

APPENDIX G: Cooperative Agreements

- 1. Kern Center Pond**
- 2. Trout Stream Mitigation Project (TSMP)**
- 3. Brown's Creek Conservation Area**

COOPERATIVE AGREEMENT
Between the Brown's Creek Watershed District
and the City of Oak Park Heights

Kern Center Pond, Oak Park Heights

This Agreement is made by and between the Brown's Creek Watershed District ("BCWD"), a watershed district with powers pursuant to Minnesota Statutes Chapters 103B and 103D, and the City of Oak Park Heights (hereinafter referred to as "City"), a political subdivision of the State of Minnesota.

Recitals and Statement of Purpose

WHEREAS the BCWD has an approved Watershed Management Plan that identifies regional stormwater detention as a priority need for reducing stormwater flow rates, localized flooding and water quality degradation within the watershed and establishes a program for the demonstration of infiltration and related stormwater management practices;

WHEREAS the Kern Center Pond ("Pond") is a regional ponding facility constructed and maintained by the City for stormwater management;

WHEREAS Pond redesign, including the incorporation of regional infiltration, will further the purposes and goals of the BCWD and provide a useful site to educate and inform interested persons about innovative stormwater management concepts and water resource matters generally;

WHEREAS the City and the BCWD wish to collaborate in a redesign of the Pond for the purpose of regional infiltration, and the City agrees to assume responsibility for construction and maintenance, as defined in the "Kern Center Commercial Area Drainage Facility Operation and Maintenance Plan" (together, the "Project");

WHEREAS BCWD Rule 2.7.4 allows for regional stormwater management in place of site-based management if pursuant to a cooperative agreement with the BCWD, and the City would like to invoke this rule through regional management for the Kern Center Drainage Area, as shown in Exhibit B, which comprises 92.1 acres draining to the Pond (of which 17.7 +/- acres lies within the City of Lake Elmo);

WHEREAS the parties acknowledge that their ability to achieve Project objectives depends on each party satisfactorily and promptly performing its individual obligations and working cooperatively with the other party;

WHEREAS the Project will be funded in part through a Local Water Planning Challenge Grant of the Minnesota Board of Water and Soil Resources, and the grant agreement imposes certain requirements on the BCWD, the Local Governmental Unit and Fiscal Agent, referred to as "Grantee" in said grant;

THEREFORE the parties enter into this agreement to document their understanding of the scope of and responsibilities for the Project and facilitate communication and cooperation to ensure successful completion of the Project.

Agreement

1. The design plans have been prepared and signed by the BCWD Engineer and provided in both electronic and hard copy to the City's Engineer. The specifications based on the design plans have been prepared by the City's engineering consultant. These design plans, dated 11/03/04, are attached as **Exhibit A** to this agreement and incorporated herein.

2. The final bid documents have been prepared and signed by the City's Engineer. The City shall construct or provide for construction in accordance with **Exhibit A**. The City shall acquire all property rights and permits as needed, including a BCWD permit as applicable. The BCWD shall waive any administrative or permit fees to the City associated with the Project. Bid preparation and evaluation, contract administration and construction management shall be the City's responsibility, subject to grant reimbursement if applicable. At the City's request, the BCWD shall assist the City in the cost-effective disposition of excavated materials.

3. The BCWD shall be given notice of pre-construction and construction meetings and shall be permitted access to the site and to Project documents in order to perform construction observation. Notwithstanding, it shall be the responsibility of the City to ensure that construction conforms to **Exhibit A**. When construction is completed, the City shall provide the BCWD as-built drawings certified by a professional engineer. The BCWD shall bear its own costs for its activity under this paragraph.

4. On a written determination by the BCWD that the construction is complete in accordance with the final plans and specifications and the terms of the BCWD permit, the provisions of BCWD Rules, paragraph 2.7.4(c), shall be deemed to be met for all parcels within the Kern Center Drainage Area, which area is bounded as shown in **Exhibit B**, attached hereto and incorporated herein. Notwithstanding, paragraph 2.7.4 shall be deemed to apply to a proposed activity only if:

(a) At the time land disturbance for an activity described at BCWD Rule paragraph 2.2 occurs, the Pond is being maintained in accordance with the

operation and maintenance plan, **Exhibit C**, attached hereto and incorporated herein; and

(b) The proponent of such an activity has established, and the BCWD in writing has confirmed, that the hard surface created by the activity falls within the 74.4 acres of hard surface within the Kern Center Commercial Area to which the City has allocated Pond capacity.

Compliance with paragraph 2.7.4(c) under this paragraph does not apply to any land presently within the City of Lake Elmo, which is not a party to this agreement and shall not receive any exemption under BCWD rules relating to development.

5. Water level, discharge and water quality monitoring, at the expense of the BCWD, shall be performed in accordance with the monitoring plan, **Exhibit D**, attached hereto and incorporated herein. Each party may do other monitoring as it wishes.

6. The BCWD shall develop materials to inform interested persons about the Project and related water resource matters. The cost to prepare and install signage and other information structures shall be the responsibility of the BCWD. The BCWD shall maintain these structures at its expense. Any materials or other publicity regarding the Project shall identify the State, the City and the BCWD as sponsoring bodies. Placement of any such structures shall be subject to the approval of the City. The City and the BCWD will cooperate to determine the location of signage and information structures.

7. The City shall be responsible for the removal of accumulated sediments according to the terms of **Exhibit C**, "Routine Maintenance," subject to paragraph 12(a), below.

8. Each party shall bear the cost of those actions for which it is responsible under this agreement, except as explicitly stated otherwise herein.

9. Any communications specified herein shall be addressed as follows:

TO THE BCWD:

Karen Kill, Administrator
Brown's Creek Watershed District
1380 West Frontage Road, Highway 36
Stillwater, MN 55082

TO THE CITY:

Eric Johnson, Administrator
City of Oak Park Heights
P.O. Box 2007
Oak Park Heights, MN 55082

10. The City shall provide a copy of this agreement to its contractor. By entering into this agreement and acting pursuant hereto, the BCWD is assuming no duty of care with respect to the contractor or any other third party, and nothing herein shall create any right

of action by the contractor or any other third party against the BCWD. Nothing herein shall be construed as a waiver of any immunity otherwise possessed by the City or the BCWD with respect to any third party or each other.

11. Neither the BCWD nor the City shall be deemed to be an agent or representative of the other in performing any action under this agreement. This agreement is not intended as and shall not be construed as a joint powers agreement under Minnesota Statutes section 471.59. The allocation of rights in materials and intellectual property under this Project shall conform to the grant agreement.

12. The City and the BCWD recognize certain risks inherent in the construction of the proposed facilities, and intend to address those risks cooperatively, should they occur, as follows:

(a) The BCWD assumes no liability to the City related to the design other than that liability, if any, derivative of a failure of the BCWD engineer to exercise a professional standard of care in preparing the design. If the Pond fails to demonstrate performance per **Exhibit C**, the City and the BCWD will consult on corrective measures. The City's obligation for removal of accumulated sediments under paragraph 7, above, will not commence until performance has been demonstrated, but the BCWD will not otherwise be compelled to take corrective action. The City assumes no liability for the design of the project as prepared by the BCWD consulting engineer.

(b) The City shall manage the construction contract to avoid a deviation from the plans and specifications that may affect the volume control performance of the Pond. If circumstances arise that may result in an unforeseeable construction cost increase or delay, the parties will consult on how to proceed. Neither party will be liable to the other for any project cost increase resulting from such circumstances except as agreed to following consultation. The City, in its discretion, will be responsible to manage the contract to avoid or minimize contract cost increases in the event that such circumstances arise.

(c) If after the City's maintenance obligation has commenced the Pond fails to perform effectively per **Exhibit C**, the City and the BCWD will consult on corrective measures. The City will not otherwise be compelled to take corrective action beyond the maintenance specified in **Exhibit C**.

(d) If in the future the City and the BCWD agree that the Pond has ceased to provide meaningful volume control and that measures will not be taken to restore meaningful control, this agreement will be amended to relieve the City of its maintenance obligation for removal of accumulated sediments under paragraph 7,

above. This would not affect any City obligation deriving from a source other than this agreement to maintain the Pond for water quality or other purposes.

13. This agreement shall take effect on full execution and expire five years thereafter, except that paragraphs 4 through 12 shall survive expiration. The agreement may be amended only in writing signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Cooperative Agreement.

BROWN'S CREEK WATERSHED DISTRICT

By: Craig F. Leiser
President

Date: Nov. 30, 2004

APPROVED AS TO FORM
AND EXECUTION

By: [Signature]
Smith Parker, P.L.L.P.

CITY OF OAK PARK HEIGHTS

By: [Signature]
Mayor

Date: Dec 12, 2004

APPROVED AS TO FORM
AND EXECUTION

By: [Signature]
Eckberg, Lammers, Briggs, Wolff &
Vierling, P.L.L.P.
City Attorney

Appendix B

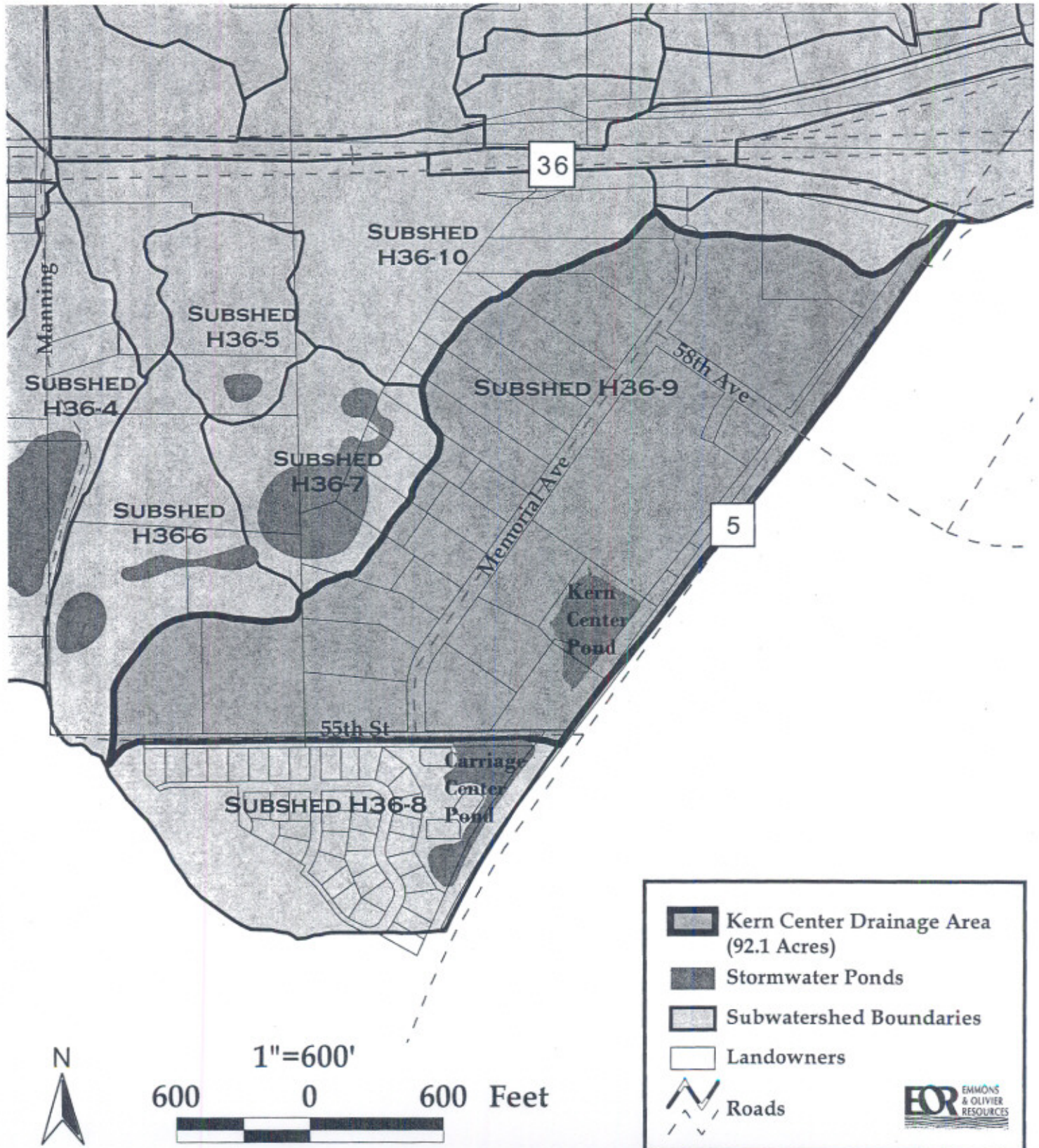


EXHIBIT C

Kern Center Commercial Area Drainage Facility Operation and Maintenance Plan

Purpose

The overall objective of this Operation and Maintenance (O&M) Plan is to ensure the successful long-term operation of the Kern Center infiltration basin (Basin) that has been designed as part of the storm water plan for the Kern Center Commercial Area in the City of Oak Park Heights (City).

The purpose of the O&M Plan is to identify the tasks that will be needed for operation and maintenance of this facility, and standards for evaluating successful operation and maintenance. The City of Oak Park Heights will be responsible for financing and carrying out these tasks. The Brown's Creek Watershed District (BCWD) will be responsible for monitoring the infiltration basin, at its expense.

Background

The Basin for the Kern Center Commercial Area is designed to retain and infiltrate storm water runoff generated on the approximately 74 acres of commercial area that drains to the basin. The site is located within the City and Brown's Creek Watershed District.

Basin Performance Targets and Monitoring

The BCWD has determined that the Kern Center Basin has been designed to provide the additional 6.8 acre-feet of retention/infiltration required to accommodate existing and future development, up to 80 percent imperviousness, within its drainage area, while meeting the BCWD's volume control requirements. The requirements will be achieved by expanding the pond to approximately 3.6 acres, and by managing the pond at a new normal water level (NWL) that is on average 1.5 to 2 feet below the invert of the existing 12-inch orifice outlet. The BCWD estimates that given the soil types identified during the geotechnical investigation, the 1.5 to 2 feet of storage below the invert will infiltrate within a 3 to 4 day period after a storm event.

The BCWD will develop a monitoring plan that will evaluate the infiltration capacity of the basin over time. Under the monitoring plan, the BCWD will monitor pond performance for at least one year, at which time performance will be evaluated, taking annual precipitation into account. The BCWD will continue to monitor performance thereafter at a frequency and for a period it finds appropriate. For each year in which monitoring is performed, an annual monitoring report summarizing the monitoring activities completed and findings for the Kern Center Basin will be submitted to the City of Oak Park Heights.

Construction Inspection

The City will bear responsibility for inspection of the Basin construction and working with the contractor to assure that the Basin is constructed according to the plans. The BCWD will participate in on-site inspection, and will identify any concerns regarding construction-related issues to the City during construction or the warranty period. The BCWD will have no authority to direct the contractor.

Basin Performance Warranty Period

After construction is completed, the BCWD will monitor the performance of the Basin for a period of time deemed adequate by the City engineer and BCWD engineer, given precipitation patterns, plant rooting and other relevant factors, to calibrate actual performance in relation to the design target. The BCWD will report to the City on the function of the Basin during this time, identify actual performance in comparison to the target infiltration rate, and identify any other issues related to performance of the Basin. The BCWD and the City will discuss the outcomes of the monitoring, and determine whether the Basin is functioning successfully, whether changes are needed to achieve the target infiltration rate, or the target rate needs to be modified.

Vegetation Establishment Period

The City and BCWD will monitor vegetation establishment during the first year after construction is completed. Maintenance during the first year will be included in the construction contract, and will be completed by the contractor.

The City will provide in the contract that maintenance requirements and evaluation of native seeding at the Basin will conform to *Guidelines for Restoring & Managing Native Wetland Vegetation* (Minnesota DOT and Minnesota BWSR) and *MN/DOT Seeding Manual 2003*.

The City will provide in the contract that tree and shrub plantings will be monitored as well and that those that die or are in poor condition within one year after planting will be replaced by the contractor at his/her expense, and a second 1-year establishment period will begin.

Maintenance Period

The Maintenance Period for the Basin will begin after construction is completed, and after the BCWD and City agree that the design is functioning successfully in meeting the target infiltration rate identified for the Basin.

Routine Maintenance

The City will complete the following routine maintenance activities at its expense:

1. Annual inspection

The City will complete an annual inspection of the Basin to identify maintenance issues.

2. Removal of accumulated sediments

The City will remove accumulated sediments from the smaller “forebay” cells at the north and southeast sides of the large basin when the depth of sediment reaches half the depth of the basin. Sediment will be removed with light equipment that will be operated from outside the basin to the degree possible to minimize compaction and damage to plantings.

3. Vegetation maintenance

Maintenance of plantings will include the following:

- a. Seeded areas—Maintenance will conform to *Guidelines for Restoring & Managing Native Wetland Vegetation* (Minnesota DOT and Minnesota BWSR) and *MN/DOT Seeding Manual 2003*. This maintenance typically includes mowing 2-3 times per season, and spot spraying weeds as needed. When sufficient litter is available, a controlled burn may replace mowing at the City’s discretion.
- b. Trees and shrubs – Trees and shrubs will be inspected annually. Pruning or replacement may be completed for dead or diseased plants.
- c. The City will use no fertilizer near the Basin. Herbicide application will be limited to spot spraying of noxious weeds with herbicides approved for use near water bodies.

4. Erosion Control

If areas of erosion are identified within the site, the City will use appropriate methods such as fabric, seeding, plantings, or structural methods if necessary to stabilize these areas.

5. Best Management Practices

The City will encourage landowners in the drainage area to the Basin to control sediment and pollutants that may affect the operation of the Basin, including the following:

a. Use the minimum amount of sand and salt needed to maintain hard surfaces in the winter months

b. Sweep hard surfaces as early as possible in the spring

Additional Maintenance

The following criteria indicate the need to perform additional maintenance activities:

1. The Basin is no longer returning to a normal water level that is 1.5 to 2 feet below the invert elevation of the 12-inch orifice between storm events during a normal precipitation year, indicating that the available storage in the system has been reduced.

2. The time that it takes the Basin to reach its normal water level (1.5 to 2 feet below invert elevation) after a rainfall event is longer than a 3 to 4 day period, unless another rainfall event occurs during this period.

If the BCWD monitoring finds either or both of the conditions identified above, it will notify the City, and provide the results of the monitoring to the City. The BCWD and City will discuss the findings of the monitoring, and determine the actions to be taken, the responsibility for those actions, and time frame for completion of the actions.

EXHIBIT D

KERN CENTER MONITORING PLAN

This monitoring plan has been developed to determine the infiltration capacity of the Kern Center Pond. It will also enable the Brown's Creek Watershed District (BCWD) to evaluate how this stormwater management facility meets the District's volume control standard by measuring how often the water level exceeds the outlet elevation (928.6 feet).

Identification of the infiltration rates (depth/time) and the volumetric infiltration rates (cfs/time) will also enable the BCWD and the City of Oak Park Heights to evaluate the performance of this basin. This information will be valuable in determining the potential long-term maintenance requirements for this facility.

The following tasks outline the major components of this monitoring plan:

Task 1. Data Collection

- 1.1 **Purchase Equipment.** Purchase an automatic water level recorder and a staff gage for the Kern Center Pond.
- 1.2 **Installation.** Monitoring equipment will be installed prior to the spring melt. Equipment will be calibrated and checked for defects or other hardware problems prior to installation in the field. Permission will be obtained from land owners. Equipment and staff gauges will be surveyed for exact locations and elevations during installation and removal of equipment.
- 1.3 **Maintenance.** Equipment will be maintained in the field during the field season. If necessary, equipment will be sent to the manufacturer for repair.
- 1.4 **Field Visits.** Site will be visited once every two weeks during the field season for the purposes of installing equipment, visual recording (photos), staff gauge readings, verification of measured data and electronic transfer of data.

