

**Agreement Dedicating an Irrevocable Term License and
Committing to Convey a Maintenance Easement**

**Between David C. Stone and
Brown's Creek Watershed District**

This agreement is made by and among David C. Stone, as an individual and as trustee of Stone Trust (together, Stone), and Brown's Creek Watershed District, a governmental entity of the State of Minnesota with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (BCWD), for purposes of conveyance by Stone to BCWD of temporary and ongoing property rights necessary for construction and long-term maintenance of a creek-improvement project.

RECITALS

A. Stone is the owner in fee simple of 5.3 acres of real property at 12850 McKusick Road North in the City of Stillwater, Washington County, legally described as:

The east half of the southwest quarter of the southeast quarter of the northeast quarter and the south 16 rods of the west 5 rods of the east half of the southeast quarter of the northeast quarter of Section 19, Township 30, Range 20, according to the United States Government Survey thereof, excepting therefrom Parcel no. 4 of Washington County highway Right of Way Plat No. 84, filed and recorded in the Washington County Recorder's Office as document no. 714184,

(the Stone Property).

B. Whereas Brown's Creek Watershed District has an approved and adopted watershed-management plan in fulfillment of Minnesota Statutes section 103B.231 and the plan commits BCWD to the improvement of the water quality and ecological integrity of Brown's Creek and its tributaries, including maintenance of a viable cold-water fishery and the hydrology and geomorphology of Brown's Creek and its tributaries required for stream equilibrium and health, and the capital improvements program in the plan includes creek-restoration projects addressing impairments of Brown's Creek for turbidity and fish-bioassessments identified in the Brown's Creek Total Maximum Daily Load Plan (2012) and the Brown's Creek Thermal Study (2016);

C. Whereas at the direction of the BCWD Board of Managers and to address the impairments and improve the ecological health of Brown's Creek, the BCWD staff and engineer developed a conceptual design for restoration of roughly 1,950 linear feet of the creek extending north and west from McKusick Road North just upstream of Brown's Creek Park in Stillwater, and the design includes narrowing the creek where widening has occurred, thinning trees and removing invasive species, restoring floodplain storage, restoring riffles and pools in the creek, shaping and stabilizing banks, and planting and establishing diverse native vegetation (the Brown's Creek Cove Project), and the Brown's Creek Cove Project will also include the development and implementation of a plan for

post-construction maintenance and repair of the Brown's Creek Cove Project (the Maintenance Plan);

D. Whereas the Brown's Creek Cove Project includes work on the Stone Property, among others, and Stone has agreed to provide rights to access and use the Stone Property to facilitate implementation and maintenance of the Brown's Creek Cove Project;

E. Whereas after presentation by staff and the engineer of the concept for and assessment of the feasibility of the Brown's Creek Cove Project at its March 2026 regular meeting and a duly noticed public hearing pursuant to Minnesota Statutes section 103B.251, subdivision 3, the managers adopted BCWD Resolution 26-03, ordering the Brown's Creek Cove Project; and

F. Construction of the Brown's Creek Cove Project will benefit Stone by stabilizing and improving the Stone Property, securing it against loss from erosion, and will benefit the public generally by mitigating risk of flooding and improving the ecological health of the creek and wildlife habitat.

The parties acknowledge in executing this agreement that sufficient mutual consideration is exchanged under the terms hereof, and that this agreement sets forth obligations that are duly binding on the parties.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into and made a part of this agreement, and to facilitate the Brown's Creek Cove Project, the parties agree as follows:

1. Approval of design and plans. BCWD has contracted with the BCWD engineer, Emmons & Olivier Resources Inc., for the preparation of a design and plans for the Brown's Creek Cove Project, and the design and plans are attached hereto and incorporated herein as Exhibit A. By their signature hereunder, Stone approves the plans and design in Exhibit A. BCWD makes no warranty to Stone regarding the BCWD engineer's or another third party's performance in design, construction or construction management for the Brown's Creek Cove Project.

