no warranty regarding its or any third party's performance in design, implementation or implementation oversight for the Habitat Improvements.
- B. Stillwater will contract in accordance with applicable public-procurement requirements and other applicable law for the implementation of the Habitat Improvements in accordance with the design and plans in Exhibit CC. Stillwater will require, in contracting for the Habitat Improvements, compliance with prevailing-wages requirements in Minnesota Statutes sections 177.41 to 177.50. Stillwater will obtain, at its expense, all required permits and approvals and will bear the costs and fees associated with complying with regulatory requirements applicable to the Habitat Improvements. In contracting for the construction of the Project, Stillwater will require that:
 - i. The contractor name BCWD as an additional insured for general liability with primary and noncontributory coverage and provide a certificate showing same prior to start of implementation.
 - ii. The contractor indemnify, defend and hold BCWD harmless from any and all actions, costs, damages and liabilities of any nature arising from the contractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty, or a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by the contractor to Stillwater.
 - iii. The contractor extend any warranties applicable to the Habitat Improvements to BCWD.

2. Costs

- A. Stillwater will be responsible for all costs of design, specification, implementation, implementation oversight and management of the Habitat Improvements. Stillwater will submit to BCWD a description of and invoices documenting eligible costs incurred in completing the Habitat Improvements, along with a narrative and photographs documenting the work.
- B. Within 35 days of receipt by BCWD of documentation of costs incurred and paid by Stillwater for the Habitat Improvements, BCWD will reimburse Stillwater for the documented contracted costs of the Habitat Improvements, not to exceed a total of \$20,000.
- C. Beyond the cost-sharing provisions herein, each party will bear its own costs of completion of their responsibilities and exercise of their rights hereunder.

All terms of the Amended Agreement not expressly altered or amended by this second amendment remain in full force and effect.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned have executed this second amendment with the intent to be legally bound by its terms as of the date this second amendment is fully executed by both parties.

City of Stillwater

Ted Kozlowski, Mayor

Attest

Beth Wolf, City Clerk

Date:_____

Brown's Creek Watershed District

Klayton Eckles, President

Approved as to form and execution

BCWD counsel

Date:_____

EXHIBIT CC

Habitat Improvements - Design & Plans