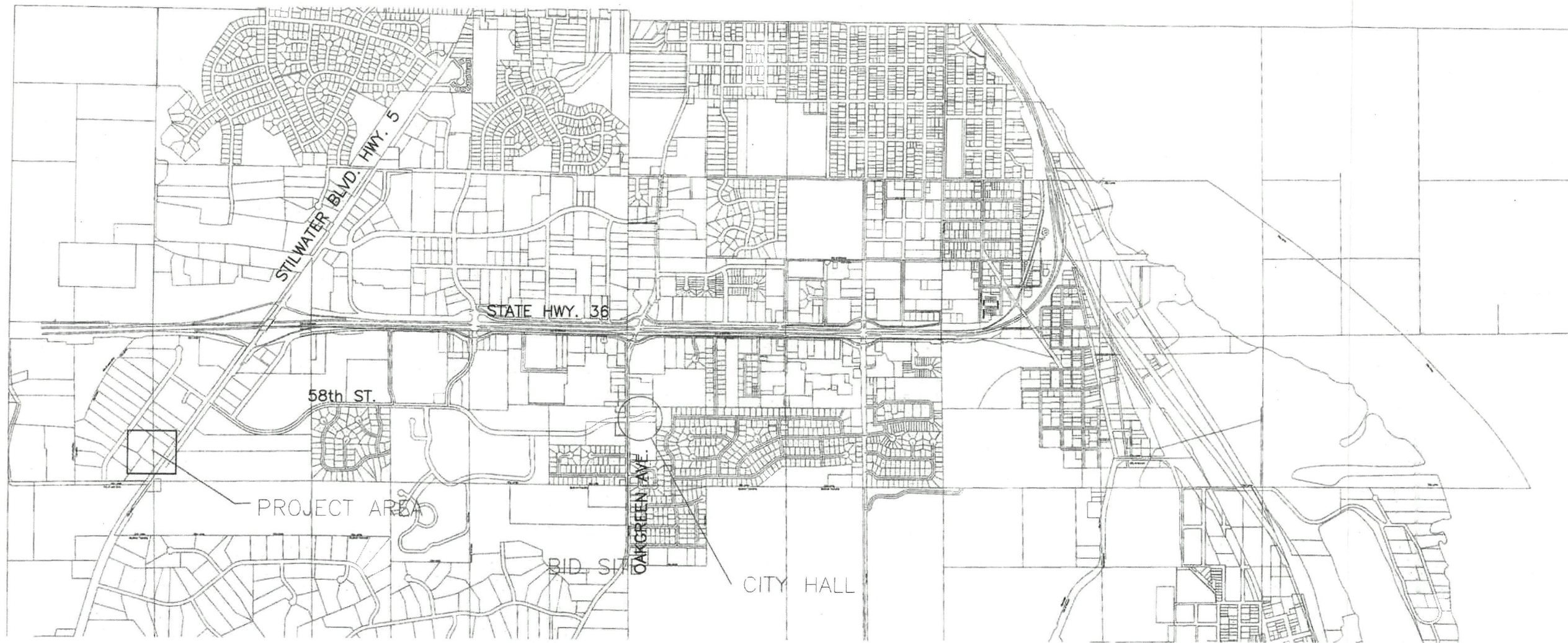
Task 2. Data Analysis and Monitoring Report

- 2.1 **Infiltration Data Analysis.** Data collected over the field season (time and water level recordings) will be imported into a database which will be tabulated and analyzed for infiltration rates. These infiltration rates will enable the District and the City to evaluate the performance of the Kern Center Basin over time.
- 2.2 **Report.** A Monitoring Report will be produced at the end of the field season that will identify trends in infiltration performance and state appropriate recommendations to effectively manage the system for long-term operation and viability.

PROJECT TIMELINE

Begin Implementation
Final 2005 Report Submitted to BCWD

March 2005
November 2005



VICINITY MAP

OAK PARK HEIGHTS, MINNESOTA

KERN CENTER POND EXPANSION

B.R.A. PROJECT NUMBER 55-04-135

DAVE BEAUDET
LES ABRAHAMSON
JACK DOERR
MARY McCOMBER
MARK SWENSON
ERIC JOHNSON
MARK VIERLING

MAYOR
COUNCILMEMBER
COUNCILMEMBER
COUNCILMEMBER
COUNCILMEMBER
CITY ADMINISTRATOR
ATTORNEY

SHEET INDEX

G1.01	TITLE SHEET
1	EOR TITLE SHEET
2	EXISTING CONDITIONS
3	PROPOSED CONTOURS
4	EROSION CONTROL
5	PLANTING AND SEEDING
6	SECTIONS AND DETAILS

CITY OF OAK PARK HEIGHTS, MINNESOTA
KERN CENTER POND EXPANSION
TITLE SHEET

55041350101

SHEET NUMBER

G1.01

G14

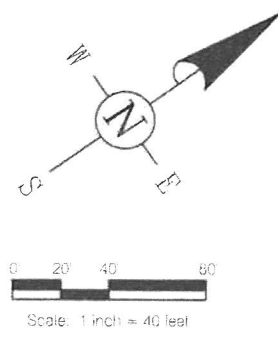
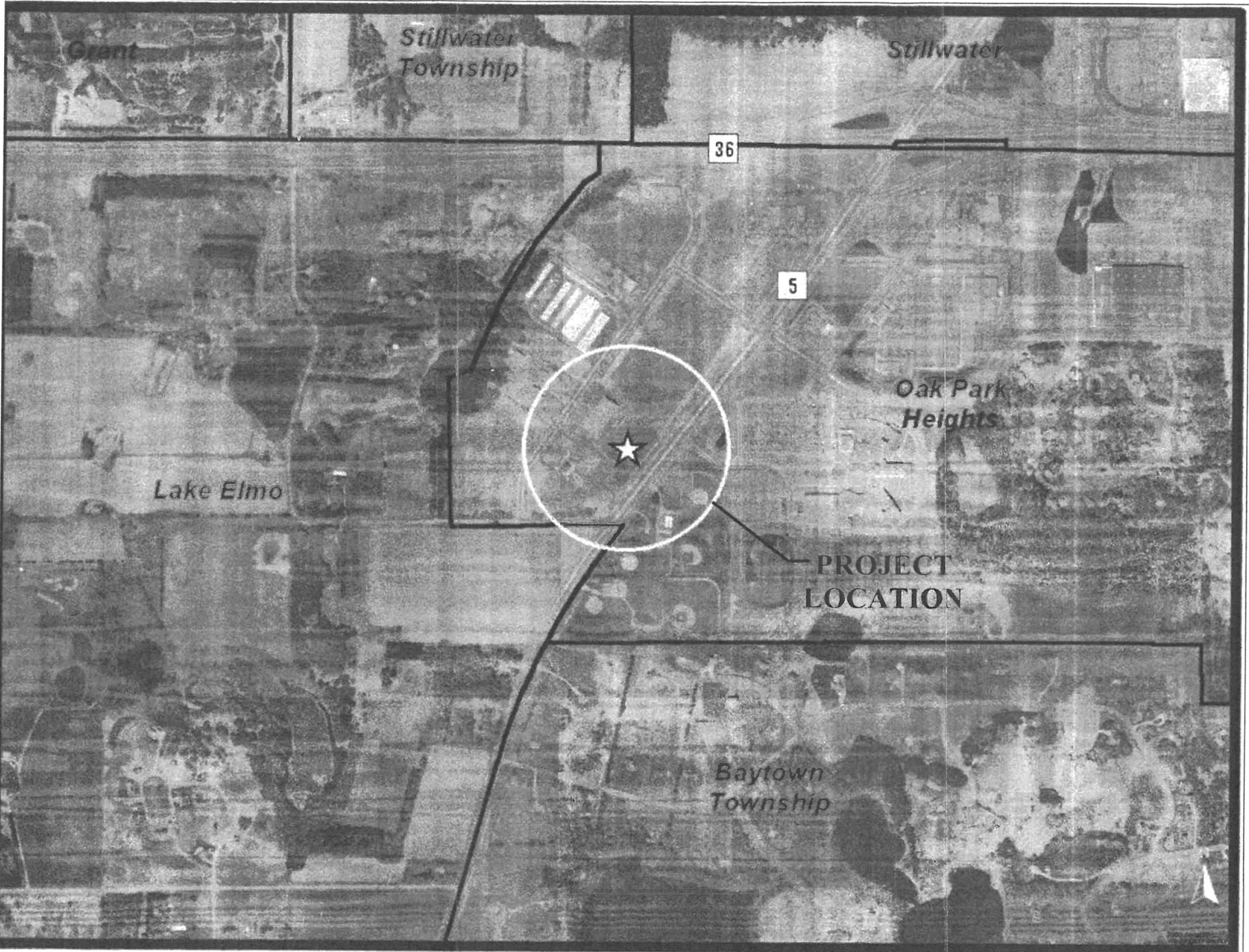
Bonestroo
Rosene
Anderlik &
Associates
Engineers & Architects
www.bonestroo.com

St. Paul Office
2335 West Highway 36
St. Paul, MN 55113
Phone: 651-636-4600
Fax: 651-636-1311

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT
WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION
AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER
UNDER THE LAWS OF THE STATE OF MINNESOTA.
PRINT NAME: *David M. Rosene*
SIGNATURE: *David M. Rosene*
DATE: *4/14/11* LIC. NO.: 22011
PAUL NO. 55-04

KERN CENTER COMMERCIAL AREA DRAINAGE FACILITY OAK PARK HEIGHTS, MINNESOTA

TITLE
SHEET



SHEET INDEX	
SHEET	DESCRIPTION
1	TITLE SHEET
2	EXISTING CONDITIONS
3	PROPOSED CONTOURS
4	EROSION CONTROL
5	PLANTINGS AND SEEDING
6	SECTIONS AND DETAILS

BENCHMARK
TOP OF OUTLET CASTING
ELEVATION 935.08
(SEE NOTE ON SHEET 2)

THE LOCATION OF UNDERGROUND FACILITIES OR STRUCTURES AS SHOWN ON THE PLANS ARE BASED ON AVAILABLE RECORDS AT THE TIME THE PLANS WERE PREPARED AND ARE NOT GUARANTEED TO BE COMPLETE OR CORRECT. CONTRACTOR IS RESPONSIBLE FOR CONTACTING ALL UTILITIES 72 HOURS PRIOR TO CONSTRUCTION TO DETERMINE THE EXACT LOCATION OF ALL FACILITIES AND TO PROVIDE ADEQUATE PROTECTION OF SAID UTILITIES DURING THE COURSE OF WORK.

REVISION DESCRIPTION

NO.

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.
Print Name: *Michael L. Jensen*
Sign Name: *[Signature]*
Date: *11-3-07* License No. *102954*

Date: 10-23-03

Designed By: MLJ

Drawn By: JRJ

EMMONS & OLIVER RESOURCES
651 HALE AVENUE NORTH
OAKDALE, MN 55128
PHONE: (651) 770-8448
FAX: (651) 770-2552
WEBSITE: www.eorinc.com

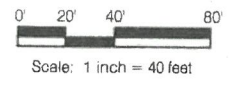
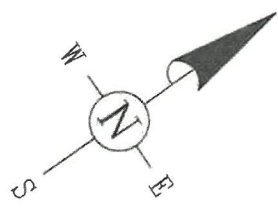
BROWN'S CREEK WATERSHED DISTRICT

KERN CENTER COMMERCIAL AREA DRAINAGE FACILITY
OAK PARK HEIGHTS, MN

Sheet No. 1 of 6

G15 Sheets

EXISTING
CONDITIONS
AND REMOVALS



LEGEND

- 922 --- EXISTING CONTOURS
- --- EXISTING SANITARY SEWER
- --- PROPERTY LINES
- E --- E EXISTING BURIED ELECTRIC
- T --- T BURIED TELEPHONE
- --- EXISTING STORM SEWER
- --- WATERMAIN
- X- -X- -X- EXISTING FENCE LINE
- GAS- -GAS- -GAS- BURIED GAS
- COMM- -COMM- -COMM- EXISTING BURIED COMM.
- 938 PROPOSED CONTOURS
- 924.5 EXISTING SPOT ELEVATIONS
- 924.5 PROPOSED SPOT ELEVATIONS
- S- -S- PROPOSED SILT FENCING
- F- -F- TEMPORARY ORANGE CONSTRUCTION FENCE
- GR- NEW CEDAR SPLIT RAIL FENCE
- [Brick pattern] EXISTING RETAINING WALL
- [Stippled pattern] EXISTING RIPRAP
- [Tree symbols] EXISTING TREES

NOTE:
1. INSTALL TEMPORARY EROSION CONTROL PRIOR TO THE START OF ANY WORK SEE SHEET 4

EXISTING OUTLET STRUCTURE
42 - INCH RCP WITH 12 - INCH
DRIFICE @ 928.6'
TOP OF CASTING @ 935.00'

SALVAGE RIP RAP
SEE SHEET 3 FOR
PLACEMENT OF
SALVAGED RIP RAP

6" SAN FORCE MAIN

STATE HIGHWAY 5

REMOVE TREES

NO.

REVISION DESCRIPTION

DATE

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota

Print Name: *Michelle L. Johnson*

Sign Name: *Michelle L. Johnson*

Date: *11-23-03* License No. *90454*

Date
10-23-03

Designed By
MLJ

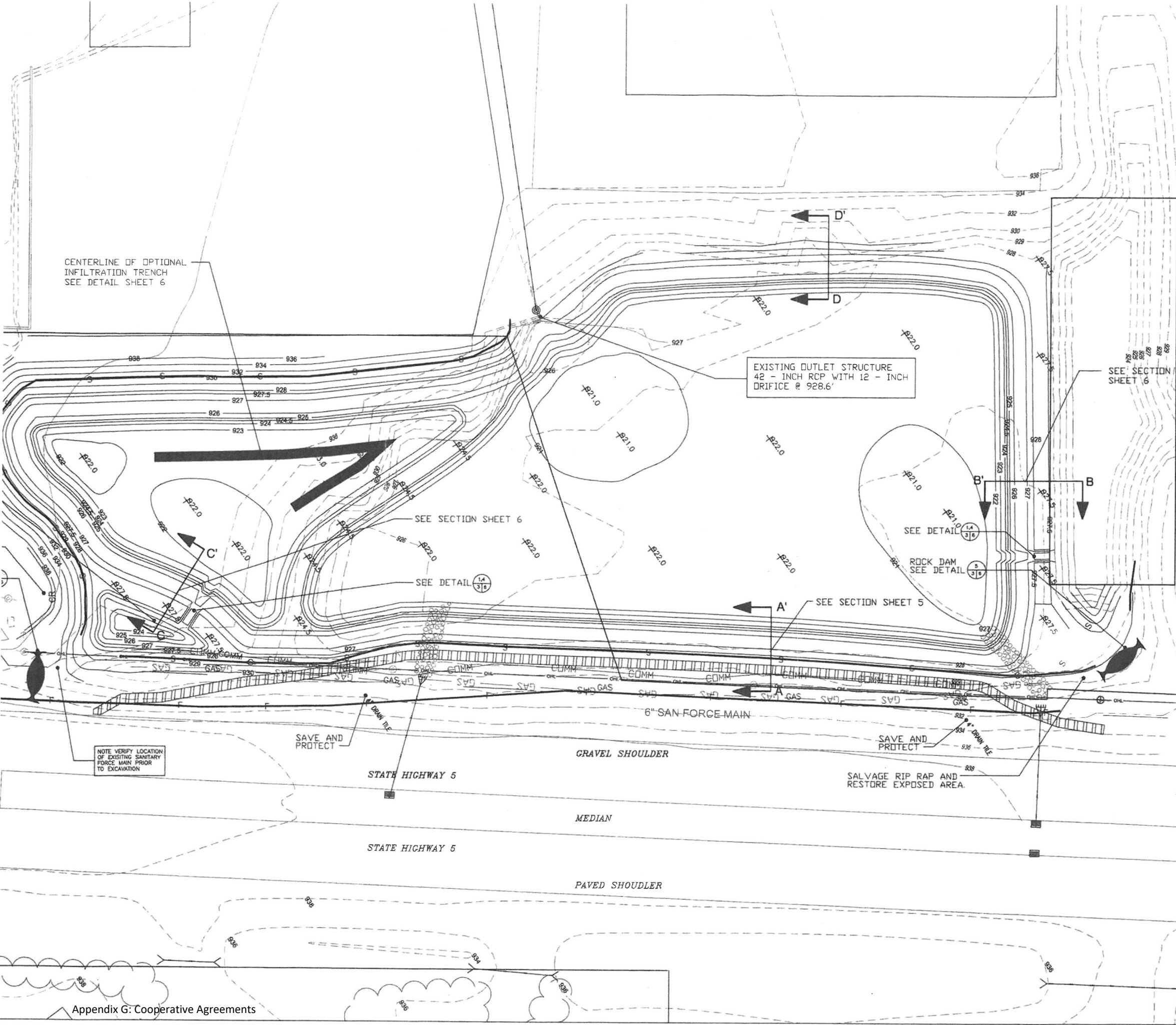
Drawn By
JRJ

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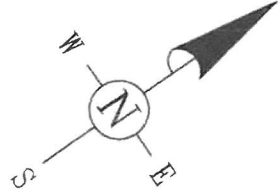
BROWN'S
CREEK
WATERSHED
DISTRICT

KERN CENTER
COMMERCIAL AREA
DRAINAGE FACILITY
OAK PARK HEIGHTS, MN

Sheet No.
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6



PROPOSED CONTOURS



0 15' 30' 60'

Scale: 1 inch = 30 feet

EXISTING POND CONTOURS BASED ON SURVEY DATA AND ON DESIGN DRAWINGS BY METRO LAND SURVEYING FOR OAK PARK STATION SITE GRADING. NORTHERLY POND CELL WILL ALSO REQUIRE DEWATERING TO CONSTRUCT PROPOSED IMPROVEMENTS.

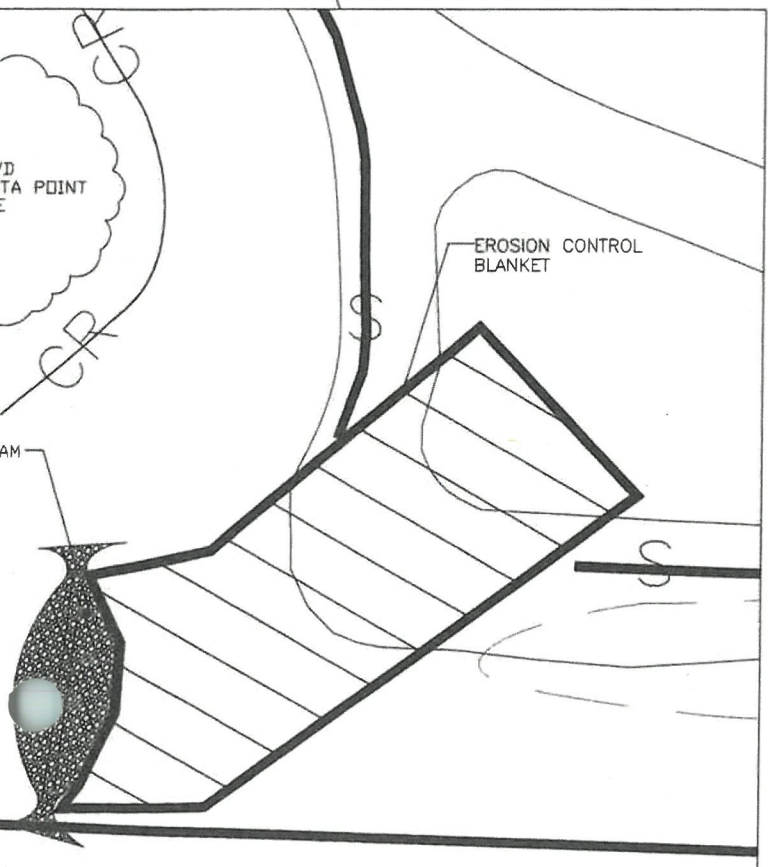
LEGEND

---	EXISTING CONTOURS
---	EXISTING SANITARY SEWER
---	PROPERTY LINES
---	EXISTING BURIED ELECTRIC
---	BURIED TELEPHONE
---	EXISTING STORM SEWER
---	WATERMAIN
X X X	EXISTING FENCE LINE
GAS GAS GAS	BURIED GAS
COMM COMM COMM	EXISTING BURIED COMM.
938	PROPOSED CONTOURS
924.5	EXISTING SPOT ELEVATIONS
924.5	PROPOSED SPOT ELEVATIONS
S S	PROPOSED SILT FENCING
F F	TEMPORARY ORANGE CONSTRUCTION FENCE
CR	NEW CEDAR SPLIT RAIL FENCE
---	CENTERLINE LOCATION FOR OPT. INFILTRATION TRENCH SEE NOTE 12 AND DETAILS
	PROPOSED 6' TRAIL BENCH

NOTES

- 1) EVERY MEASURE SHOULD BE TAKEN TO PREVENT COMPACTION OF SOILS DUE TO VEHICULAR TRAFFIC OR MASS-GRADING EQUIPMENT.
- 2) ALL EXCAVATION AND GRADING WORK SHALL BE PERFORMED WITH WIDE-TRACKED LOW COMPACTION EQUIPMENT.
- 3) SILT FENCE ON POND SLOPES TO BE INSTALLED IMMEDIATELY AFTER GRADING OF SLOPES IS COMPLETED.
- 4) ALL EROSION AND SEDIMENT CONTROL BEST MANAGEMENT PRACTICES NEED TO BE IN-PLACE AND PROPERLY MAINTAINED THROUGHOUT THE CONSTRUCTION PROCESS AND UNTIL THE ENTIRE SITE BECOMES PERMANENTLY STABILIZED. (SEE SHEETS 3 & 4).
- 5) REMOVAL OF SILT FENCE SHALL BE AT THE DISCRETION OF THE ENGINEER.
- 6) GRADE BASIN TO POND BOTTOM TO SHOW CONTOUR ELEVATIONS. FURTHER EXCAVATION MAY BE REQUIRED TO EXPOSE NATURALLY OCCURRING PERMEABLE MATERIAL AS DIRECTED BY THE ENGINEER. (SEE NOTE 12).
- 7) SEE SHEET 5 FOR PLANTING AND EROSION CONTROL PLAN AND SHEET 6 FOR DETAILS
- 8) SEDIMENT WASHED INTO THE INFILTRATION BASIN FROM THE SIDE SLOPES NEEDS TO BE REMOVED IMMEDIATELY.
- 9) CARE MUST BE TAKEN WHEN GRADING AROUND OR NEAR EXISTING OUTLET MANHOLE NOT TO DISTURB THE ESTABLISHED VEGETATION OR RIP-RAP AREA.
- 10) INFILTRATION TRENCH TO BE INSTALLED AS DIRECTED BY THE ENGINEER. SIZING AND EXACT LOCATION WILL BE BASED ON LOCATION AND DEPTH OF NATURALLY OCCURRING PERMEABLE MATERIALS.