2. License

- a. **Grant of license.** Stone hereby grants and conveys to BCWD, its contractors, agents, successors and assigns, an irrevocable term license over, under, upon and across that portion of the Stone Property shown and labeled "Construction Area" on Exhibit B, attached hereto and incorporated herein, for purposes of access to and use of the Stone Property for purposes of completion of the Brown's Creek Cove Project (the License). The License includes the right of ingress and egress and to pass over and through the Construction Area on foot and using motorized equipment for staging of construction, construction and implementation of the Brown's Creek Cove Project and the right to plant native vegetation, install stabilization techniques, alter existing grades and perform grading and filling within the Construction Area necessary to achieve the intended purposes of the Brown's Creek Cove Project. The rights granted

hereby include the right to lay and maintain temporary utilities across or above the surface of the Construction Area for purposes of implementation and construction of the Brown's Creek Cove Project.

- b. **Restrictions on Stone's use of the Construction Area.** During the term of the License, Stone agrees not to use the Construction Area in any manner that would damage or interfere with the Brown's Creek Cove Project. Specifically, any grading, filling or alteration of the surface of the Construction Area by any party other than BCWD, its contractors, agents, successors or assigns, or the construction of any hard-surfaced areas, fences, sheds, structures or similar improvements within the Construction Area is prohibited. Stone may use and enjoy the Stone Property and the Construction Area for all purposes, but such use and enjoyment is subject to the restrictions stated herein and the temporary right of BCWD to use the same for the purposes herein expressed.
- c. **No public access or use.** No right of access or use of the Stone Property is granted to the general public by this License.

3. Property Condition. On completion of construction of the Brown's Creek Cove Project, BCWD will restore the Stone Property to materially the same condition as existed prior to the commencement of construction, except to the degree that the Stone Property is improved by the Brown's Creek Cove Project. In the event the Stone Property is damaged by the activities of BCWD or its contractors, agents or assigns pursuant to the exercise of any of BCWD's rights under this agreement, BCWD will promptly repair or restore the Stone Property to the extent reasonably practicable or to a condition agreed to by BCWD and Stone. BCWD will repair, seed or plant disturbed or damaged areas with vegetation suitable for Stone's continued use of the Stone Property. Stone agrees and acknowledges that BCWD will not be responsible for any preexisting conditions on the Stone Property, environmental or otherwise, or for any damage to the Stone Property or liability arising out of or related to such preexisting conditions.

4. BCWD's ongoing specific rights and duties. In addition to its rights and responsibilities for fulfillment of the terms of this agreement as provided herein, BCWD agrees to accept and exercise rights and duties as follows:

- a. BCWD will contract with the BCWD engineer for construction oversight and management of the Brown's Creek Cove Project in accordance with the design and plans in Exhibit A.
- b. In contracting for the construction of the Brown's Creek Cove Project, BCWD will require that:
 - i. The contractor restrict all of its activities to the Construction Area of the Stone Property as specified in subsections 2a and b herein.
 - ii. The contractor name Stone as an additional insured for general liability with primary and noncontributory coverage and provide a certificate showing same prior to start of construction.

- iii. The contractor indemnify, defend and hold harmless Stone 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 BCWD.
- iv. The contractor extend all warranties applicable to the Stone Property to Stone.
- c. BCWD or its engineer or contractor will assess the need for and obtain all permits and other regulatory approvals applicable to the Brown's Creek Cove Project on behalf of BCWD and Stone.
- d. BCWD will notify Stone at least 10 calendar days prior to commencement of construction of the Brown's Creek Cove Project, and within 10 days of substantial completion of construction. (For purposes of this agreement and the Brown's Creek Cove Project generally, "substantial completion" is defined as completion of all elements of the Brown's Creek Cove Project as described herein for the intended purposes of the Brown's Creek Cove Project, except establishment and maintenance of vegetation, and implementation of the Maintenance Plan, as described in paragraph 5c herein, all of which will continue after substantial completion.)
- e. BCWD will consult with Stone in advance of making any material change in the design and plans in Exhibit A pertaining to work on the Stone Property.
- f. BCWD will provide Stone with as-built drawings of the portion of the Brown's Creek Cove Project on the Stone Property and a draft Maintenance Plan within 60 days of substantial completion of construction.
- g. BCWD will commence performance or contract for the performance of maintenance of the Brown's Creek Cove Project on receipt of an executed final Maintenance Easement and approval of a draft of the Maintenance Plan, as specified and defined in paragraphs 5b and 5c, respectively, herein. As between BCWD and Stone, BCWD will retain responsibility for establishment of vegetation and implementation of the Maintenance Plan.
- h. Until substantial completion of the Brown's Creek Cove Project, if BCWD, in its judgment, should decide that the Brown's Creek Cove Project is infeasible, BCWD, at its option, may declare the agreement rescinded and annulled. If BCWD so declares, all obligations herein, performed or not, will be void but, if land-disturbing activities for the Brown's Creek Cove Project on the Stone Property have commenced, BCWD will return the Stone Property materially to its prior condition or to a condition agreed to in writing by Stone and BCWD.