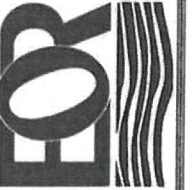
REVISION DESCRIPTION	
NO.	
I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota	
Print Name: M. J. L. Johnson	Sign Name: M. J. L. Johnson
Date: 11-03-04	License No. 90954
Date: 10-23-03	Designed By: M. J. L.
	Drawn By: J. R. J.
ELMONS & OLIVER RESOURCES 651 HALE AVENUE NORTH OAKDALE, MN 55128 PHONE: (651) 770-8448 FAX: (651) 770-2552 WEBSITE: www.eorinc.com	
BROWN'S CREEK WATERSHED DISTRICT	
KERN CENTER COMMERCIAL AREA DRAINAGE FACILITY OAK PARK HEIGHTS, MN	
Sheet No. 3 of 6	G17
Sheets	



Appendix G: Cooperative Agreements
EROSION CONTROL BLANKET INSET
SCALE: 1" = 10'

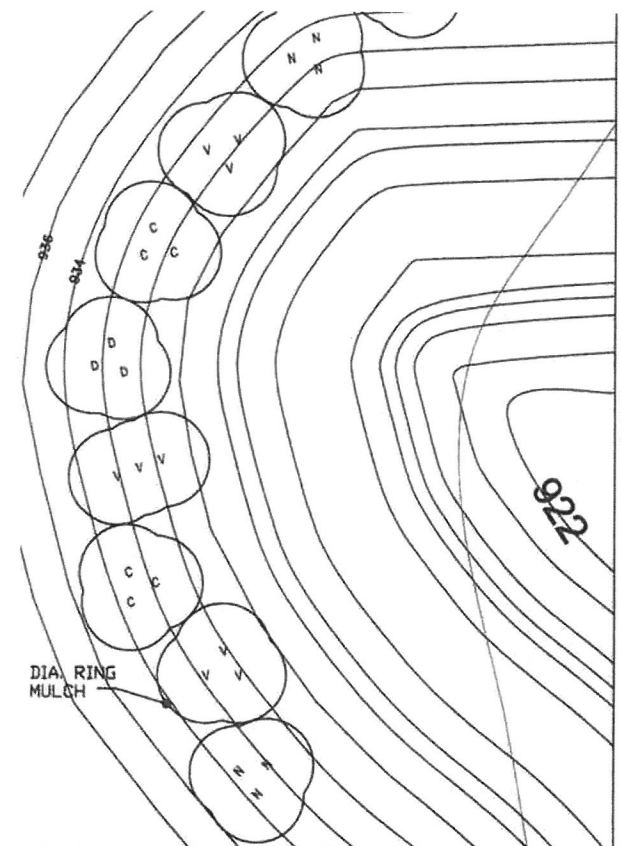
- 1) SILT FENCING SHALL BE INSTALLED AS SOON AS THE INFILTRATION BASIN SLOPES ARE CONSTRUCTED TO ENSURE SEDIMENT DOES NOT CONTAMINATE THE BASIN SUBSOILS.
- 2) TEMPORARY CONSTRUCTION FENCING SHALL BE INSTALLED BEFORE CONSTRUCTION BEGINS.
- 3) THE ROCK CHECK DAM SHALL BE CONSTRUCTED FROM CLASS II RIP-RAP.
- 4) THE BERM PILOT CHANNELS SHALL BE CONSTRUCTED OF CLASS II RIP-RAP. DETAILS SHEET 5.
- 5) TEMPORARY HYDROMULCH SHALL BE PLACED AT ALL DISTURBED AREAS.

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BROWN'S
CREEK
WATERSHED
DISTRICT

KERN CENTER
COMMERCIAL AREA
DRAINAGE FACILITY
OAK PARK HEIGHTS, MN

Sheet No. 4 of 6
G18 Sheets

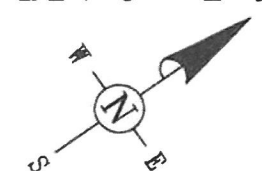


Common Name	Botanical Name	Plant Symbol	Approx. No. of plants
River bulrush	Scirpus fluviatilis	BB	40
Broad-leaved arrowhead	Sagittaria latifolia	AH	40
Softstem bulrush	Scirpus validus	SB	40
Water plantain	Alisma subcordatum	WP	40
Pickersweed	Pondederia cordata	PW	40
Giant bur-reed	Sperganium eurycarpum	BR	40
Marsh milkweed	Asclepias incarnata	MM	40
New England aster	Aster novae-angliae	NA	40
Jacoby-weed	Euthatorium maculatum	JW	40
Blue-flag iris	Iris virginica-shrevei	BI	40
Total			400

Common Name	Botanical Name	Plant Symbol	Approx. No. of plants
River bulrush	Scirpus fluviatilis	BB	40
Broad-leaved arrowhead	Sagittaria latifolia	AH	40
Softstem bulrush	Scirpus validus	SB	40
Water plantain	Alisma subcordatum	WP	40
Pickersweed	Pondederia cordata	PW	40
Giant bur-reed	Sperganium eurycarpum	BR	40
Marsh milkweed	Asclepias incarnata	MM	40
New England aster	Aster novae-angliae	NA	40
Jacoby-weed	Euthatorium maculatum	JW	40
Blue-flag iris	Iris virginica-shrevei	BI	40
Total			400

Common Name	Botanical Name	Approx. No. of plants
River bulrush	Scirpus fluviatilis	460
Broad-leaved arrowhead	Sagittaria latifolia	460
Softstem bulrush	Scirpus validus	460
Water plantain	Alisma subcordatum	460
Pickersweed	Pondederia cordata	460
Giant bur-reed	Sperganium eurycarpum	460
Total		2760

EROSION CONTROL PLANTING AND SEEDING PLAN



0' 30' 60' 120'
Graphic scale: 1 inch = 60 feet
For overview map

0' 5' 10' 20'
Graphic scale: 1 inch = 10 feet
For inset maps

LEGEND

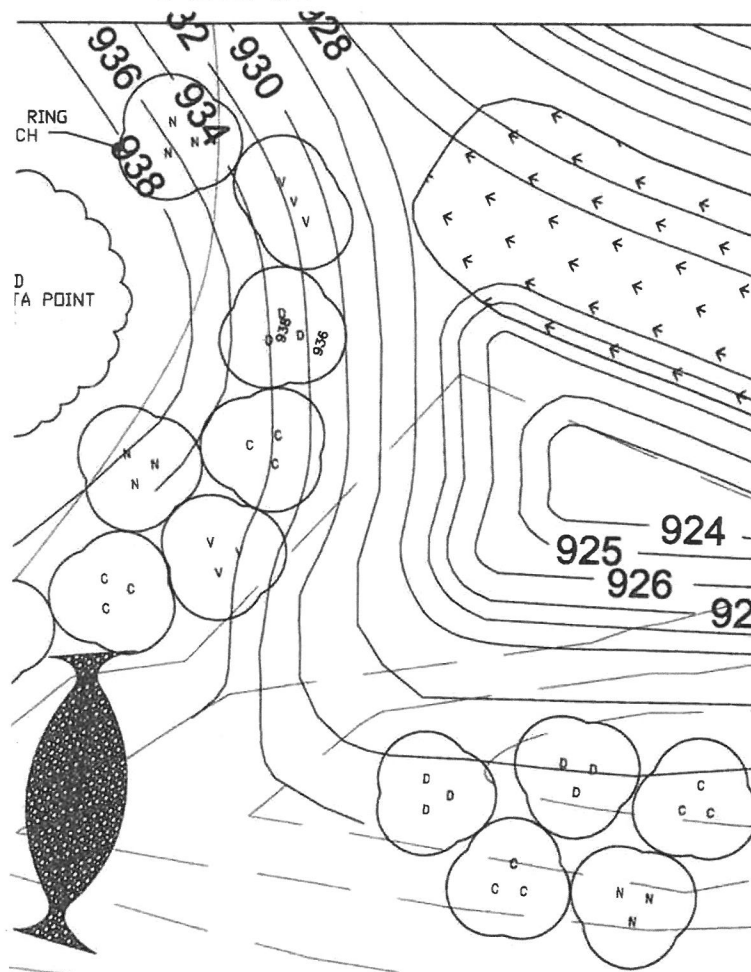
- 922 --- EXISTING CONTOURS
- 938 --- PROPOSED CONTOURS
- [Pattern] FRINGE WETLAND PLANTINGS
- [Pattern] SHRUB PLANTINGS ZONE A
- [Pattern] LINEAR SHRUB PLANTINGS ZONE A & B
- [Pattern] BERM WETLAND PLANTINGS

NOTES

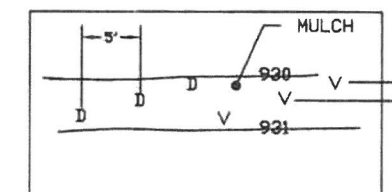
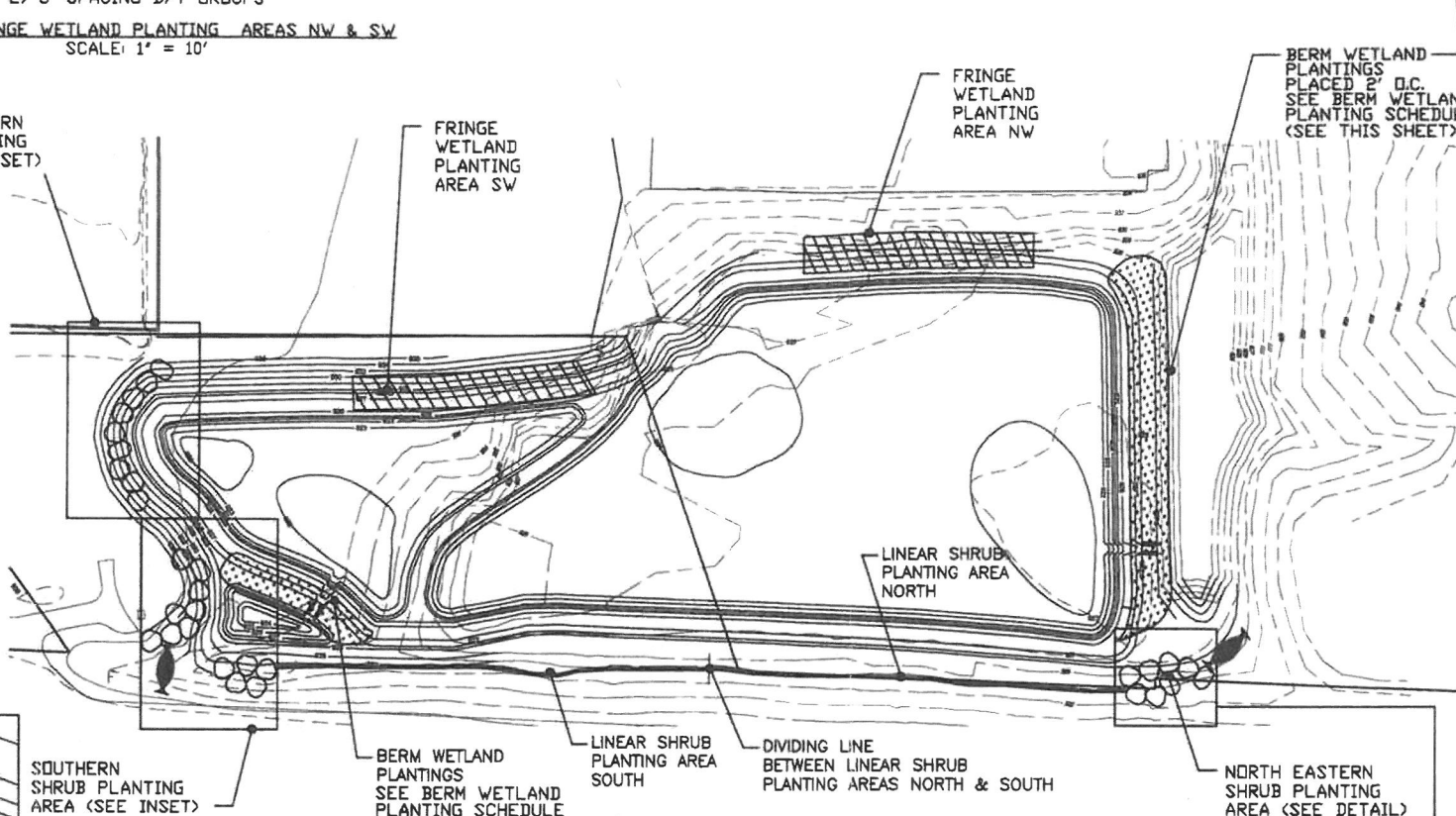
- 1) PERMANENT SEEDING, WETLAND PLANTING AND SHRUB PLANTING TO OCCUR BETWEEN MAY 1 AND JUNE 15.
- 2) ALL AREAS ABOVE ELEVATION 928.6 (ZONE A) SHALL BE SEEDED WITH MNDOT 15B AT 30 LBS PER ACRE.
- 3) ALL AREAS BETWEEN ELEVATION 928.6 AND 926.6 (ZONE B) SHALL BE SEEDED WITH MNDOT 25B AT 30 LBS PER ACRE.
- 4) WATER LEVELS IN THE POND AND INFILTRATION BASIN MUST BE MAINTAINED BELOW 926.6 DURING THE PLANT ESTABLISHMENT PERIOD (FIRST GROWING SEASON). IF WATER LEVELS EXCEED 926.6 FOR LONGER THAN 5 DAYS, PUMPING MAY BE NECESSARY TO ENSURE VIABILITY OF WETLAND PLANTINGS. SEE SPECIFICATION.
- 5) CATEGORY II STRAW FIBER BLANKET SHALL BE INSTALLED ON BOTH THE BERM AND FRINGE AREAS TO BE SEEDED AND PLANTED WITH WETLAND PLANTS.
- 6) WOOD MULCH SHALL BE APPLIED TO ALL AREAS IDENTIFIED FOR SHRUB PLANTING TO A DEPTH OF 4".
- 7) ALL SHRUBS SHALL BE #2 POTS AND PLANTED AS SHOWN IN PLAN DETAILS.
- 8) ALL WETLAND PLANTS SHALL BE THRIVING ROOT STOCK AND PLANTED AS SHOWN IN PLAN DETAILS.

SOUTH WESTERN SHRUB PLANTING AREA
SCALE: 1" = 10'

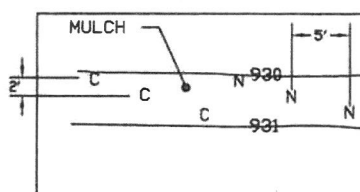
- 1) 3' SPACING B/T PLANTS
- 2) 10' SPACING B/T GROUPS
- 3) #2 POT SIZE



SOUTHERN SHRUB PLANTING AREA
SCALE: 1" = 10'



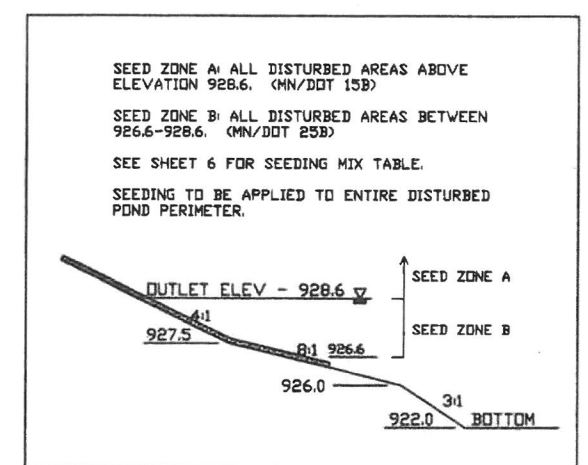
LINEAR SHRUB PLANTING AREA SOUTH
NOT TO SCALE



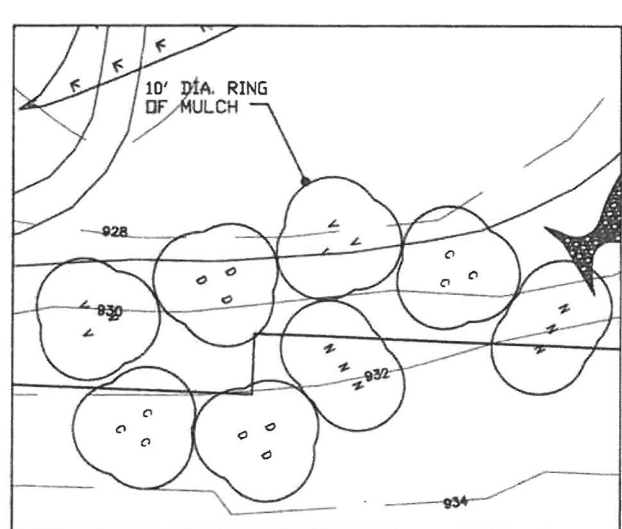
LINEAR SHRUB PLANTING AREA NORTH
NOT TO SCALE

Common Name	Botanical Name	Plant Symbol
Red Osier Dogwood	Cornus stolonifera	D
Common Ninebark	Physocarpus opulifolius	N
Eastern Sand Cherry	Prunus pumila	C
Mapleleaf Viburnum	Viburnum acerifolium	V

- 1) 3' SPACING B/T PLANTS
- 2) 10' SPACING B/T GROUPS
- 3) #2 POT SIZE



POND EDGE SEEDING PLAN SECTIONAL VIEW
NOT TO SCALE



NORTH EASTERN SHRUB PLANTING AREA
SCALE: 1" = 10' - 0'

REVISION DESCRIPTION

NO.

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Print Name: Michael L. Johnson

Sign Name: Michael L. Johnson

Date: 11-3-04 License No. 40454

Date: 10-23-03

Designed By: HLJ

Drawn By: JRJ

EMMONS & OLIVER RESOURCES

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BROWN'S CREEK WATERSHED DISTRICT

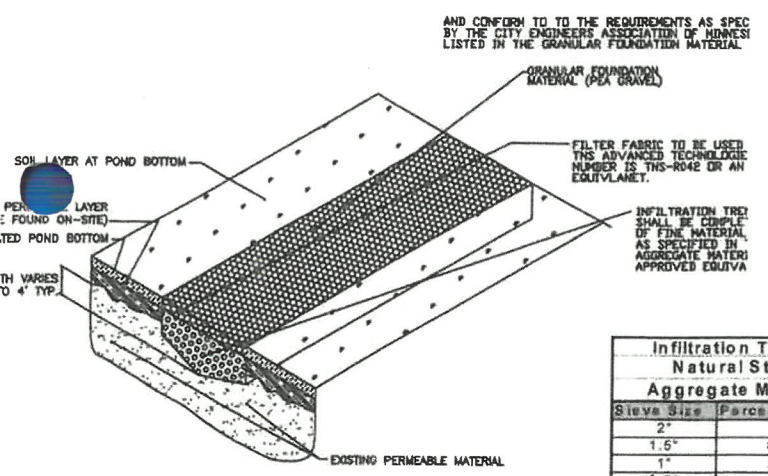
KERN CENTER COMMERCIAL AREA DRAINAGE FACILITY

OF PARK HEIGHTS, MN

Sheet No. 5 of 6

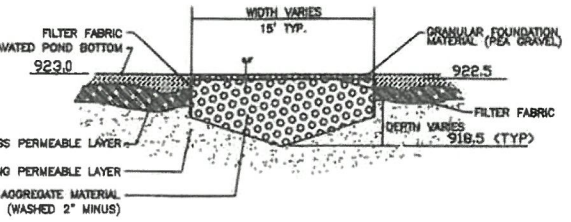
19 Sheets

SECTIONS AND DETAILS

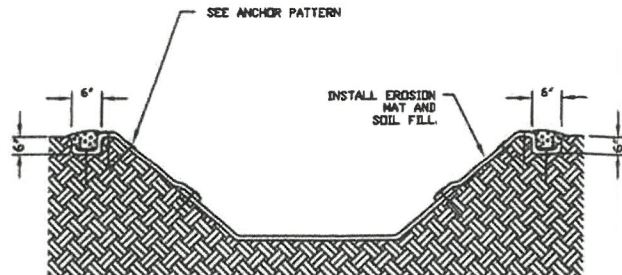
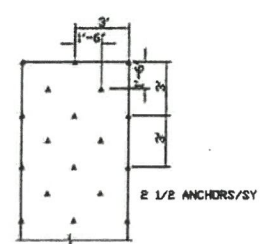
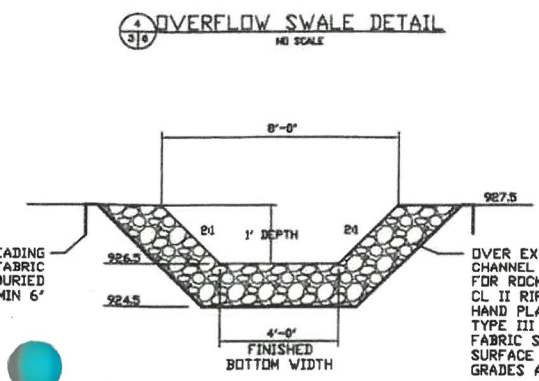
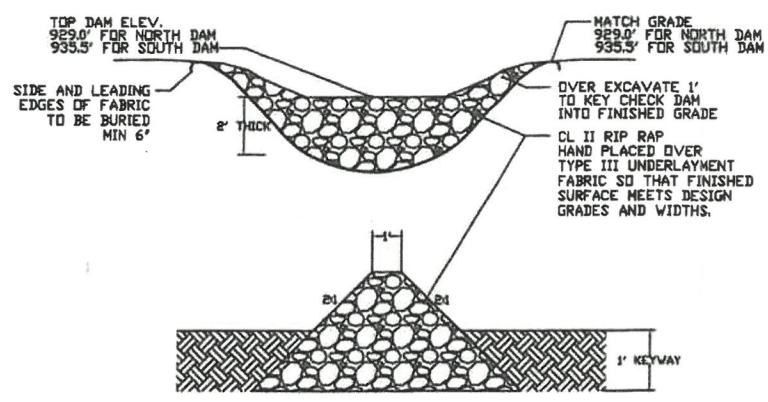
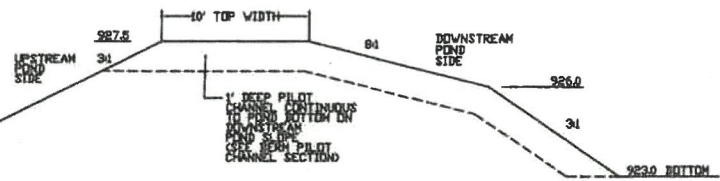
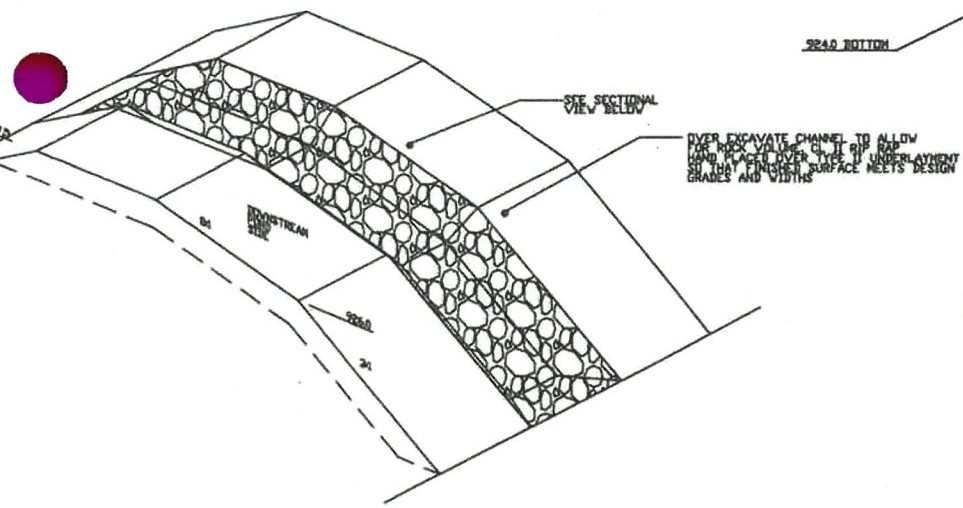
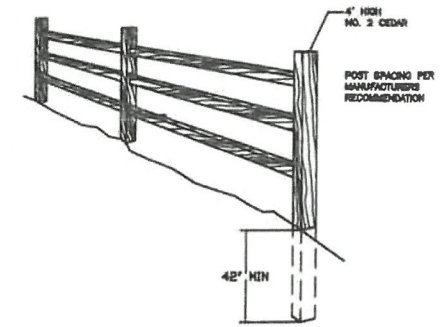
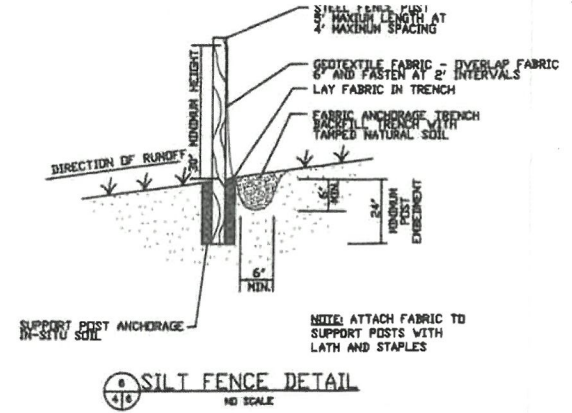
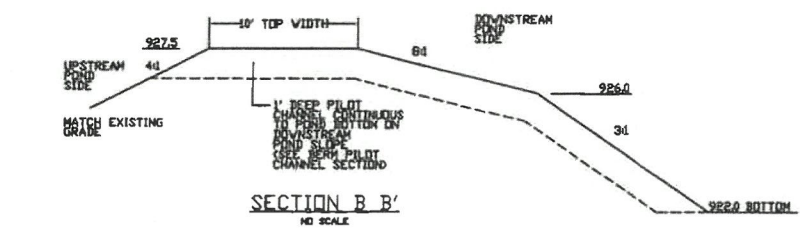
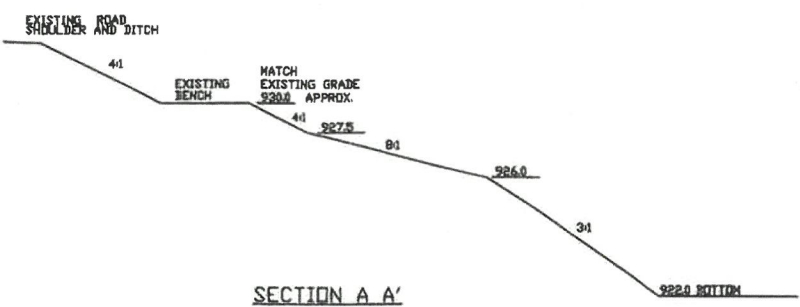


Infiltration Trench		
Natural Stone		
Aggregate Material		
Sieve Size	Percent Passing	
2"	100	
1.5"	85-100	
1"	30-60	
0.5"	0-10	

Granular Foundation Material		
Sieve Size	Percent Passing	
1"	100	
3/4"	85-100	
3/8"	30-60	



LINEAR INFILTRATION TRENCH DETAILS



Seed Zone A		
Seeding List		
MIXTURE 15A Modified (15A) - Rate 20 lbs/acre		
Common Name	Scientific Name	% of Mixture
Bluestem, big	Andropogon gerardii	5
Ornamental, little	Scirpus americanus	10
Wild rice, Canadian	Elymus canadensis	5
Wheatgrass, slender	Elymus trachycarpus	5
Rye grass, annual	Lolium italicum	10
Redtop	NA	34
Switch grass	Panicum virgatum	2
Bluestem, little	Schizanthus scoparium	12
Indian grass	Sorghastrum nutans	12
Mixweed, butterfly	Asclepias tuberosa	0.25
Aster, smooth-blued	Aster spicatus	0.25
Mixweed, Canada	Aster spicatus	0.25
Partridge pea	Chamaecrista fasciculata	0.25
Prairie clover, white	Dalea candida	0.25
Prairie clover, purple	Dalea purpurea	0.25
Hickory, showy	Desmodium canadense	0.25
Ox-eye, common	Heliopsis helianthoides	0.25
Blacktop, rough	Liatris aspera	0.25
Blacktop, tall	Liatris pycnostachya	0.25
Legume, wild	Medicago lupulina	0.25
Pentstemon, showy	Pentstemon grandiflorus	0.25
Cornflower, gray-headed	Rudbeckia hirta	0.25
Black-eyed Susan	Rudbeckia hirta	0.25
Goldenrod, stiff	Solidago rigida	0.25
Spikenard, Ohio	Tridax asarifolia	0.25
Vervain, blue	Verbena hastata	0.25
Vervain, hoary	Verbena stricta	0.25
Alexander's golden	Zizia aurea	0.25
Total:		100

Seed Zone B		
Seeding List		
MIXTURE 25A Modified (25A) - Rate 20 lbs/acre		
Common Name	Scientific Name	% of Mixture
Bluestem, big	Andropogon gerardii	5
Canada anemone	Anemone canadensis	0.1
Mari milkweed	Asclepias incarnata	0.5
New England aster	Aster novae-angliae	0.5
Swamp aster	Aster punctatus	0.5
Frogfoot, brom	Bromus ciliatus	5
Blue-joint grass	Calamagrostis canadensis	0.1
Bottlebrush sedge	Carex comosa	1
Tussock sedge	Carex stricta	0.5
Fox sedge	Carex vulpinoidea	0.4
Showy tickleweed	Desmodium canadense	0.4
Wheatgrass, slender	Elymus trachycarpus	5
Virginia wild-rye	Elymus virginicus	5
Joe-pye weed	Eupatorium maculatum	0.4
Sonnet	Eupatorium purpureum	0.3
Red meadow grass	Glyceria grandis	0.3
Fowl meadow grass	Glyceria striata	0.2
Early sunflower	Helianthus annuus	0.7
Blue-flag iris	Iris virginica	0.5
Common rush	Juncus effusus	0.2
Meadow blazingstar	Liatris spicata	0.4
Tall blazingstar	Liatris pycnostachya	0.4
Great blue lobelia	Lobelia spicata	0.1
Rye grass, annual	Lolium italicum	10
Monkey flower	Monarda didyma	0.1
Wild Bergamot	Monarda fistulosa	0.5
Redtop	NA	42
Switch grass	Panicum virgatum	1
Fowl bluegrass	Poa palustris	5
Black-eyed Susan's	Rudbeckia hirta	0.5
Green bunnish	Scirpus americanus	0.5
Wood grass	Scirpus cyperinus	0.5
Sol-solen budnah	Scirpus validus	1
Grass-leaved goldenrod	Solidago graminifolia	0.2
Indian grass	Sorghastrum nutans	6
Prairie cord grass	Spartina pectinata	2
Blue vervain	Verbena hastata	0.5
Ironweed	Veronica fasciculata	0.2
Culver's root	Veronica virginiana	0.1
Golden Alexander's	Zizia aurea	0.4
Total:		100

NO.	REVISION DESCRIPTION
1	
2	
3	
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9	
10	

I hereby certify that this plan was prepared by me or under my direct supervision and that I am a duly Licensed Professional Engineer under the laws of the State of Minnesota.

Print Name: Matthew L. Johnson

Sign Name: Matthew L. Johnson

Date: 11-3-04 License No. 40454

Date	10-23-03
Designed By	MLJ
Drawn By	JRJ

EMMONS & OLIVER RESOURCES

651 HALE AVENUE NORTH

OAKDALE, MN 55128

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FAX: (651) 770-2552

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BROWN'S CREEK WATERSHED DISTRICT

KERN CENTER COMMERCIAL AREA DRAINAGE FACILITY

OAK PARK HEIGHTS, MN

Sheet No. 6 of 6

G20 6 Sheets

EXHIBIT C

Kern Center Commercial Area Drainage Facility Operation and Maintenance Plan

Purpose

The overall objective of this Operation and Maintenance (O&M) Plan is to ensure the successful long-term operation of the Kern Center infiltration basin (Basin) that has been designed as part of the storm water plan for the Kern Center Commercial Area in the City of Oak Park Heights (City).

The purpose of the O&M Plan is to identify the tasks that will be needed for operation and maintenance of this facility, and standards for evaluating successful operation and maintenance. The City of Oak Park Heights will be responsible for financing and carrying out these tasks. The Brown's Creek Watershed District (BCWD) will be responsible for monitoring the infiltration basin, at its expense.

Background

The Basin for the Kern Center Commercial Area is designed to retain and infiltrate storm water runoff generated on the approximately 74 acres of commercial area that drains to the basin. The site is located within the City and Brown's Creek Watershed District.

Basin Performance Targets and Monitoring

The BCWD has determined that the Kern Center Basin has been designed to provide the additional 6.8 acre-feet of retention/infiltration required to accommodate existing and future development, up to 80 percent imperviousness, within its drainage area, while meeting the BCWD's volume control requirements. The requirements will be achieved by expanding the pond to approximately 3.6 acres, and by managing the pond at a new normal water level (NWL) that is on average 1.5 to 2 feet below the invert of the existing 12-inch orifice outlet. The BCWD estimates that given the soil types identified during the geotechnical investigation, the 1.5 to 2 feet of storage below the invert will infiltrate within a 3 to 4 day period after a storm event.

The BCWD will develop a monitoring plan that will evaluate the infiltration capacity of the basin over time. Under the monitoring plan, the BCWD will monitor pond performance for at least one year, at which time performance will be evaluated, taking annual precipitation into account. The BCWD will continue to monitor performance thereafter at a frequency and for a period it finds appropriate. For each year in which monitoring is performed, an annual monitoring report summarizing the monitoring activities completed and findings for the Kern Center Basin will be submitted to the City of Oak Park Heights.

Construction Inspection

The City will bear responsibility for inspection of the Basin construction and working with the contractor to assure that the Basin is constructed according to the plans. The BCWD will participate in on-site inspection, and will identify any concerns regarding construction-related issues to the City during construction or the warranty period. The BCWD will have no authority to direct the contractor.

Basin Performance Warranty Period

After construction is completed, the BCWD will monitor the performance of the Basin for a period of time deemed adequate by the City engineer and BCWD engineer, given precipitation patterns, plant rooting and other relevant factors, to calibrate actual performance in relation to the design target. The BCWD will report to the City on the function of the Basin during this time, identify actual performance in comparison to the target infiltration rate, and identify any other issues related to performance of the Basin. The BCWD and the City will discuss the outcomes of the monitoring, and determine whether the Basin is functioning successfully, whether changes are needed to achieve the target infiltration rate, or the target rate needs to be modified.

Vegetation Establishment Period

The City and BCWD will monitor vegetation establishment during the first year after construction is completed. Maintenance during the first year will be included in the construction contract, and will be completed by the contractor.

The City will provide in the contract that maintenance requirements and evaluation of native seeding at the Basin will conform to *Guidelines for Restoring & Managing Native Wetland Vegetation* (Minnesota DOT and Minnesota BWSR) and *MN/DOT Seeding Manual 2003*.

The City will provide in the contract that tree and shrub plantings will be monitored as well and that those that die or are in poor condition within one year after planting will be replaced by the contractor at his/her expense, and a second 1-year establishment period will begin.

Maintenance Period

The Maintenance Period for the Basin will begin after construction is completed, and after the BCWD and City agree that the design is functioning successfully in meeting the target infiltration rate identified for the Basin.

Routine Maintenance

The City will complete the following routine maintenance activities at its expense:

1. Annual inspection

The City will complete an annual inspection of the Basin to identify maintenance issues.

2. Removal of accumulated sediments

The City will remove accumulated sediments from the smaller “forebay” cells at the north and southeast sides of the large basin when the depth of sediment reaches half the depth of the basin. Sediment will be removed with light equipment that will be operated from outside the basin to the degree possible to minimize compaction and damage to plantings.

3. Vegetation maintenance

Maintenance of plantings will include the following:

- a. Seeded areas—Maintenance will conform to *Guidelines for Restoring & Managing Native Wetland Vegetation* (Minnesota DOT and Minnesota BWSR) and *MN/DOT Seeding Manual 2003*. This maintenance typically includes mowing 2-3 times per season, and spot spraying weeds as needed. When sufficient litter is available, a controlled burn may replace mowing at the City’s discretion.

- b. Trees and shrubs – Trees and shrubs will be inspected annually. Pruning or replacement may be completed for dead or diseased plants.

- c. The City will use no fertilizer near the Basin. Herbicide application will be limited to spot spraying of noxious weeds with herbicides approved for use near water bodies.

4. Erosion Control

If areas of erosion are identified within the site, the City will use appropriate methods such as fabric, seeding, plantings, or structural methods if necessary to stabilize these areas.

5. Best Management Practices

The City will encourage landowners in the drainage area to the Basin to control sediment and pollutants that may affect the operation of the Basin, including the following:

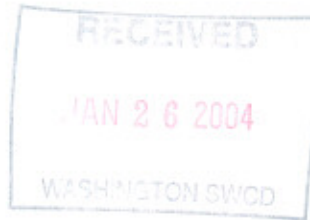
- a. Use the minimum amount of sand and salt needed to maintain hard surfaces in the winter months
- b. Sweep hard surfaces as early as possible in the spring

Additional Maintenance

The following criteria indicate the need to perform additional maintenance activities:

1. The Basin is no longer returning to a normal water level that is 1.5 to 2 feet below the invert elevation of the 12-inch orifice between storm events during a normal precipitation year, indicating that the available storage in the system has been reduced.
2. The time that it takes the Basin to reach its normal water level (1.5 to 2 feet below invert elevation) after a rainfall event is longer than a 3 to 4 day period, unless another rainfall event occurs during this period.

If the BCWD monitoring finds either or both of the conditions identified above, it will notify the City, and provide the results of the monitoring to the City. The BCWD and City will discuss the findings of the monitoring, and determine the actions to be taken, the responsibility for those actions, and time frame for completion of the actions.



REVISED COOPERATIVE AGREEMENT

For a Project to Manage Stormwater and Protect Water Quality in the Brown's Creek Watershed, Washington County, Minnesota

The parties to this Revised Cooperative Agreement ("Revised Cooperative Agreement") are the City of Stillwater, a Home Rule City of the Third Class, existing under the constitution and laws of Minnesota ("Stillwater"), the City of Oak Park Heights, a statutory city ("Oak Park Heights") and Brown's Creek Watershed District ("BCWD"), a watershed district created pursuant to Minn. Stat. §103D.

Recitals and Statement of Purpose

WHEREAS Brown's Creek is a unique and important natural resource and a designated trout stream located within the Twin Cities metropolitan area, the ecological health and habitat viability of which depend on the maintenance of water quality, water temperature, and stable flow character.

WHEREAS, Stillwater conducted an Alternative Urban Areawide Review (AUAR) for areas proposed to be annexed by Stillwater between now and the year 2020 and produced a Report (May 1997) and Final Report (December 16, 1997) (together, the "AUAR Reports") reviewing impacts to water resources from development in the annexation area consistent with the Stillwater comprehensive plan and proposing means of mitigating those impacts.

WHEREAS, the implementation and use of regional measures to manage stormwater may serve to allow properties within the drainage area to meet the requirements of BCWD rules, the AUAR, and Stillwater and Oak Park Heights ordinances in a more cost-effective way than managing stormwater on an individual site basis.

WHEREAS, the parties desire to implement measures recommended in the AUAR to protect Brown's Creek and its tributaries and acknowledge that their ability to do so requires that each party satisfactorily and promptly perform its obligations and cooperate with the other party on those tasks. As used in this Revised Agreement, the Regional Treatment System that will be designed, constructed, owned and maintained by Stillwater is described as the Brown's Creek Trout Stream Mitigation Project ("TSMP").

WHEREAS, on August 7, 2003, Stillwater and Oak Park Heights have reached an agreement establishing terms on which land within Oak Park Heights may drain to the TSMP, entitled "Memorandum of Understanding Between The City of Oak Park Heights and The City of Stillwater With Regard to Storm Water Management Issues Within the City of Oak Park Heights' Central Business District and adjoining lands, Lying South of Trunk Highway 36, West of Oakgreen Avenue and East of Trunk Highway 5" ("Stillwater/Oak Park Heights MOU") and Stillwater and the BCWD have determined the TSMP as designed will manage surface water flows from the areas described in this Revised Agreement so as to protect Brown's Creek, its tributaries and the other water resources within the watershed.

NOW, THEREFORE, the parties enter into this Revised Agreement to document their understanding as to the scope of their undertaking; reaffirm the commitment of each party as to the responsibilities and tasks to be undertaken by each party; establish procedures for performing these tasks and responsibilities; and facilitate communication and cooperation among the parties to ensure successful completion of the undertaking.

AGREEMENT

1. General Responsibilities and Performance Guidelines

1.1 A Work Plan describing the tasks and schedule anticipated in performance of the TSMP is incorporated in this Revised Agreement by reference (Exhibit "A"). Consistent with its obligations under this Revised Agreement, Stillwater will retain final authority as to the manner in which it implements the responsibilities assigned to it but will provide the BCWD and Oak Park Heights the opportunity for review and comment with regard to the design, construction, operation and maintenance of the TSMP by timely providing any documents that another party requests and will cooperate with each other party in good faith to achieve goals of this Revised Agreement.

1.2 With respect to compliance with paragraph 2.4.1(b) of the BCWD Rules, the TSMP, within the area subject to the terms of this Revised Agreement, constitutes a regional facility pursuant to paragraph 2.7.4(c) of those rules.

1.3 The area of Stillwater that is subject to this Revised Agreement is limited to Phase I, Phase II, Phase III, and Phase IV as described in the Orderly Annexation Agreement between the City of Stillwater and Town of Stillwater dated August 16, 1996. Areas not described in this section, and areas that become

part of the City in the future by reasons of annexation or other expansion, are not subject to the exception unless this Revised Agreement is amended to include those areas. The orderly annexation area is described in Exhibit "B," Phase I on Exhibit "C," Phase II on Exhibit "D," and Phase III on Exhibit "E." Phase IV is that part of the orderly annexation area (Exhibit "B") not shown on Exhibit "C," "D" or "E."

1.4 Also subject to this Revised Agreement is that part of Oak Park Heights labeled on Exhibit F as "Remaining Parcels in the BCWD to be Developed Subject to the Revised Cooperative Agreement." Oak Park Heights recognizes that a portion of this area lies within the BCWD hydrological boundary but currently outside the BCWD legal boundary, and therefore that development of this portion may be subject to the stormwater management review of another watershed management organization.

1.5 All designs, written materials, technical data, research or any other work in progress concerning implementation of the TSMP must be available for review and copying by the other party, except to the degree limited by law.

1.6 Review and comment as provided for in this Revised Agreement means distribution of the documents or materials in question to each other party for a 30-day opportunity to review and comment. This period shall begin on the later of (a) the other party's receipt of documents under paragraph 1.1; or (b) the other party's receipt of documents pursuant to a request under paragraph 1.4 made within 15 business days of the Administrator's initial receipt under paragraph 1.1. Stillwater will in its discretion ensure that review occurs at a time when any comments may be meaningfully considered and implemented by Stillwater. The parties agree to consider all timely comments fully and to modify documents or materials to the extent feasible.