5. **Stone's ongoing specific rights and duties.** In addition to its rights and responsibilities for fulfillment of the terms of this agreement as provided herein, Stone agrees to accept and exercise rights and duties as follows:
- a. Stone will cooperate with efforts undertaken by BCWD and its contractors to obtain permits and approvals needed for the Brown's Creek Cove Project, and by his execution below Stone authorizes BCWD to apply for such permits and approvals on their behalf.
 - b. *Commitment to execute maintenance easement.* When BCWD notifies Stone of substantial completion of the Brown's Creek Cove Project and provides Stone with as-built construction drawing(s) of the portions of the Brown's Creek Cove Project on the Stone Property, Stone will attach the final construction drawing(s) provided by BCWD and execute a maintenance easement substantially in the form attached to and incorporated herein as Exhibit C (the Maintenance Easement). The Maintenance Area to be defined in the Maintenance Easement will encompass no greater area than that described as the Construction Area in this license, as shown in Exhibit B.
 - c. *Review and approval of the Maintenance Plan.* In accordance with paragraph 4f herein, BCWD will timely provide a draft of the Maintenance Plan to Stone for his cooperation in the development of the Maintenance Plan. Stone will have 60 days from receipt to review and approve the final draft Maintenance Plan submitted in accordance with paragraph 4f. Failure to act within the specified time will constitute approval. Stone's approval will not be unreasonably withheld.
6. **Costs.** As between the parties, BCWD will be responsible for all costs of design, specification, construction, construction oversight and management for the Brown's Creek Cove Project, and development and implementation of the Maintenance Plan. Stone dedicates the License and the Maintenance Easement pursuant to the terms of this agreement at no cost to BCWD. In addition, the parties each will bear their own incidental costs of determination and completion of their responsibilities and exercise of their rights hereunder.
7. **Insurance.** BCWD will require its contractors, agents, successors and assigns to carry commercial general liability coverage for injury to or death of a person or persons and for damage to property caused by the performance of the Brown's Creek Cove Project. Stone will remain solely responsible for maintaining liability and other insurance for their own use of and authority over the Stone Property.
8. **Term.** The License granted hereunder will expire two years from the date of execution of this agreement or on recordation in the office of the Washington County Recorder by BCWD of the Maintenance Easement, whichever occurs sooner. Stone may revoke the License prior to its expiration only on written concurrence of BCWD. All other rights, obligations and duties hereunder will survive termination of the License, including but not limited to Stone's obligation under paragraph 5b hereunder.

9. Delivery of Notices. All notices required or permitted under this agreement will be in writing and will be deemed delivered when personally delivered, delivered by documented courier delivery or mailed by United States registered or certified mail, return receipt requested, at the address below or to such other address as a party may designate by a written notice to the other.

If to Stone: David C. Stone
12850 McKusick Road North
Stillwater, MN 55082-8429
[phone/email]

If to BCWD: Brown's Creek Watershed District
Attn: Administrator
455 Hayward Ave North
Oakdale, MN 55128
KKill@mnwcd.org
651-330-8220

10. Severability. If any one or more of the provisions of this agreement, or the applicability of any such provision to a specific situation, is held invalid or unenforceable, such provision will be modified to the extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this agreement and all other applications of any such provision will not be affected thereby.