1.7 In the event of conflict between the terms of the Stillwater/Oak Park Heights MOU and this Revised Agreement, the Stillwater/Oak Park Heights MOU, specifying the terms by which land within Oak Park Heights may drain to the improvements described at paragraph 2.1 of this Revised Agreement, shall supersede the terms of this Revised Agreement as to the rights and obligations of Stillwater and Oak Park Heights with respect to each other. Nothing in the Stillwater/Oak Park Heights MOU shall affect the rights and obligations of the BCWD as set forth in this Revised Agreement, nor shall Stillwater deny any lands credited by the BCWD under paragraph 4.1 of this Revised Agreement the use of the improvements to the extent contemplated in the plans for development of those lands incorporated into a BCWD permit.

1.8 This Revised Agreement shall apply to land within Oak Park Heights, and to the rights and obligations of Oak Park Heights, effective retroactive to August 7, 2003.

2. Structural Improvements

2.1 Stillwater will prepare plans and specifications for the construction, operation and maintenance of the proposed improvements and distribute them for review and comment in accordance with paragraph 1.5.

2.2 Stillwater will be responsible for selecting the contractor or contractors to perform the construction of the improvements, negotiating construction contracts and supervising project construction. It will be responsible for obtaining any governmental permits and conducting any environmental reviews necessary for the construction, operation and maintenance of the improvements, and for acquiring any property or access rights needed to design, construct, operate and maintain the improvements.

2.3 Stillwater will take all reasonable and feasible measures to minimize impacts on Long Lake and Brown's Creek that are caused by development that takes place before and following complete construction and operation of the TSMP and all elements thereof.

3. Responsibility for Costs.

3.1 Stillwater will be responsible for all project costs for the design, construction and maintenance of the TSMP. Nothing in this section will limit the right of Stillwater to seek contributing funds from any entity other than BCWD that contributes flows to the TSMP on any basis allowed by law.

3.2 Stillwater and BCWD will exercise reasonable efforts to secure outside means of funding for activities under section 2. The parties will assist and cooperate in these efforts.

4. Application of BCWD Rules to Areas Affected by the Improvements.

4.1 It is the intent of the parties that the improvements constructed pursuant to this Revised Agreement constitute a regional facility for managing stormwater flow volume within the area described at Paragraphs 1.3 and 1.4 of this Revised Agreement. Therefore, pursuant to Paragraph 2.7.4(c) of the BCWD

rules, development within the area described in this Revised Agreement is deemed to be in compliance with the standard at Paragraph 2.4.1(b) of the rules.

4.2 Stillwater will cooperate with the BCWD on any monitoring the BCWD may undertake with respect to TSMP performance and water resource conditions, and will provide a location for a BCWD monitoring facility as identified jointly by the parties. This shall not obligate Stillwater to pay the cost of any such monitoring, except as may be specified in the monitoring plan referenced in paragraph 5.1 of this Revised Agreement.

4.3 Nothing in this Revised Agreement affects the authority or responsibility of the BCWD to revise paragraph 2.4.1(b) of its rules as appropriate. In the event a revision of paragraph 2.4.1(b) should impose a stricter standard than presently applicable to the Orderly Annexation Area as described in Paragraph 1.3 of this Revised Agreement, or the area of Oak Park Heights described in Paragraph 1.4 of this Revised Agreement, any permit applicant subsequent to adoption of the revised standard would be required to meet that standard, after consultation and agreement of the municipalities within the drainage area of the Regional Treatment System or TSMP as defined in Paragraphs 1.3 and 1.4 of this Revised Agreement. An applicant within the area described in Paragraphs 1.3 and 1.4 of this Revised Agreement will receive compliance credit for that degree of volume control that the TSMP is providing, but also shall be required to provide for such additional volume control as is necessary to meet the standard. A revised standard would operate only as to applications considered after adoption of the revision, and would not operate retroactively to any existing development.

5. Monitoring Plan

5.1 The parties, with the participation of other interested governmental bodies, jointly will develop and implement a monitoring plan ("Monitoring Plan") that will identify specific sampling procedures, analytic methods, detection limits, and quality assurance and quality control procedures to facilitate the accurate measurement of baseline data and any water quality or quantity impacts within the Long Lake drainage area and areas downstream. The specific monitoring activities for which each party is responsible will be identified in the Monitoring Plan.

6. Remedies.

6.1 In the event that periodic sampling or analysis done by BCWD or the Monitoring Plan reveals that the TSMP or any associated improvements are not functioning to meet BCWD volume control standards, the BCWD will meet and confer with Stillwater and Oak Park Heights to determine appropriate curative action.

6.2 In the event the parties cannot agree on an appropriate curative action, BCWD may send a notice to Stillwater and Oak Park Heights entitled "Notice to Cure," describing the curative action necessary. The notice must allow Stillwater six (6) months to cure.

6.3 If curative action is not taken, or for any other dispute between the parties arising under this Revised Agreement, the parties agree to mediation for a minimum of ninety (90) days before seeking redress in the District Court of Washington County, Minnesota. Mediation shall be conducted pursuant to procedures, and with a mediator, agreed on by the parties. The 90-day period shall commence on the written request of either party for mediation under this paragraph.

7. Indemnification

7.1 Stillwater agrees to defend, indemnify and hold harmless the BCWD against claims including those made by third parties that arise out of the design, construction or maintenance of the TSMP, whether during construction of the system or after its completion.

8. Notice.

8.1 Notices to the parties to this Revised Agreement shall be given by hand delivery or first-class mail addressed to an elected or appointed representative of a party or a person as the party may designate. Documents required to be provided pursuant to paragraph 2.1 must be addressed to the BCWD Administrator at the BCWD's designated address and to the City Administrator, Oak Park Heights, unless otherwise specified by either party in writing.

9. Amendments.

9.1 This Revised Agreement may be amended only by agreement of the parties in writing.

10. Effect and Binding Nature.

10.1 This Revised Agreement replaces and supersedes the August 18, 2000 Cooperative Agreement executed by Stillwater and the RCWD as of the date on which this Revised Agreement has been fully executed by all parties.

10.2 This Revised Agreement will be binding on the parties and their respective successors, whether by merger, consolidation or transfer of authority to another government agency, to the fullest extent permitted by law.

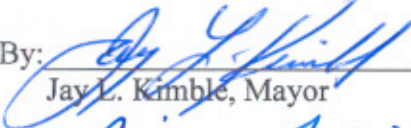
11. Termination.

11.1 This Revised Agreement shall remain in effect in perpetuity. Any party may withdraw its participation under this Revised Agreement on two (2) years' written notice to the other parties. Before termination is finalized, the parties shall meet in good faith to attempt to resolve the reasons for the noticed withdrawal.

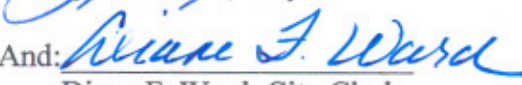
IN WITNESS WHEREOF, the parties hereto have executed this Revised Cooperative Agreement.

CITY OF STILLWATER

1-20-04
Date

By: 
Jay L. Kimble, Mayor

1-20-04
Date

And: 
Diane F. Ward, City Clerk

CITY OF OAK PARK HEIGHTS

Date

By: 
David Beaudet, Mayor

1-22-04
Date

And: 
Eric Johnson, City Administrator

BROWN'S CREEK WATERSHED DISTRICT

12/30/03
Date

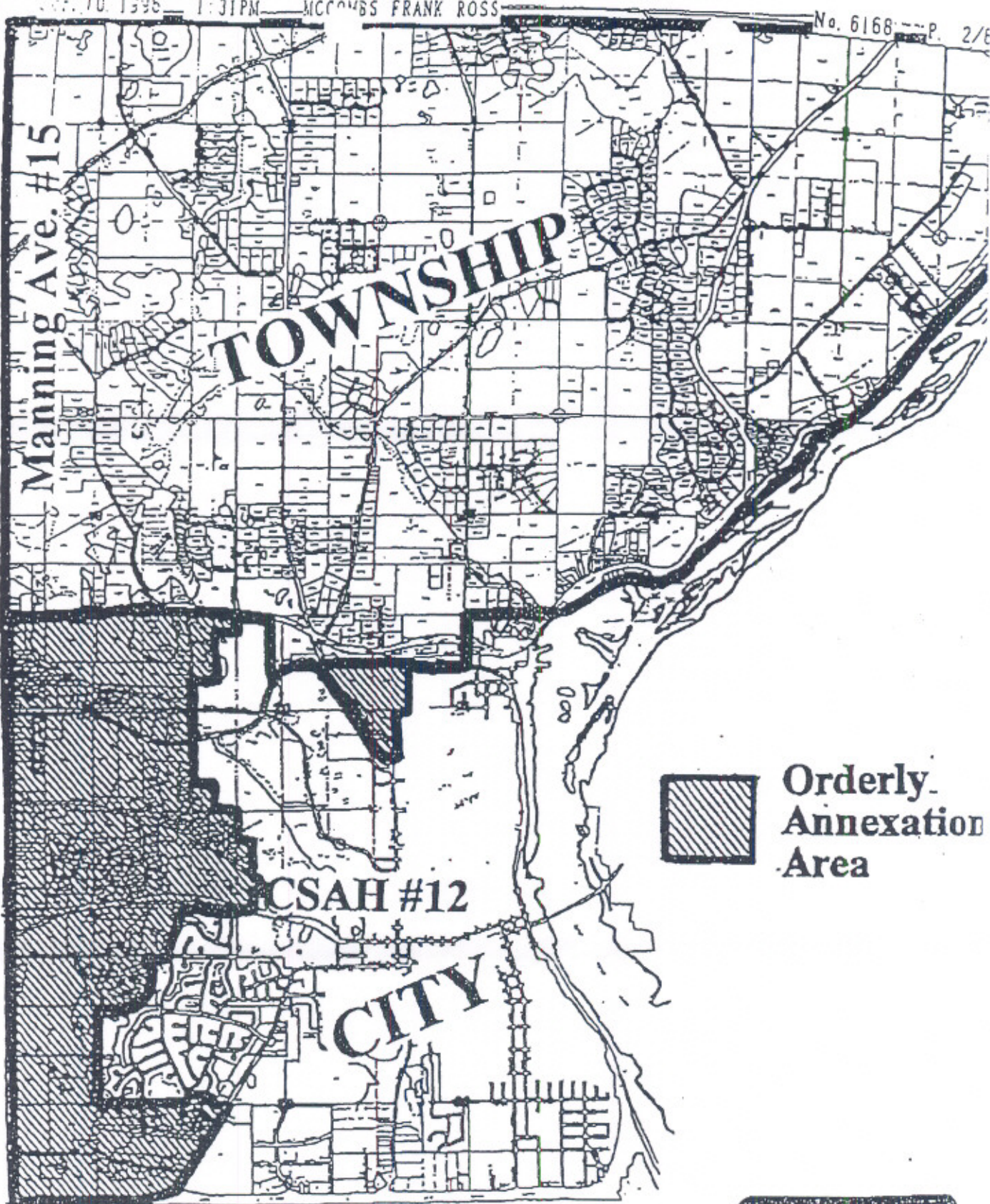
By: Craig F Leiser
Craig Leiser, President

EXHIBIT "A"**Work Plan for TSMP**

Item	7/1/2000 Status	Estimated Completion Date
Trout Stream Realignment – Oak Glen Segment	Completed Spring 2000	Completed
McKusick Downstream Conveyance Improvement	Out for bid	Fall 2002
McKusick Lake Diversion Construction	Partially Complete	Fall 2003
Long Lake Outlet Control	Conceptual Design	2005
Long Lake Conveyance System Improvements	Partially Complete	2007

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No. 6168 P. 2/6



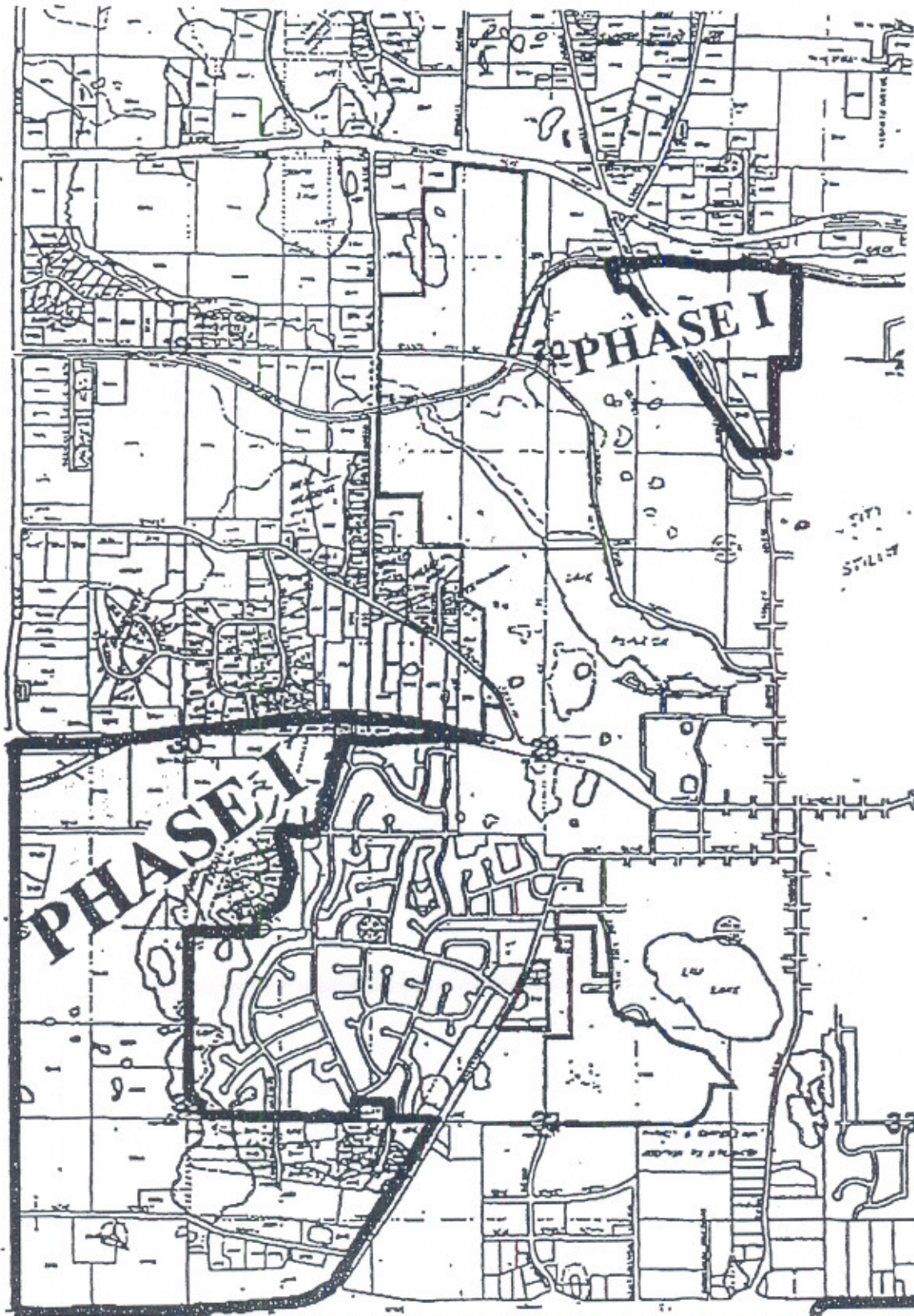
 **Orderly Annexation Area**

EXHIBIT
B



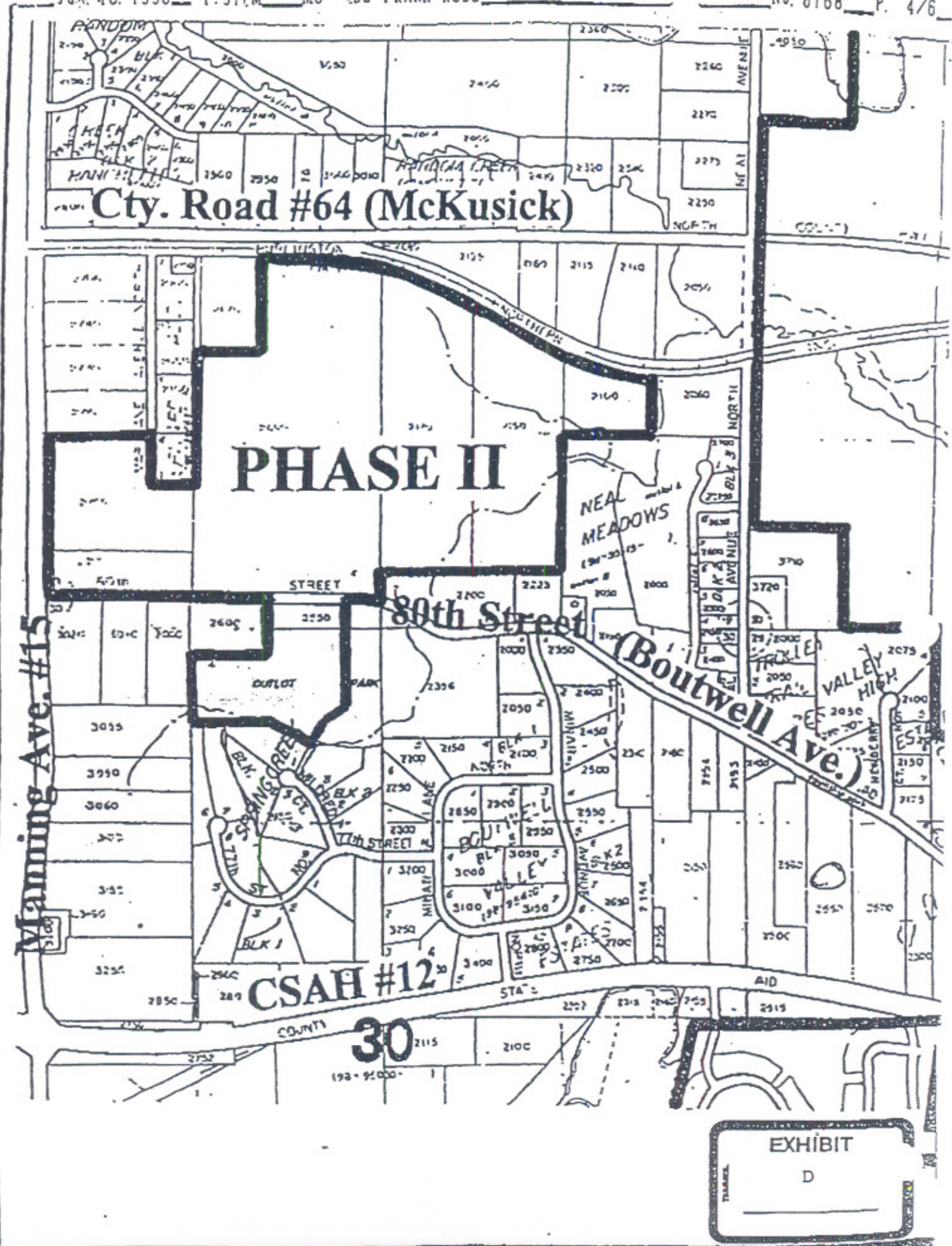
McCombs Frank Ross Associates, Inc.
15050 23rd Ave. N.
Plymouth, MN. 55447
Engineers