11. Venue; governing law. Venue for any adjudication arising from this agreement will be in the district court of Washington County, Minnesota, and the agreement will be construed and governed by the laws of the State of Minnesota.

12. No waiver of immunity. No provision of this agreement will be interpreted as a waiver of any statutory or common-law immunity by or limitation of liability available to BCWD, all such immunities and limitations being expressly reserved by BCWD.

{Signature page follows.}

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

Stone

_____ Date: _____
By David C. Stone, individually, and as trustee of the Stone Trust

Brown's Creek Watershed District

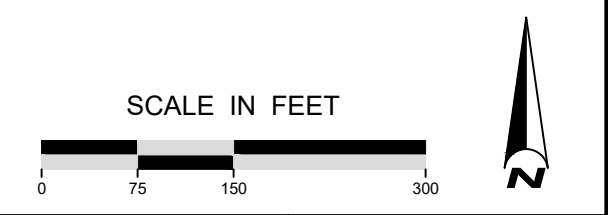
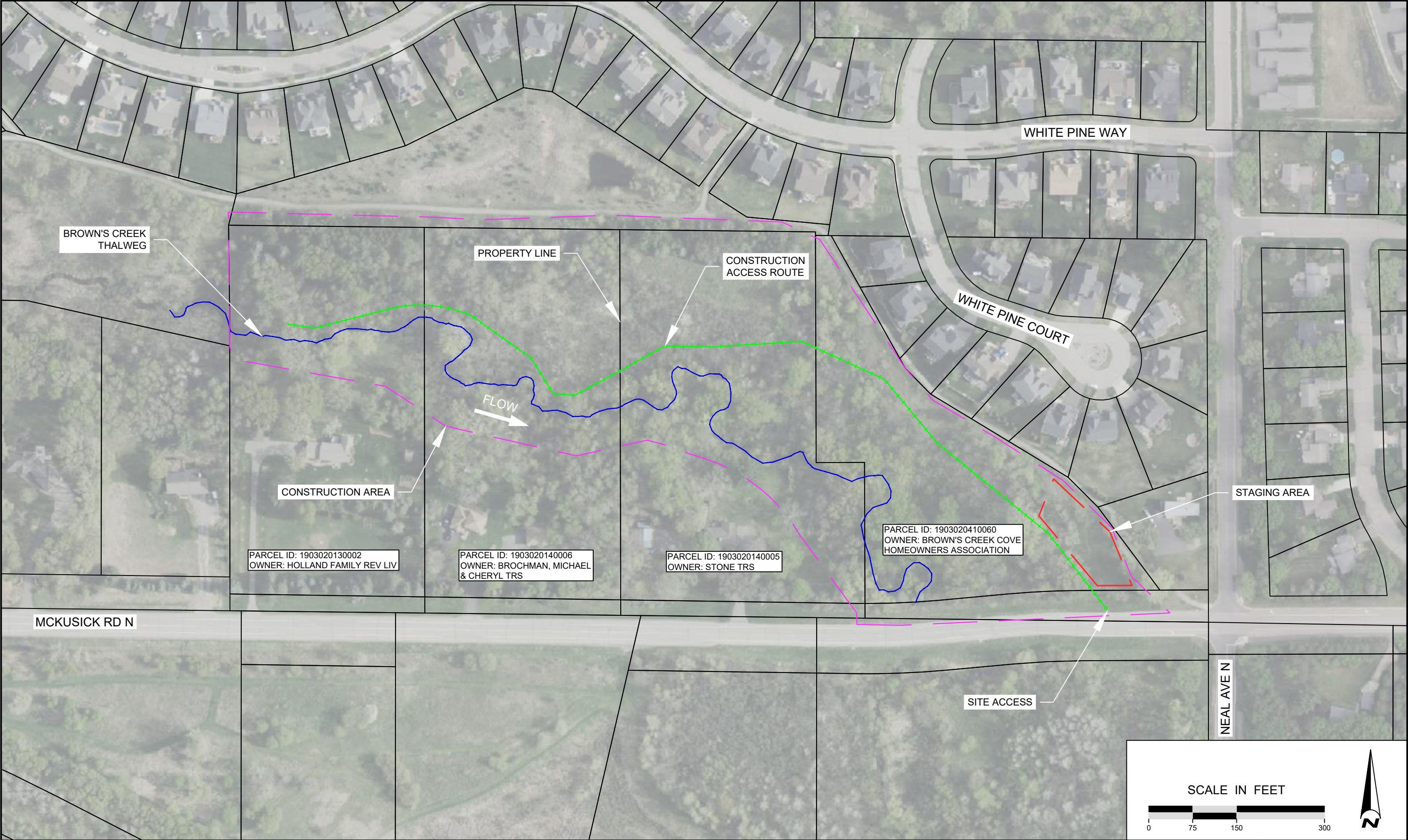
_____ Date: _____
By Karen Kill, its administrator

Approved as to form and execution

BCWD counsel

EXHIBIT A

Project Design & Plans



NOT FOR CONSTRUCTION

EOR

water ecology community

EMMONS & OLIVIER RESOURCES, INC.
1919 UNIV. AVE. W. #300 ST. PAUL, MN
TEL: 651.770.8448 WWW.EORINC.COM

DATE	NO.	DESCRIPTION
	1	
	2	
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	5	
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DESIGNED BY: EOR
DRAWN BY: DEM
CHECKED BY: MJM
EOR JOB #0041-0449



BROWN'S CREEK WATERSHED DISTRICT

CLIENT PROJECT #XXX-XXXX

BROWN'S CREEK COVE RESTORATION
STILLWATER, WASHINGTON COUNTY, MINNESOTA

BROWN'S CREEK WATERSHED DISTRICTOAKDALE, MN 55128

EXHIBIT B

SHEET 01 OF 01

Plot Date: 04/14/2026
Drawing Name: C:\Users\dem\OneDrive\Documents\Brown's Creek Cove\001 GIS\Shaded\041_0449-EASEMENT_EXHIBIT.dwg
User: A:\BASE\0410449_Images\...\\0412_Brown's Cove\Plt\0412_Brown's Cove\0412_Brown's Cove.dwg

EXHIBIT B

Site Plan – Construction Area

EXHIBIT C

Maintenance Easement

[MAINTAIN 3-INCH MARGIN]

MAINTENANCE EASEMENT

**On the Stone Property at 12850 McKusick Road North
Washington County, Minnesota**

THIS EASEMENT is granted by David C. Stone, as an individual and as trustee of Stone Trust (Grantor), and Brown's Creek Watershed District, a governmental entity of the State of Minnesota with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (Grantee).

WITNESS:

A. Grantor owns in fee simple certain real property consisting of 5.3 acres of land, more or less, at 12850 McKusick Road North in the City of Stillwater, Washington County, legally described as:

The east half of the southwest quarter of the southeast quarter of the northeast quarter and the south 16 rods of the west 5 rods of the east half of the southeast quarter of the Northeast quarter of Section 19, Township 30 north, Range 20 west, according to the United States Government Survey thereof, excepting therefrom Parcel no. 4 of Washington County highway Right of Way Plat No. 84, filed and recorded in the Washington County Recorder's Office as document no. 714184,

(the Stone Property) and no one other than Grantor and [NAME(S) OF ADDITIONAL PARTIES HOLDING RECORDED INTERESTS (E.G., A MORTGAGE) IN THE PROPERTY; EACH NEEDS TO COMPLETE A CONSENT AND SUBORDINATION], has any right, title or legal interest in the Stone Property.

B. Grantee has restored of roughly 1,950 linear feet of the creek extending north and west from McKusick Road North just upstream of Brown's Creek Park in Stillwater, and the design includes narrowing the creek where widening has occurred, thinning trees and removing invasive species, restoring floodplain storage, restoring riffles and pools in the creek, shaping and stabilizing banks, and planting and establishing diverse native vegetation (the Brown's Creek Cove Project) on, in part, the Stone Property. The Brown's Creek Cove Project has benefited Stone by stabilizing and improving the Stone Property and securing against soil loss from erosion, and will contribute to the realization of the public purposes for which Grantee was established;

C. Grantee has requested and Stone has agreed to grant to Grantee an easement over the Stone Property providing Grantee with the right to access and use the Stone Property to maintain the Brown's Creek Cove Project after construction.