CITY & TOWNSHIP
OF STILLWATER
ORDERLY ANNEXATION



EXHIBIT

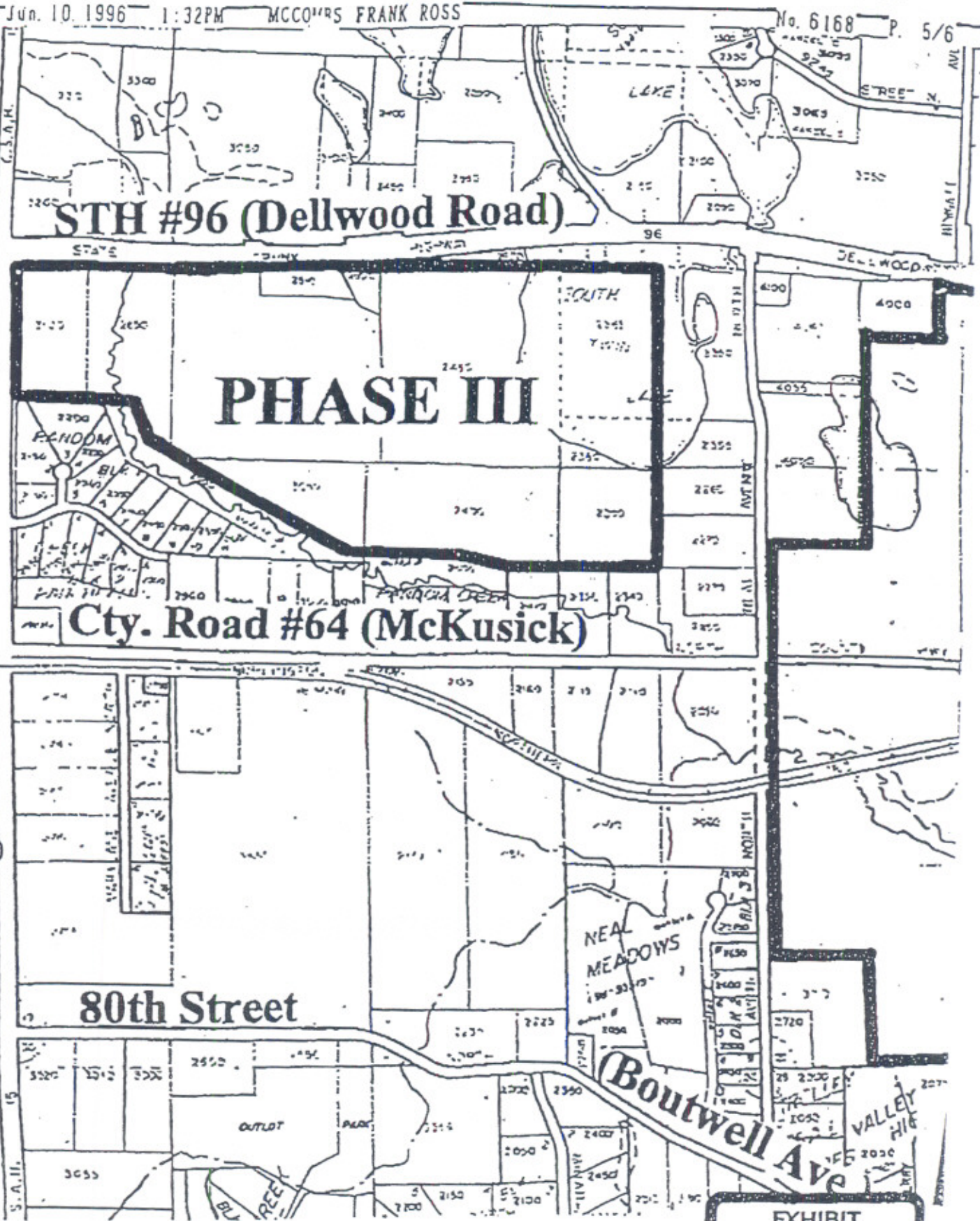
C



Jun. 10. 1996 1:32PM MCCOY'S FRANK ROSS

No. 6168 P. 5/6

Manning Ave. #15

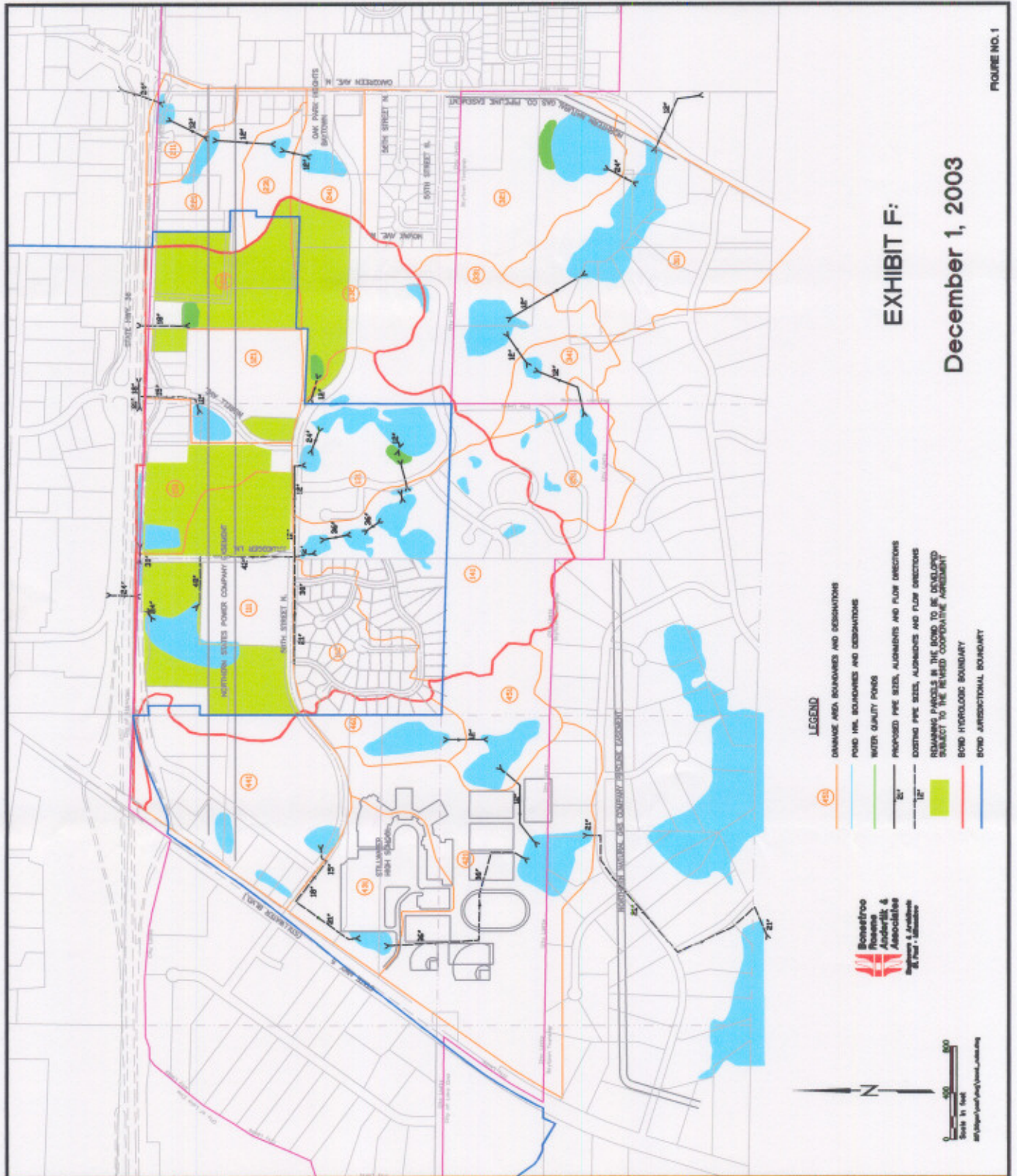


EXHIBIT

E

McCoys Frank Ross Associates, Inc.
15050 23rd Ave. N.

CITY & TOWNSHIP
OF STILLWATER



**AGREEMENT BETWEEN
WASHINGTON COUNTY AND
BROWN'S CREEK WATERSHED DISTRICT**

**LAND AND WATER LEGACY PROGRAM
LAUENSTEIN PARCEL ACQUISITION**

This Agreement is made and entered into in furtherance of the provisions of the Washington County Land and Water Legacy Program by and between Washington County, 14949 62nd Street North, Stillwater, Minnesota 55082, hereinafter referred to as the "County," and Brown's Creek Watershed District, whose principal place of business is 1875 Northwester Avenue, Stillwater, MN 55082, hereinafter referred to as the "BWCD"; both parties are governmental and political subdivisions of the State of Minnesota.

WHEREAS, pursuant to Minnesota Statutes Chapter 84C, Minnesota Statutes Section 373.40 and Minnesota Statutes Section 394.25, Washington County is authorized to acquire and improve land and interests in land for the purposes of preserving open space, including natural and scenic areas and agricultural land; and

WHEREAS, Washington County has enacted the Acquisition of Development Rights Ordinance #175 to establish a program for the preservation of open space, parks and public water, commonly referred to as the Land and Water Legacy Program and has established the policies, rules and official controls governing such acquisitions; and

WHEREAS, Washington County has issued general obligation bonds to acquire land and interests in land to provide long-term stable funding to purchase interests in land for the purpose of preserving open space; and

WHEREAS, the County and BCWD have identified a 13-acre parcel – located in the City of Grant and identified in Washington County property records by identification number 12-030-21-21-0005, shown in Exhibit A and legally described in Exhibit B, both of which are attached to and incorporated into this Agreement – which contains 1,300 feet of Brown's Creek and 2.4 acres of wetland and is presently owned by Michael and Kristin Lauenstein (referred to herein as "the Property"); and

WHEREAS, Washington County has determined that acquisition of the Property meets the criteria and purposes of the Land and Water Legacy Program, and has reached an agreement in principle with Michael and Kristin Lauenstein for sale of the Property; and

WHEREAS, Minnesota Statutes section 103D.335, subd. 11, authorizes the BCWD to acquire, maintain and manage land for water resource-protection and -improvement purposes; and

WHEREAS BCWD has adopted the 2017-2016 Watershed Management Plan (hereinafter, the Plan) pursuant to Minnesota Statutes chapter 103B, and the plan describes BCWD's commitment to working in

partnership with public and private entities to protect and restore water resources in the Brown's Creek watershed through protection of natural areas, connections between natural areas and groundwater recharge zones; and

WHEREAS the capital improvement program in the Plan states that BCWD will identify conservation priorities and pursue opportunities to purchase fee ownership or easements on critical lands consistent with these priorities to preserve and restore land in the watershed; and

WHEREAS the BCWD Board of Managers has adopted criteria guiding its land-conservation work; and

WHEREAS on October 12, 2016, the BCWD Board of Managers, after conducting a duly-noticed public hearing in accordance with Minnesota Statutes section 103B.251, subdivision 3, to give interested members of the public an opportunity to comment on the proposed collaboration with the County to purchase the Property and addressing the comments received, adopted Resolution 16-07, ordering the purchase of the Property as a project implementing, in part, the Plan;

WHEREAS BCWD has provided the County with a conceptual recreational-use and natural-resources management plan for the Property, requested by the County as a critical precursor to a complete plan for the Property; and

WHEREAS, the County and BCWD are authorized by Minnesota Statutes section 471.59 to enter into this cooperative agreement for the Project.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

I. County and BCWD Rights and Duties

- A. BCWD will provide the County with a certified copy of BCWD Resolution 16-07, whereby BCWD ordered the Project and authorized the president to enter into the Agreement;
- B. On receipt of BCWD Resolution 16-07 and receipt and acceptance by the County of BCWD's conceptual recreational-use and natural-resources management plan for the Property, the County will enter into a purchase agreement with Michael and Kristin Lauenstein setting forth the terms and schedule for purchase of the Property by the County, at a cost not to exceed \$254,400.
- C. The County will conduct, in consultation with BCWD, due diligence, title review and other analysis of the Property prior to closing the purchase of the Property in accordance with the terms of the purchase agreement between the County and Michael and Kristin Lauenstein. The County will require Michael and Kristin Lauenstein, as sellers, to represent and warrant to the County that:
 - i. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or, to the best of Michael or Kristin Lauenstein's knowledge, threatened against or affect the Property. No condemnation or eminent domain proceedings are now pending or, to the best of sellers' knowledge, are contemplated against the Property.
 - ii. Sellers have not received any notices, orders, suits, judgments or other proceedings relating to violations of zoning, subdivision, platting or building laws with respect to the Property.

- iii. There are no mortgages encumbering the Property.
- iv. Michael and Kristin Lauenstein have full power to enter into and to perform the purchase agreement according to its terms and the execution and the delivery of the Property and the consummation of the transactions contemplated will not constitute a default under any mortgages or other instruments or agreements to which Michael and Kristin Lauenstein are, individually or together, a party, and this purchase agreement is not in contravention of any law, order, ordinance, or regulation by which Michael and Kristin Lauenstein are bound or subject.
- v. Michael and Kristin Lauenstein have not used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any hazardous materials on or affecting the Property in any manner which violates any federal, state or local law, statute, regulation, requirement, ordinance, rule or policy, and to the best of their knowledge, no prior or current owner, tenant, subtenant, occupant or licensee of the Property has used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any hazardous materials on or affecting the Property in any manner which violates any federal, state or local law, ordinance, rule, regulation or policy. For purposes of the purchase agreement, "hazardous materials" should be defined to mean any asbestos, urea formaldehyde foamed in place insulation, polychlorinated biphenyl, petroleum, crude oil or any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, the Minnesota Environmental Response and Liability Act, as amended, or any other federal, state or local laws, statutes, regulations, requirements, ordinances, rules or policies.

The purchase agreement between the County and Michael and Kristin Lauenstein will explicitly extend the above warranties from Michael and Kristin Lauenstein to BCWD.

D. Within 10 days of its obtaining fee title ownership of the Property, the County will convey title to the Property by quit-claim deed to BCWD, and BCWD will execute and record in the Office of the Washington County Recorder a conservation easement defining and protecting the Property's conservation values. A draft conservation easement that will serve as the template for a final easement fulfilling this purpose is attached hereto and incorporated herein as Exhibit C.

E. After receipt of fee title ownership of the Property, BCWD will reimburse the County 50 percent of the purchase price, not to exceed \$127,200, in five equal annual payments, the first of which will be due January 31, 2017. The remaining payments will be due on the same date each year. If the event BCWD fails to make payments as scheduled, the County will withhold the amount due from tax-levy proceeds collected by the County on BCWD's behalf.

F. BCWD will complete, in consultation with the County, a plan for the management of the recreational use and natural resources of the Property within 18 months of the date the Property is conveyed to BCWD. In the event that BCWD fails to timely complete the recreational use and natural resource management plan, the County may, at its election, complete or contract for the completion of the management plan and withhold the costs thereof from tax-levy proceeds collected by the County on BCWD's behalf. On completion of the management plan, BCWD will manage and maintain the Property in conformity therewith.

G. Each party will comply with all applicable state and federal laws and regulations in the fulfillment of its obligations under this Agreement.

H. In the event BCWD elects to sell the Property, the County will have 45 days from the receipt of notification from BCWD of such intent to elect to repurchase the Property. In the event the County elects to repurchase the Property, BCWD will timely convey the Property to the County by quit-claim deed at a cost not to exceed the amount BCWD has paid the County pursuant to paragraph I.E of this Agreement.

I. Except as specified otherwise herein, each of the parties will bear its own costs of fulfilling its duties under this Agreement.

II. Term and termination

This Agreement becomes effective when fully executed. The Agreement will remain in force for six years. Any responsibility or obligation that has come into being before expiration, specifically including obligations under paragraphs I.E and I.H, will survive expiration.

III. Notice; Authorized Representatives

The parties designate the following authorized representatives, each to serve as the liaison to the other party for purposes of administration of the duties and rights established by the Agreement. Any written communication required under this Agreement will be addressed to the other party as follows, except that either party may change its representative or address for notice by so notifying the other party in writing:

A. The County's authorized representative for the purposes of administration of this Agreement and the specific obligations under paragraph I.E herein is:

June Mathiowetz, Land and Water Legacy Program
Washington County, Office of Administration
Government Center
14949 62nd Street North
Stillwater, MN 55082
651-430-6016
june.mathiowetz@co.washington.mn.us

B. BCWD's authorized representative for the purposes of administration of this Agreement and the specific obligations under paragraph I.E herein is:

Karen Kill, Administrator
Brown's Creek Watershed District
455 Hayward Ave North
Oakdale, MN 55128
651-330-8220, ext. 26
Karen.Kill@mnwcd.org

IV. Independent Relationship; Indemnification

It is agreed that nothing within this Agreement is intended to be or should be construed in any manner as creating or establishing the relationship of co-partners between the parties or as

constituting that either party is the agent, representative, or employee of the other party for any purpose or in any manner whatsoever.

Each party to this Agreement will secure, at its own expense, all personnel required to perform its responsibilities and obligations under this Agreement. Any and all personnel of either party to this Agreement or other persons, while engaged in the performance of any work or services required under this Agreement shall have no contractual relationship with the other party and shall not be considered employees of the other party to this Agreement.

This Agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes section 471.59. Each party agrees that it will be responsible only for its own acts and the results thereof to the extent authorized by the law and will not be responsible for the acts or omissions of the other party or the results thereof. This Agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party. Only contract remedies are available for a breach of this Agreement. Neither party will be liable for special, indirect, incidental, punitive, exemplary or unforeseeable consequential damages arising out of or in connection with its respective obligations under this Agreement. Specific performance explicitly is an available remedy for the failure of a party to perform any obligation hereunder and does not require a demonstration that other remedies are inadequate. Remedies are non-exclusive.

The County and BCWD enter this Agreement solely for the purposes of purchase, management and maintenance of the Property.

Nothing herein will be construed to constitute approval of any permit or other regulatory approval required by either party, nor does this Agreement in any way modify or delegate any party's regulatory authority

V. Audits, Reports, Records and Monitoring Procedures

Pursuant to Minnesota Statutes section 16C.05 Subd. 5, the County and BCWD will:

- A. Maintain records that reflect all revenues, costs incurred and services provided in the performance of this Agreement.
- B. Agree that the County, the State Auditor, or legislative authority, or any of their duly authorized representatives at any time during normal business hours, and as often as they may deem reasonably necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices of the other party that are relevant to the contract for six (6) years.

VI. Data Practices

All data collected, created, received, maintained, or disseminated for any purposes by the activities of the County or BCWD, because of this Agreement, are governed by the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as amended, the Minnesota Rules implementing such Act now in force or as adopted, as well as applicable federal regulations on data practices.

VII. Equal Employment Opportunity – Civil Rights

During the performance of this Agreement the parties agree to the following:

A. No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance status, criminal record, creed or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable federal and state laws against discrimination including the Civil Rights Act of 1964.

B. If during the term of the Agreement it is discovered that either party is not in compliance with the applicable regulations as aforesaid, or if either party engages in any discriminatory practices, the Agreement may be cancelled as provided by the cancellation clause of this Agreement.

VIII. Insurance Requirements

Any contract BCWD executes for improvement of the Property will:

A. Require the contractor to indemnify, defend and hold harmless the County, its officers, commissioners, employees and agents 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;

B. Require that for any claim subject to indemnification by an employee of selected contractor or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the contractor or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

C. Require that the contractor name the County as an additional insured for general liability and provide a certificate showing same prior to construction.

IX. Complete Agreement; Modifications

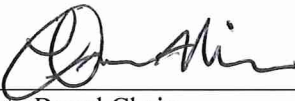
Any material alteration, modification, or variation shall be reduced to writing as an amendment and signed by the same parties who executed and approved the original agreement or their successors in office. The recitals stated at the outset are incorporated into and made a part of the Agreement.

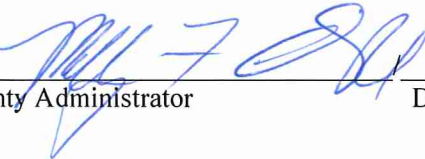
X. Waiver

The waiver by the County or BCWD of any breach or failure to comply with any provision of this Agreement by the other party will not be construed as nor will it constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

(signature page follows)

COUNTY
COUNTY OF WASHINGTON

By  11/1/16
County Board Chair Date

By  11/1/16
County Administrator Date

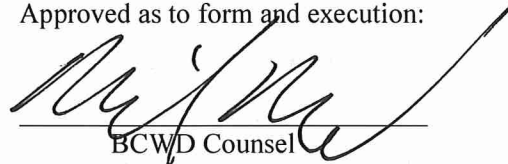
Approved as to form:


Asst. Washington County Attorney

WATERSHED DISTRICT
BROWN'S CREEK WATERSHED DISTRICT

By  12/2/16
By Craig Leiser, its President Date

Approved as to form and execution:


BCWD Counsel

This instrument was drafted by:
Washington County Attorney's Office and
Washington County Dept. of Public Works
11660 Myeron Road North
Stillwater, MN 55082

EXHIBIT A

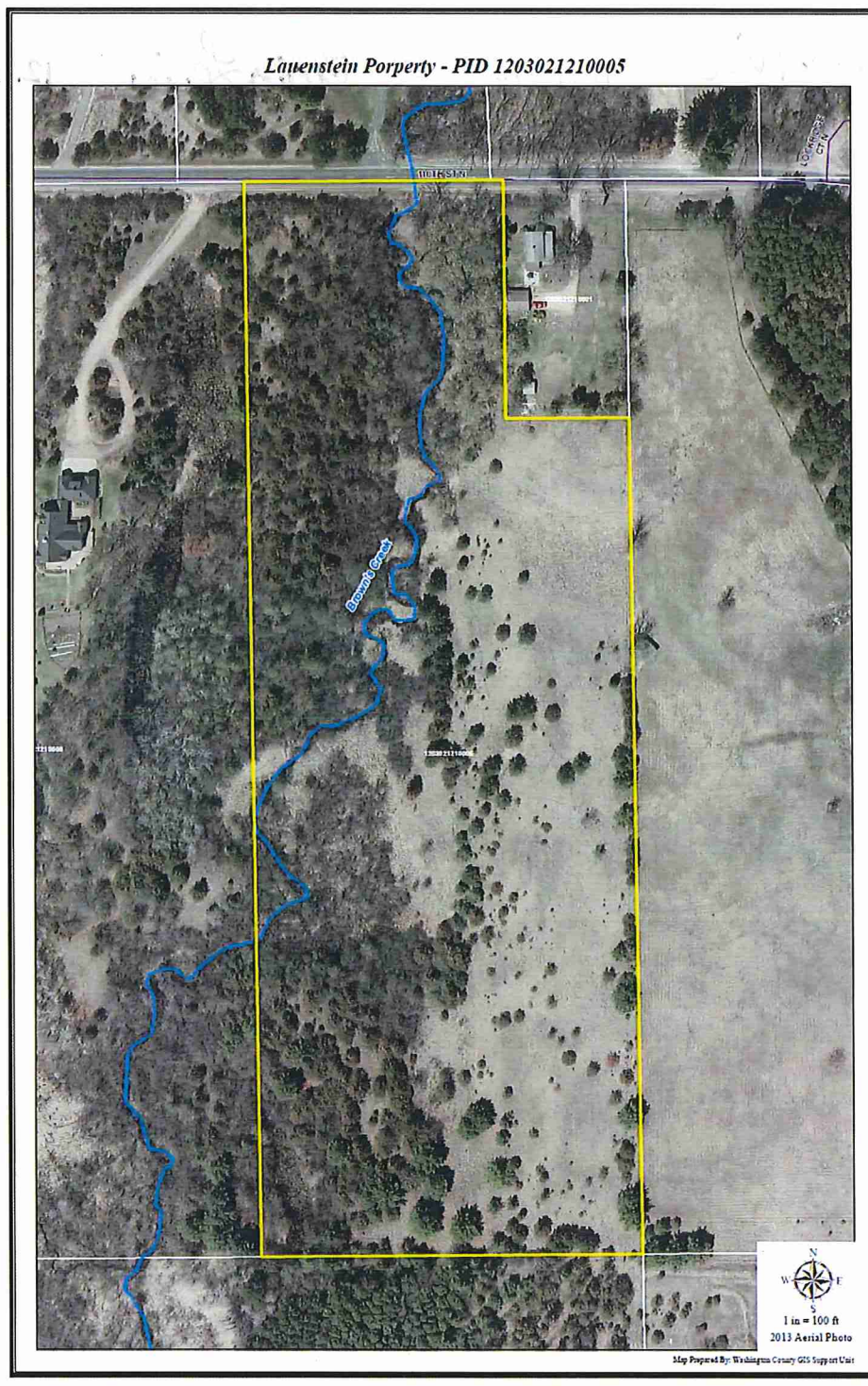


EXHIBIT B
Legal Description

The east 466.20 feet of the Northeast Quarter (NE ¼) of the Northwest Quarter of Section Twelve (12), Township Thirty (30) North, Range Twenty-one (21) West, Grant Township, Washington County, Minnesota, subject to the right-of-way of 110th Street North, except:

Beginning at the Northeast corner of the Northwest Quarter (NW ¼) of Section Twelve (12), Township Thirty (30) North, Range Twenty-one (21) West and running South at right angles with the North line of said Section Twelve (12), a distance of Two Hundred Ninety and Four-tenths (290.4) feet; thence West and parallel to the North line of said Section Twelve (12), a distance of One Hundred Fifty (150) feet; thence North at right angles to the last described line a distance of Two Hundred Ninety and Four-tenths (290.4) feet to the north line of said Section Twelve (12), thence East on the North line of said Section Twelve (12), a distance of One Hundred Fifty (150) feet to the place of beginning.

EXHIBIT C

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is conveyed on _____ by Brown's Creek Watershed District ("Grantor"), a special purposes local unit of government with powers and duties under Minnesota Statutes chapters 103B and 103D, to the County of Washington, a body politic and corporate ("Grantee") in accordance with the terms and conditions outlined herein.

I. RECITALS

A. Grantors

Grantor is the sole owner in fee simple of 12.76 acres of real property, herein referred to as the "Protected Property," in Washington County, Minnesota, which is particularly described in Exhibit A and generally depicted in the property map in Exhibit B. Both exhibits are attached to this conservation easement and incorporated herein by this reference.

B. County of Washington

The County of Washington is qualified to acquire and hold conservation easements under Minnesota Statutes Chapter 84C and Section 170(h)(3) of the Internal Revenue Code of 1986 and regulations promulgated thereunder.

C. Protected Property

The Protected Property consists of 12.76 acres located south of 110th Street between Manning Trail North and Lansing Avenue N in Grant, MN (Washington County PIN 12.030.21.21.0005) in the Northeast Quarter of Section 12, Township 30 North, Range 21 West.

The Protected Property is located in the headwaters area of Brown's Creek, a tributary stream to the St. Croix River and designated cold-water trout stream. Brown's Creek enters the property from the north along 110th Street and runs 1,300 feet before exiting the parcel on the west.

The Protected Property is currently vacant land without any structures or outdoor recreation facilities.

The property is located within one mile north of the Gateway State Trail.

D. Conservation Values

1. Collectively and individually the following natural, scenic and ecological qualities and the open space character of the Protected Property comprise "Conservation Values" the parties wish to protect by this easement:
 - a. The protection of this property maintains its undeveloped and natural character, contributing to a large current and anticipated complex of open space along Brown's Creek Trout Stream, within the City of Grant and in the St. Croix Valley.
 - b. The protection of this property contributes to a larger scale effort to provide ecological connectivity and support biological diversity along Brown's Creek Trout Stream and in the St. Croix River Watershed.
 - c. The protection of this property helps protect air quality through its preservation of trees.
 - d. The protection of this property helps remove pollutants from surface water flowing into Brown's Creek and groundwater resources by preserving its generally undisturbed nature, wetland filtering functions and other ecosystem services.
 - e. The protection of this property prevents privatization of access to this segment of Brown's Creek.
2. These Conservation Values have not been and are not likely to be significantly impaired by the continuous use of the Protected Property as described above or as authorized in this Conservation Easement.
3. The preservation and protection of these Conservation Values will provide significant benefit to the public.

E. Conservation Policy

Preservation of the Protected Property will advance the following government policies:

1. Minnesota Statutes Chapter 84C authorizes the State of Minnesota and political subdivisions thereof, as well as nonprofit organizations to preserve, acquire or hold lands for open-space uses, which specifically include farmland, wetlands, native or restored prairie, or lands deemed critical to protecting soil and water quality, and enhancing fish and wildlife habitat; and that actions pursuant to these purposes are for the public health, safety, and general welfare of the citizens of the State of Minnesota and for the promotion of sound land development by preserving suitable open spaces.
2. The Washington County Board of Commissioners through adoption of Ordinance 175 Acquisition of Development Rights has declared that public open-space benefits result from the protection and conservation of natural areas. This includes the protection of scenic areas for public visual enjoyment from public rights-of-way; that the conservation and protection of restored natural areas as valued natural and ecological resources provide needed open spaces for clean air and clean water as well as for aesthetic purposes; that public benefit will result from the conservation, protection, management and improvement of natural areas; and that the preservation of open-space is vital to the public interest of Washington County through its economic, environmental, cultural and scenic benefits.
3. The *Geologic Atlas of Washington County* assigns the Protected Property a rating of "very high" and "high" sensitivity of the groundwater systems to pollution, meaning that pollutants in this area can reach the groundwater in a very short time. This Conservation Easement protects surface and groundwater resources

by limiting the physical degradation caused by soil movement and increase in the extent of impervious surface on the Protected Property through, for example, cover with asphalt, and reducing the volume of runoff and potential flooding. It further supports the ecosystem's ability to clean water and reduce concentrations of substances produced by society by maintaining an area for infiltration and natural treatment of stormwater in the watershed.

4. The City of Grant's comprehensive plan indicates the Protected Property is located in the Minnesota Department of Natural Resources' Metro Conservation Corridor and includes wetland forest, dry grassland and planted or cultivated areas. The City of Grant's zoning map indicates the Protected Property is in an area designated as A2, Agricultural Small Scale. The topography map incorporated into the City of Grant's comprehensive plan identifies the area's slopes as between 12 percent and 18 percent. As host to Brown's Creek and its streambank, the area offers significant benefit for wildlife and water quality protection and forms an important buffer. There are 2.4 acres of wetlands on the site. The City of Grant's comprehensive plan cites goals of: 1) Protecting the natural resource base of the community; 2) Ensuring the long-term quantity and quality of water supplies; and 3) Protecting groundwater and surface water bodies from erosion and other degradation.

F. Conservation Intent

1. Grantor desires and intends that the open-space character of the Protected Property be preserved, protected and maintained in perpetuity.
2. Grantor desires and intends to place restrictions upon the use of the Protected Property and effects, in part, this intent by transferring to the Grantee this Conservation Easement on, over and across the Protected Property, conferring rights to ensure the conservation of the natural elements and values of the Protected Property.
3. Grantor conveys to Grantee the right to protect the ecological values of the Protected Property in perpetuity and to prevent or to remedy activities or uses that are inconsistent with the terms of this Conservation Easement.

II. CONVEYANCE OF CONSERVATION EASEMENT

A. Conveyance

The Grantor in consideration of the facts recited above, the mutual covenants contained herein and other good and valuable consideration and pursuant to Minnesota Statutes Chapter 84C and other applicable Minnesota laws, does hereby grant and convey to the Grantee, its successors and assigns, forever, a Conservation Easement in perpetuity over the Protected Property, the specific rights, terms and restrictions of which are detailed herein.

B. Conservation Values and Purposes

The Conservation Purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values of the Protected Property and the Public Benefit, as defined in section II.C. By confining the development, management and use of the Protected Property to activities that are consistent with the preservation of these Conservation Values, by prohibiting activities that significantly impair or interfere with these Conservation Values, and by providing for remedies in the event of any violation of this Conservation Easement. These Conservation Values have not been and are not likely to be adversely affected to any substantial extent by the continued use of the Protected Property as authorized below or by the use,

maintenance, or construction of those structures and improvements that presently exist on the Protected Property or that are authorized below.

C. Public Benefit

This Conservation Easement is specifically intended to provide a significant public benefit by furthering the following recreational and conservation purposes:

1. Protect Brown's Creek, a designated trout stream in Washington County.
2. Protect a natural and open space area in the City of Grant.
3. Provide public recreation and outdoor education opportunities.
3. Reduce impervious surface and provide for infiltration and natural stormwater treatment for the purposes of protecting groundwater aquifers and surface water.

III. AFFIRMATIVE RIGHTS

In order to accomplish the Conservation Purposes of this Conservation Easement and to preserve and protect the Conservation Values of the Protected Property, the Grantor conveys to the Grantee and its successors and assigns the following rights.

A. Right of Enforcement and Remedies

The Grantee has the right to enforce by proceedings at law or in equity the covenants contained in this Conservation Easement. This right includes, but shall not be limited to, the right to bring an action in any court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the Protected Property to its prior or more natural condition; to enjoin non-compliance by temporary or permanent injunction; and to recover any damages arising from non-compliance. Such damages when recovered may be applied by the Grantee in its discretion to corrective action on the Protected Property, if necessary. If such court determines that the Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement including costs of restoration, court costs, and reasonable attorney's fees in addition to any other payments ordered by such court. These remedies are cumulative and are available without requiring the Grantee to prove actual damage to the Conservation Values and Conservation Purposes of the Protected Property. The Grantee is entitled to seek expedited relief ex parte if necessary and shall not be required to post any bond applicable to a petition for such relief.

B. Written Notice

If the Grantee becomes aware of an event or circumstance of noncompliance with the terms and conditions set forth in this Conservation Easement, the Grantee shall give written notice to the Grantor at the address set forth below of such event or circumstance of noncompliance. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be requested by the Grantee within thirty (30) days after receipt of notice shall entitle Grantee to bring an action as authorized in this Conservation Easement. The written notification requirements contained in this section, III.B., shall not apply if in the sole discretion of the Grantee, immediate judicial action is necessary to prevent or mitigate significant damage to the Protected Property or if reasonable, good faith efforts to notify the Grantor are unsuccessful.

C. Discretionary Enforcement

The Grantee does not waive or forfeit the right to take action as may be necessary to ensure compliance with the covenants and purposes of this Conservation Easement on the Protected Property by any failure to act.

D. Acts beyond Owner's Control

Nothing in this Conservation Easement shall be construed to entitle the Grantee to institute any enforcement proceeding against the Grantor for any changes to the Protected Property due to causes beyond the Grantor's control, such as changes caused by fire, flood, storm, civil authorities undertaking emergency action or third parties not under the control or supervision of, or not acting with the consent of, the Grantor. This provision does not preclude the Grantor or the Grantee from recovering damages or bringing an action against any third party for trespass or other violation of its respective rights in this Conservation Easement or in the Protected Property.

E. Right to Enter

The right is granted for designated representatives of and chosen by the Grantee to enter the Protected Property to conduct monitoring and management evaluations annually at a time mutually agreed to by the parties and at such other times with reasonable notice to Grantor to determine easement compliance; to obtain evidence for use in seeking judicial or other enforcement of this Conservation Easement; and to otherwise exercise its rights under this Conservation Easement. In exercising its rights to enter and inspect under this paragraph, the Grantee will not unreasonably interfere with Grantor's use and quiet enjoyment of the Protected Property.

F. Right to Report

The Grantee in addition to other remedies shall have the right to report any environmental concerns or conditions or any actual or potential violations of any environmental or other laws to appropriate regulatory or law enforcement agencies.

G. Enforcement Rights of Others

Nothing in this Conservation Easement is intended to create any right to enforce this Conservation Easement in any third party.

IV. RESERVED RIGHTS

A. Recreational Facilities and Resource-Management Works

Grantor reserves the right to implement, plant, construct and maintain the following where appropriate and pursuant to a management plan for the Protected Property approved by Grantor's Board of Managers (hereinafter the Management Plan), as may be updated and amended from time to time:

1. Native vegetation.
2. Permeable connector trails.
3. Water quality- or quantity-improvement and management facilities and associated utilities and temporary access routes and staging areas.
4. Streambank stabilization and improvement systems or structures.

B. All Other Rights

Grantor reserves all rights as owner of the Protected Property inclusive of rights to locate and maintain facilities as noted in Section IV.A., except the right to undertake any activities that are expressly and specifically prohibited by this Conservation Easement. The Grantor may not exercise these rights in a manner that would adversely impact the Conservation Values of the Protected Property.

C. Notification

Grantor agrees to notify the Grantee in writing before exercising any reserved right that may have an adverse impact on the natural characteristics or ecological and aesthetic features of the Protected Property protected by this Conservation Easement.

V. COVENANTS

IN FURTHERANCE of the foregoing affirmative rights, Grantor intends that rights under this Conservation Easement conveyed to the Grantee on behalf of the public shall continue to exist in perpetuity. Grantor makes the following covenants on behalf of the Grantee, which covenants shall run with and bind the Protected Property in perpetuity.

A. Required Management Plan

All natural resource management, agricultural practices and recreational uses on the Protected Property shall be in accordance with the Management Plan. The Grantor may prepare revisions for the Management Plan as desired.

B. Land Use

1. Any activity on or use of the Protected Property that is inconsistent with the Conservation Purposes and Public Benefit identified in sections II.B. and II.C. of this Conservation Easement is prohibited.
2. No residential use or development of the Protected Property is allowed.
3. No industrial or commercial activity shall be undertaken or allowed on the Protected Property.
4. No agricultural use of the Protected Property is allowed except as allowed for in the approved Management Plan.

C. Development Rights

1. No development rights in or to the Protected Property or any part thereof that have been encumbered or extinguished by this Conservation Easement shall be transferred by Grantor or Grantee to any location outside the Protected Property, whether pursuant to a cluster development plan or any other agreement or plan for transferable development rights or used to obtain any regulatory mitigation credits.
2. No portion of the Protected Property shall be used by Grantor or Grantee to satisfy land area requirements for other property not subject to this Conservation Easement for purposes of calculating building density, lot coverage, or open space under otherwise applicable laws, regulations or ordinances controlling land use.

D. Division of Property

Grantor shall not divide, subdivide, or partition, either legally or physically, the Protected Property for any reason without the prior written approval of the Grantee except for the purpose of correcting or adjusting a boundary line to resolve a marketable title or ownership dispute. If written approval is granted, any conveyance of the Protected Property is subject to the following terms. The enforceability or validity of this Conservation Easement shall not be impaired or limited by any failure of the Grantor to comply with this section (V.D).

1. Any conveyance or encumbrance of the Protected Property is subject to this Conservation Easement.
2. The Grantor will notify the Grantee of any conveyance within thirty (30) days after closing and will provide the Grantee with the name and address of the new owner and any party that has acquired an interest in the Protected Property and a copy of the deed transferring title or mortgage conveying an interest.

E. Right-of-Way

No new right of way or passage across or upon the Protected Property shall be allowed or granted in conjunction with any residential, industrial or commercial use for development of other land not protected by this Conservation Easement without prior written approval of the Grantee. This provision does not affect any rights of way existing at the time of this conveyance.

F. Structures and Improvements

1. No house, garage, barn, mobile homes, or other structures or buildings shall be constructed or placed on the Protected Property except as needed to carry out activities permitted by this Conservation Easement and as specifically allowed for in the approved Management Plan or specially permitted by Section IV. A. of this agreement.
2. No poles, antennae, lights, towers, water towers or any other temporary or permanent structures shall be constructed or installed on the Protected Property without prior approval of the grantee, unless permitted by Section IV.A. of this agreement.
3. New sanitary and storm sewers and electric and gas lines, not presently existing and needed to serve the Protected Property or other properties nearby may be permitted with the prior written approval of the Grantee and shall be constructed in a sensitive manner with minimal disturbance of vegetation and minimal grading. The land surface shall be restored to a condition consistent with the Conservation Values and Conservation Purpose of the Conservation Easement and within a reasonable time frame agreed to in writing by the Grantee. All permanent utility easements shall be recorded.
4. No roads or parking lots of asphalt, bituminous, gravel, concrete or other materials shall be constructed or installed on the Protected Property except as to carry out activities permitted by this Conservation Easement and as specifically allowed for in the approved Management Plan or otherwise approved in writing by the Grantee or permitted by Section IV.A of this agreement.
5. Fencing may be constructed and maintained for the purposes of marking boundaries, securing the Protected Property, or carrying out activities permitted by this Conservation Easement or specifically allowed by Section IV.A. of this agreement or allowed by the approved Management Plan or otherwise approved in writing by the Grantee.
6. Any outdoor light fixtures must minimize light emitted above the plane of the horizon of the fixture through the use of earthward directed or full cut-off fixtures or lamps with single or minimal-color light sources, or other equally effective fixtures designed to minimize light pollution.

7. Signs, billboards, and outdoor advertising structures shall not be placed or erected on the Protected Property except for small, unlighted signs for the following informational or interpretive purposes. For all signs permitted by this section, the location, number, size and design shall not significantly diminish the natural and scenic qualities of the Protected Property and shall be allowed in accordance with the approved Management Plan or otherwise approved in writing by the Grantee. Signs may be allowed for the following purposes:

- a. Displaying the name of the Protected Property.
- b. Announcing the existence of this Conservation Easement.
- c. Providing educational information to commemorate the importance of the Protected Property.
- d. Providing the name and address of the owner.
- e. Delineating the boundaries in order to prohibit trespass and to manage the Protected Property.
- f. Advertising any on-site activities permitted herein.

G. Water Bodies and Courses

1. Reasonable manipulation or alteration of natural watercourses, lakes, shorelines, wetlands, springs or other surface or subsurface bodies of water is allowed to restore or enhance wildlife habitat or native biological communities or to improve or enhance the function and quality of existing wetlands and in accordance with the approved Management Plan.

2. No activities on or uses of the Protected Property that cause significant erosion or are seriously detrimental to water quality or purity are allowed.

H. Mining

No mining, drilling, exploring for, or removing any minerals, sand, gravel, rock, or fossil fuels from the Protected Property is allowed.

I. Surface Alteration

1. The commercial extraction of minerals by surface mining and the extraction and removal of topsoil from the Protected Property is prohibited. The extraction of subsurface or deep-mined minerals from the Protected Property, including natural gas and oil, and the noncommercial extraction of minerals, including limestone, shale, gravel, sand and other minerals is prohibited.

2. The topography of the Protected Property shall not be altered or changed in any manner, including ditching, draining, filling, excavation or removal of soil, sand, gravel rock or other materials except as incidental and reasonably required in the course of activities or uses permitted by this Conservation Easement or as specifically allowed for in the approved Management Plan. Any permitted alteration shall be undertaken with minimal grading and disturbance to vegetation and with the surface restored in a timely manner to a condition consistent with the Conservation Values and Purposes of this Conservation Easement.

J. Forest and Habitat Management

1. No removal, destroying, burning, cutting, mowing or altering of vegetation is allowed except as follows:
 - a. To prevent or control insects, noxious weeds, invasive species, diseases, fire, personal injury, or property damage.

- b. As reasonably required to construct and maintain permitted buildings, structures, roads, trails and other improvements and provided that vegetation shall be restored following any construction to a condition consistent with the Conservation Values and Purposes of this Conservation Easement.
 - c. To remove downed or dead timber.
 - d. In conjunction with activities permitted by this Conservation Easement and as specifically allowed for in the approved Management Plan.
2. Timber and other wood products may be removed and vegetation may be managed on the Protected Property in accordance with the approved Management Plan.
 3. Habitat for wildlife and native biological communities may be created, maintained, restored, or enhanced on the Protected Property in accordance with the approved Management Plan.
 4. No plant or animal species shall be introduced on the Protected Property except those native species that are consistent with the protective purposes of this Conservation Easement and consistent with the approved Management Plan.

K. Animals

No livestock or feedlots shall be permitted on the Protected Property except for draft animals used to pull wagons or sleds or used in the course of activities or uses permitted by this Conservation Easement or as specifically allowed for in the approved Management Plan. A feedlot is defined as open ground or buildings or a combination of open ground and buildings intended for the confined feeding, breeding, raising or holding of animals and specifically designed as a confinement area in which manure may accumulate or where the concentration of animals is such that a vegetative cover cannot be maintained. Open lots for feeding and rearing poultry are considered feedlots. Areas immediately adjacent to supplemental feeding and watering areas are not considered feedlots.

L. Waste Removal

Use of the Protected Property for dumping, storage, processing or landfill of solid or hazardous wastes is prohibited, including without limitation, municipal sewage sludge and/or bio-solids application. This does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted by this Conservation Easement or conducted in accordance with the Management Plan.

M. Recreational Use

1. Unpaved paths or foot trails may be established and maintained on the Protected Property for recreational uses and shall be established, maintained and used in a manner that does not result in significant erosion or have an adverse impact on the Conservation Values and Conservation Purposes of the Protected Property. Unpaved paths or foot trails may be established and maintained on the Protected Property in accordance with the Management Plan or as allowed by Section IV.A. of this Conservation Easement.
2. Snowmobiles, dune buggies, golf carts, motorcycles, all-terrain vehicles, horses, or any other motorized vehicles may be operated by or with the consent of the Grantor on the Protected Property only in the following manner:
 - a. On trails designated for their use.
 - b. For administrative, emergency, and management purposes.
 - c. In conjunction with management operations or for habitat restoration or enhancement as prescribed in the approved Management Plan.