Now, therefore, for one dollar and other good and valuable consideration, the sufficiency of which the parties hereby acknowledge, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys to Grantee, its contractors, agents, successors and assigns an ~~perpetual-ongoing~~ easement over, under, upon and across that portion of the Stone Property delineated and labeled on Exhibit 1, attached hereto and incorporated herein (the Maintenance Area), for purposes of access for maintenance of the Brown's Creek Cove Project in accordance with the Maintenance Plan developed for and approved by Stone as part of the Brown's Creek Cove Project. The easement includes the right of ingress and egress and to pass over and through the Maintenance Area on foot and using motorized equipment to conduct maintenance of the Brown's Creek Cove Project, including the right to inspect, monitor, reconstruct and otherwise maintain the Brown's Creek Cove Project on the Stone Property, including but not limited to correction of erosion and structural problems observed to ensure stability of the Maintenance Area, maintenance or replacement of plantings; seeding and reseedling to maintain ecological health and function; removal of invasive species and weeds as necessary to achieve the intended purposes of the Brown's Creek Cove Project. The rights granted hereby include the right to lay and maintain temporary utilities across or above the surface of the Maintenance Area for purposes of maintenance of the Brown's Creek Cove Project.

2. Restrictions on Grantor's Use of Maintenance Area. Grantor will not use the Maintenance Area or permit the construction of any improvements within the Maintenance Area in any manner that would damage or interfere with the function or physical structure of the Brown's Creek Cove Project. Specifically, Grantor will not alter or allow alteration of any grade-control structures or any filling or grading of land or construction of structures within the Maintenance Area to ensure the Brown's Creek Cove Project continues to protect water quality and moderate flow in the creek. Weeds may be hand-pulled or spot-treated with herbicide according to instructions on the herbicide label. Grantor will not mow or otherwise disturb vegetation, apply fertilizer to, or dispose of yard or other waste in the Maintenance Area.

3. No Public Access or Use; Grantor's Reserved Rights. No right of access or use is granted to the general public to the Stone Property by this easement. Stone may use and enjoy the Maintenance Area for any purposes and engage in or allow others to engage in all activities or uses and enjoy all rights accruing from his ownership of the Stone Property, subject to the restrictions stated herein and the right of Grantee to use the Maintenance Area for the purposes herein expressed. Stone retains the right to sell or transfer all or part of the Stone Property subject to the easement. Stone will inform all others who exercise any right on the Stone Property by or through Stone of the requirements and constraints imposed by the easement, and will take any other steps as necessary to ensure that the terms of the easement are met.

4. Conduct of the Brown's Creek Cove Project Maintenance; Property Condition. All activity by Grantee on the Stone Property will be conducted in a safe and workmanlike manner at Grantee's sole cost. In the event the Maintenance Area or the Stone Property is damaged by the activities of Grantee or its contractors, agents or assigns pursuant to the exercise of any of Grantee's rights under the easement, Grantee will promptly repair or restore the Stone Property to the extent reasonably practicable. Grantee will repair, seed or plant disturbed or damaged areas with vegetation suitable for the intended uses of the Stone Property.

5. Inspection and Enforcement. Grantee representatives, agents and contractors may enter the Maintenance Area at reasonable times to monitor activities on and uses of the Maintenance Area. In acting under this paragraph, Grantee will not unreasonably interfere with Stone's use and quiet enjoyment of the Stone Property. Grantee may act to prevent or remedy all activities and uses of the Maintenance Area not consistent with the terms of the easement. Grantee will remain responsible for its legal fees and related expenses for any unlawful action taken by Grantee, its employees, agents or contractors.

6. Notice. Grantee will notify Stone by telephone or email at least 24 hours prior to commencement of any exercise of Grantee's rights under the easement.

7. Regulatory Authorities Not Affected. The easement does not replace or diminish the regulatory authority of Grantee or any other public body, as may apply to the Stone Property or any activity within it.

8. Insurance. Stone remains solely responsible for maintaining liability and other insurance for its own uses of and authority over the Stone Property.

9. Running with the Land; Term. Unless terminated as provided hereunder, t~~This~~ the ~~rights and privileges hereby granted, the restrictions and obligations hereby imposed, and the agreements contained in this easement will be easements, restrictions and covenants running with the land in perpetuity and will inure to the benefit of and be binding on the parties hereto and their respective heirs, successors and assigns including but not limited to all subsequent owners of any portion of the Stone Property and all persons claiming under them. The easement granted hereunder will commence on recordation and may not for 10 years thereafter be revoked, amended, superseded or otherwise modified or abrogated except as may be agreed to in writing by~~

Grantee, after which Grantor or its successor(s) in interest may direct Grantee to execute and deliver within 60 days a termination and release of the easement and Grantee's interests thereunder for recordation by Grantor.

10. Notices. Except as otherwise specifically provided herein, all notices required or permitted under this easement will be in writing and will be deemed delivered when personally delivered, delivered by documented courier delivery or mailed by United States registered or certified mail, return receipt requested, at the address appearing below or to such other address as each party may designate by a written notice to the other.

If to Stone: David C. Stone
 12850 McKusick Road North
 Stillwater, MN 55082-8429
 [phone/email]

If to Grantee: Brown's Creek Watershed District
 Attn: Administrator
 455 Hayward
 Oakdale MN 55128
 KKill@mnwcd.org

11. Severability. If any one or more of the provisions of this easement, or the applicability of any such provision to a specific situation, will be held invalid or unenforceable, such provision will be modified to the extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this agreement and all other applications of any such provision will not be affected thereby.

12. Governing Law; Venue. This easement will be construed and governed by the laws of the State of Minnesota. Venue for any action taken under or related to the Easement will be in the district court of Washington County, Minnesota.

13. No Waiver of Immunity. No provision of this easement will be interpreted as a waiver of any statutory or common law immunity from or limitation of liability available to Grantee, all such immunities and limitations being expressly reserved by Grantee.

14. Recording. Grantee may, at its expense, record and rerecord this easement.

{Signature page follows.}

IN WITNESS WHEREOF, the undersigned execute this easement, intending to be legally bound.

Grantor

By David C. Stone, individually, and as trustee of the Stone Trust

Date: _____

STATE OF MINNESOTA
COUNTY OF WASHINGTON

This instrument was acknowledged before me this ____ day of _____, 202__, by David C. Stone, individually, and as trustee of the Stone Trust

Notary Public

Brown's Creek Watershed District

By Karen Kill
Its administrator

Date: _____

STATE OF MINNESOTA
COUNTY OF WASHINGTON

This instrument was acknowledged before me this ____ day of _____, 202__, by Karen Kill, as administrator of the Brown's Creek Watershed District, a special purposes district of the State of Minnesota with powers set forth at Minnesota Statutes chapters 103B and 103D, on behalf of the district.

Notary Public

Drafted by:
Smith Partners PLLP - MJW
250 Marquette Avenue South, Suite 250
Minneapolis Minn 55401

EXHIBIT 1

Maintenance Area

CONSENT AND SUBORDINATION

HOLDER, an [STATE OF INCORPORATION] corporation, the holder of a [TYPE OF SECURITY OR OTHER LEGAL INTEREST IN THE PROPERTY] dated [DATE], filed for record with the office of the recorder of Washington County, Minnesota, on [DATE], as document no. [NUMBER, hereby consents to the recording of the easement to which this consent and subordination is attached and agrees that its rights in the property affected by the easement will be subordinated thereto.

IN WITNESS WHEREOF, _____, a [STATE OF
INCORPORATION] corporation, has caused this consent and subordination to be
executed this _____ day of _____, 20____.

a [STATE OF INCORPORATION] corporation

By:_____

Its:_____

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____.

Notary Public