- d. In a manner that does not result in significant erosion or have an adverse impact on the Conservation Values and Purposes of the Protected Property.
3. The Protected Property may be used for hiking, cross-country skiing, camping, picnicking, nature observation and interpretation or study, and other similar low impact recreational and educational programs or activities.
4. The Protected Property may not be used for more than minimal commercial recreation purposes. It is the intent of the parties to prevent the Protected Property from becoming the site of a commercial recreational enterprise, such as a commercial campground, a golf course, a commercial ski area, an exclusive hunting grounds or club, a commercial site for a snowmobiling, ATV motocross or other race track, a dressage field, or other similar intensive or predominantly commercial use, but this restriction shall not be construed to mean the occasional or casual use of or access to the Protected Property for purposes of low-impact outdoor recreational uses.

VI. GENERAL PROVISIONS

A. Binding Effect

This Conservation Easement creates a property right immediately vested in the Grantee, its successors and assigns that cannot be terminated or extinguished except as set out herein. This Conservation Easement shall run with and burden the Protected Property in perpetuity and shall bind and inure to the benefit of the Grantor, its successors and assigns, and the Grantee, its successors and assigns.

B. Property Transfer

The Grantor agrees that the terms, conditions, restrictions, and purposes of this Conservation Easement will be referenced by the Grantor in any subsequent deed or other legal instrument by which the Grantor transfers or divests the Grantor of all or any part of the Grantor's interest in the Protected Property, and that the Grantor will give the Grantee written notice of any such transfer within thirty (30) days after closing.

C. Notice and Approval

1. Any notice or request for approval required in this Conservation Easement shall be sent by certified mail or other courier providing reliable proof of delivery to the following addresses, such address(es) as may be subsequently specified by notice in writing, and the party of record at the address of record in the Washington County Recorder's Office.

Grantee

Washington County
June Mathiowetz
Office of Administration
14949 62nd Street North
Stillwater, MN 55082-0006
651-430-6000

Grantor

Brown's Creek Watershed District
Karen Kill, Administrator
455 Hayward Ave North
Oakdale, Minnesota 55128
651-330-8220, ext. 26
Karen.kill@mnwcd.org

2. Unless otherwise specified in this Conservation Easement any required notice or request for approval must be delivered at least thirty (30) days prior to the date proposed for initiating the subject activity.

3. The notice or request for approval must include sufficient information to allow the Grantee to make an informed decision on whether any proposed activity is consistent with the terms and Conservation Values and Conservation Purposes of this Conservation Easement. At a minimum this should include: the location, nature, and scope of the proposed activity; the proposed use, design, and location of any building, structure or improvement; and the potential impact on the Conservation Values and Purposes of the Protected Property.

4. Approval of the Grantee must be in writing to be effective.

D. Severability

If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

E. Controlling Law

1. This Conservation Easement shall be governed by the laws of the State of Minnesota.

2. This Conservation Easement shall be enforceable by the Grantee, its successors or assigns and/or by such other relief as may be authorized by law. Any ambiguities in this Conservation Easement shall be construed in a manner that best effectuates the purposes of protecting soil, improving water quality, and enhancing fish and wildlife habitat.

F. Assignment

The Grantee may assign or transfer this Conservation Easement and the rights conveyed herein, provided that (1) the Grantee requires as a condition of such transfer that the original conservation purposes of this Conservation Easement continue to be carried out in perpetuity; and (2) any assignment shall be made only to an organization qualified to acquire or hold a conservation easement at the time of the transfer under the provisions of Section 170(h)(3) of the Internal Revenue Code of 1986, as it may be amended from time to time, and any regulations promulgated thereunder. This Conservation Easement is fully valid and enforceable by any assignee or successor of the Grantee whether assigned in whole or in part. The Grantee will notify in writing the Grantor of the assignment and will provide the Grantor with the name and address of new holder.

G. Definition

The terms "Grantor" and "Grantee" as used in this Conservation Easement shall be deemed to include with respect to Grantor, its successors, and assigns; and with respect to the Grantee, its successors and assigns.

H. Warranties

The Grantor represents and warrants as follows:

1. The Grantor is the sole owner of the Protected Property in fee simple and has the right and ability to convey this Conservation Easement to the Grantee.
2. Grantor is aware of no rights, restrictions and encumbrances on the Protected Property.

3. The Grantor has no actual knowledge of any use or release of hazardous waste or toxic substances on the Protected Property.

I. Amendment

This Conservation Easement may be amended only in the event of unanticipated circumstances not specifically addressed by this Conservation Easement and only in the sole and exclusive judgment of the Grantee that such amendment (i) furthers the purpose of this Conservation Easement, (ii) is not inconsistent with and will not adversely impact the conservation values protected by this Conservation Easement, (iii) does not affect the perpetual duration of the Conservation Easement or (iv) does not affect the validity of the Conservation Easement under Minnesota law or the status of Washington County under section 170(h) of the Internal Revenue Code. Any amendment or modification must be in writing and recorded in the same manner as this Conservation Easement.

J. Ownership Responsibilities, Costs and Liabilities

The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Grantor agrees to indemnify and hold the Grantee harmless from any and all costs or liability for any personal injury or property damage occurring on or related to the Protected Property or the existence of this Conservation Easement.

1. **Taxes:** Grantor shall pay all taxes and assessments levied against the Protected Property including any taxes or assessments levied against the interest of the Grantee established by this Conservation Easement. The Grantee may, but is not obligated to, make any payment of taxes or assessments levied against the Protected Property or the interest established by this Conservation Easement and shall have a right of reimbursement against Grantor, its successors or assigns, for such amounts.

2. **Regulatory Compliance:** All activities or construction permitted by this Conservation Easement shall be undertaken in accordance with applicable federal, state and local laws, regulations and ordinances and related agreements and nothing in this Conservation Easement shall be construed to exempt the Protected Property or the Grantor, its successors or assigns, from otherwise applicable laws or regulations. The Grantor, its successors or assigns, is solely responsible for obtaining any required governmental permits.

3. **Future Environmental Condition:** The Grantor, its successors or assigns, is solely responsible for the Grantor's, its successors or assigns, use or release on the Protected Property of any hazardous or toxic substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act, The Minnesota Environmental Response and Liability Act, or other similar successor federal, state or local law or regulation regarding responsibility for environmental conditions associated with contamination. The Grantor, its successors or assigns, shall take steps necessary to assure any needed containment or remediation resulting from any release of such substance and has the legal right to pursue any person or entity responsible for any such discharge.

4. **Future Economic Condition:** In conveying this Conservation Easement the Grantor has considered the possibility that uses of the Protected Property prohibited by this Conservation Easement may in the future become more economically valuable than uses permitted by this Conservation Easement and that neighboring properties may be put entirely to such prohibited uses. Such changes are not deemed to be circumstances justifying the extinguishment of this Conservation Easement as otherwise set forth above.

K. Termination

If circumstances arise in the future such as to render the purposes of this easement impossible to accomplish, this easement can only be terminated or extinguished whether in whole or in part by judicial proceedings in a court of competent jurisdiction or by agreement executed by the parties, their successors or assigns.

L. Proceeds

If this easement is extinguished, terminated, transferred, or sold in whole or in part then the Grantee is entitled to a portion of any proceeds in an amount equal to the fair market value of this Conservation Easement at the time of the extinguishment but no less than an amount equal to the proportionate value that this easement bears to the value of the Protected Property as a whole at the time of this conveyance, excluding the value of any permitted improvements made after the conveyance of this Conservation Easement.

M. Termination of Rights and Obligations

A party's rights and obligations under this Conservation Easement terminate upon transfer or termination of that party's interest in the Conservation Easement or the Protected Property; provided, however, that any liability for acts or omissions occurring prior to the transfer or termination will survive that transfer or termination; provided further that the terms and conditions of this Conservation Easement shall continue to run with the land.

N. Re-recording

The Grantor shall execute, acknowledge and record or file any instruments necessary to assure the perpetual enforceability of this Conservation Easement. The Grantee may re-record this Conservation Easement or any other documents necessary to protect its rights under this Conservation Easement or to assure the perpetual enforceability of this Conservation Easement.

O. Additional Documents

The Grantor agrees to execute or provide any additional documents reasonably needed by the Grantee, its successors or assigns, to carry out in perpetuity the provisions and the intent of this Conservation Easement, including but not limited to any documents needed to correct any legal description or title matter or to comply with any federal, state, or local law, rule or regulation.

P. Entire Agreement

This document and the cooperative agreement entered into by Grantor and Grantee for purposes of acquisition of the Protected Property together set forth the entire agreement of the parties with respect to this easement and collectively supersede all prior discussions or understandings.

APPROVED AS TO FORM:

Assistant County Attorney

Drafted by:
Washington County
Office of Administration
14949 62nd Street N.
Stillwater, MN 55082 – 0006

In witness whereof, the Grantor has executed this Conservation Easement this _____ day of _____, 2016.

GRANTOR

Craig Leiser
President

NOTARY PUBLIC

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Craig Leiser as president of Brown's Creek Watershed District.

Notary Public
My Commission Expires:

The foregoing Conservation Easement is hereby accepted by Washington County this _____ day of _____, 2016.

COUNTY OF WASHINGTON

County Board Chair

County Administrator

NOTARY PUBLIC

The foregoing instrument was acknowledged before me this _____ day of _____, 2016 by
_____ as chair of the Washington County Board of Commissioners and by
_____ as Washington County administrator.

Notary Public
My Commission Expires:

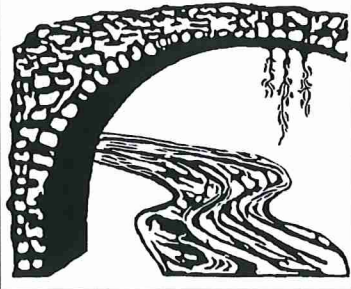
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The east 466.20 feet of the Northeast Quarter (NE ¼) of the Northwest Quarter of Section Twelve (12), Township Thirty (30) North, Range Twenty-one (21) West, Grant Township, Washington County, Minnesota, subject to the right-of-way of 110th Street North, except:

Beginning at the Northeast corner of the Northwest Quarter (NW ¼) of Section Twelve (12), Township Thirty (30) North, Range Twenty-one (21) West and running South at right angles with the North line of said Section Twelve (12), a distance of Two Hundred Ninety and Four-tenths (290.4) feet; thence West and parallel to the North line of said Section Twelve (12), a distance of One Hundred Fifty (150) feet; thence North at right angles to the last described line a distance of Two Hundred Ninety and Four-tenths (290.4) feet to the north line of said Section Twelve (12), thence East on the North line of said Section Twelve (12), a distance of One Hundred Fifty (150) feet to the place of beginning.

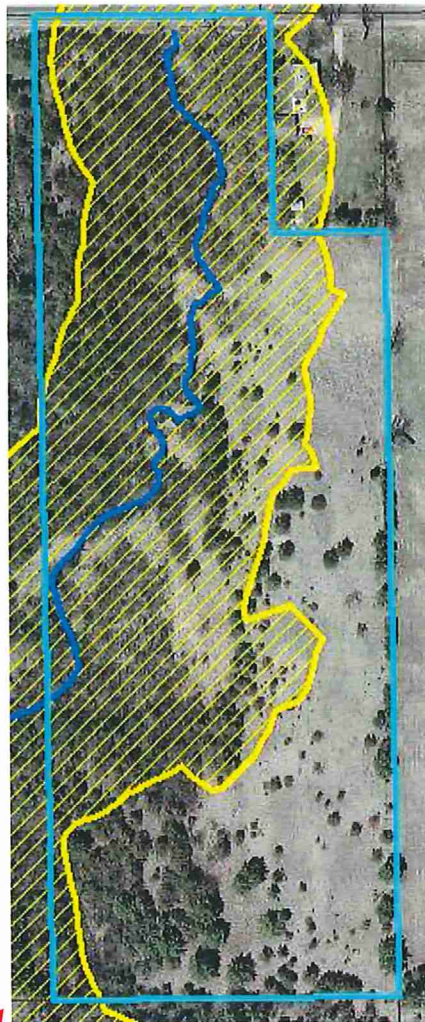
EXHIBIT B

	BROWN'S CREEK WATERSHED DISTRICT	455 HAYWARD AVE N OAKDALE, MN 55128 651.330.8220 X26 PHONE 651.330.7747 FAX WWW.BCWD.ORG
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Washington County Property Identification Number 12.030.21.21.0005
Concept Plan – October 12, 2016



Browns' Creek Watershed District



12.030.21.21.0005 – 110th Street, Grant, MN

Blue Border = 13 acres - Property boundary

Yellow hatching = ~7.5 acre Natural Area to be managed in a way that is consistent with BCWD Buffer requirements

Possible Natural Resource Management/Restoration Opportunities:

- Brown's Creek flows through the site from north to south. It has retained natural sinuosity; however, the creek is slightly overwidened and somewhat shallow. Removing buckthorn (primarily glossy) will help reestablish an herbaceous ground cover to minimize erosion. Ideally this stream corridor would be narrowed and allowed to deepen to provide better in-stream habitat.
- The east side of the creek has seepage wetlands in the southern part of the parcel. These wetlands are not of high quality but they do function as sources of groundwater to the creek. Reed canary grass and glossy buckthorn are problematic invasive species found within these wetland communities.
- The west side of the creek is heavily wooded and has a dense buckthorn shrub layer. The east-facing slope could be restored to a mesic woodland, but would require buckthorn removal. Reestablishing a healthy woodland community on this slope would help minimize soil loss and sedimentation in the creek caused by the sparse herbaceous layer.
- The upland area on the north east side of the creek has scattered bur oaks in the northerly portions. Clearing buckthorn to restore oak savanna.
- The open uplands on the east side of the creek are dominated by smooth brome. Scattered juniper (red cedar) are also found throughout. This relatively high topographic area would make an excellent prairie reestablishment project.

Managers:

Craig Leiser, President • Sharon Schwarze, Vice-President • Gerald Johnson, Secretary
• Connie Taillon, Treasurer • Gail Pundsack, Vice-President

Property, except for those warranties expressly contained in this Agreement and as identified in the Affidavit Regarding Seller attached hereto and incorporated herein as Exhibit B, which Sellers agree to execute at closing, as defined and specified in paragraph 3 of the Agreement.

And except as specifically modified herein, the Agreement remains fully in effect and in force.

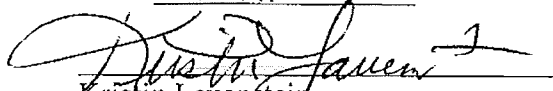
IN WITNESS WHEREOF, Seller and Purchaser have executed this amendment, effective upon complete execution by the parties.

SELLER:



Michael Lauenstein

Date: 11.22.16



Kristin Lauenstein

Date: 11-22-16

PURCHASER:

WASHINGTON COUNTY

By: _____

Its: Board Chair
Washington County Commissioners

Date: _____

By: _____

Molly F. O'Rourke
Its: Washington County Administrator

Date: _____

APPROVED AS TO FORM:

Assistant County Attorney

The Agreement was approved pursuant to Washington County Board Resolution No. 2016-146, dated the 25th day of October, 2016.

**AMENDMENT
REAL ESTATE PURCHASE AGREEMENT**

This amends the September 27, 2016, real estate purchase agreement (the "Agreement"), fully executed by Michael Lauenstein and Kristin Lauenstein, married spouses (together, "Seller") and Washington County, a public body corporate and politic ("Purchaser") on October 25, 2016. In consideration of the terms and conditions set forth herein, including the obligations of mutual consideration, the sufficiency of which is hereby acknowledged by the parties, Seller and Purchaser amend the revised by this amendment as follows:

A. Exhibit A, attached to and incorporated into the Agreement, is deleted in its entirety and replaced with Exhibit AA, attached hereto and incorporated into this amendment and the Agreement as a term thereof.

B. Paragraph 3 of the Agreement is revised as follows:

3. **Closing.** The closing ("Closing") shall occur on or before ~~December 31, 2016,~~ January 31, 2017 (the "Closing Date"), at the offices of Purchaser's attorneys, 15015 62nd Street North, Stillwater, MN 55082. Purchaser will be responsible for all closing costs. Seller will be responsible for the cost to furnish appropriate title documentation (either updated abstract or title commitment) as identified in item 6 below.

C. Paragraph 7a of the Agreement is revised to read as follows:

7. **Contingencies to Sale.** This Agreement is contingent upon the following:

- a. Purchaser having satisfied itself of the environmental condition of the Property on or before December 31, 2016. Purchaser shall have access to the Property to conduct, at its expense, such environmental tests as Purchaser deems appropriate; provided, however, that Purchaser hereby agrees to indemnify and hold Seller harmless from any and all costs, liens and damages resulting from such environmental tests and inspections and, provided further, that Purchaser restores the Property to the condition that existed prior to commencement of the tests and inspection. If Purchaser does not elect to terminate this Agreement on or before December 31, 2016, then this condition shall be deemed satisfied and this Agreement shall no longer be subject to this contingency. If Purchaser elects to terminate this Agreement pursuant to the terms of this paragraph, Purchaser shall execute and deliver to Seller a quit claim deed to the Property.

D. Paragraph 10 of the Agreement is revised to read as follows:

10. **"AS IS" Sale.** Currently the property is vacant land. Seller and Purchaser agree that Purchaser is purchasing the Property from Seller in its "as is" condition. Purchaser agrees that its decision to purchase the Property is based upon its own experience and its own inspection and investigation of the Property, and is not based upon any representation or warranty of Seller. Purchaser acknowledges that there are no warranties, express or implied, with respect to the

EXHIBIT AA

Legal Description

The east 466.20 feet of the Northeast Quarter (NE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twelve (12), Township Thirty (30) North, Range Twenty-one (21) West, Grant Township, Washington County, Minnesota, subject to the right-of-way of 110th Street North, except:

Beginning at the Northeast corner of the Northwest Quarter (NW $\frac{1}{4}$) of Section Twelve (12), Township Thirty (30) North, Range Twenty-one (21) West and running South at right angles with the North line of said Section Twelve (12), a distance of Two Hundred Ninety and four-tenths (290.4) feet; thence West and parallel to the North line of said Section Twelve (12), a distance of One Hundred Fifty (150) feet; thence North at right angles to the last described line a distance of Two Hundred Ninety and four-tenths (290.4) feet to the north line of said Section Twelve (12), thence East on the North line of said Section Twelve (12), a distance of One Hundred Fifty (150) feet to the place of beginning.

6. There has been no labor or materials furnished to the Premises for which payment has not been made.
7. There are no unrecorded contracts, leases, easements, or other agreements or interests relating to the Premises except as stated herein;
8. There are no persons in possession of any portion of the Premises other than pursuant to a recorded document, except as stated herein;
9. There are no encroachments or boundary line questions affecting the Premises of which Affiants have knowledge.
10. Affiants have not received medical assistance from the State of Minnesota or any county medical assistance agency.
11. To the best of each of Affiants' knowledge:
 - a. No actions, suits or proceedings at law or in equity, administratively or otherwise, have been instituted or, to the best of Affiants' knowledge, threatened against or affect the Premises. No condemnation or eminent domain proceedings are now pending or, to the best of Affiants' knowledge, are contemplated against the Premises.
 - b. Affiants, individually and together, have not received any notices, order, suits judgments or other proceedings relating to violations of zoning, subdivision, platting or building laws with respect to the Premises.
 - c. Affiants acknowledge that the existing mortgage is to be paid in full at closing.
 - d. Affiants together have full power to enter into and to perform the purchase agreement according to its terms and the execution and the delivery of the Premises and the consummation of the transactions contemplated therein will not constitute a default under any mortgages or other instruments or agreements to which Affiants are, individually or together, a party, and the purchase agreement is not in contravention of any law, order, ordinance or regulation by which Affiants are bound or subject.
 - e. Affiants have not used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any hazardous materials on or affecting the Property in any manner which violates any federal, state or local law, statute, regulation, requirement, ordinance, rule or policy, and to the best of their knowledge, no prior or current owner, tenant, subtenant, occupant or licensee of the Property has used, handled, stored, generated, treated, emitted, manufactured, transported or disposed of any federal, state or local law, ordinance, rule, regulation or policy. For purposes of the purchase agreement, "hazardous materials" should be defined to mean any asbestos, urea formaldehyde foamed in place insulation, polychlorinated biphenyl, petroleum, crude oil or any dangerous, toxic or hazardous pollutants, chemicals, wastes or substances as defined in the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Federal Resource Conservation and Recovery Act of 1976, as amended, the Minnesota Environmental Response and Liability Act, as amended, or any other federal, state or local laws, statutes, regulations, requirements, ordinances, rules or policies.

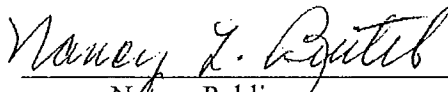
Affiants know the matters herein stated are true and make this Affidavit for the purpose of inducing the passing of title to the Premises and also for the purpose of inducing the issuance of title insurance policy(ies) in connection with the transfer of title.

Further Affiants sayeth naught.

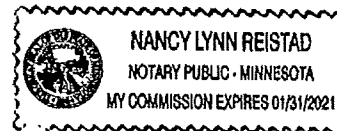

Michael Lauenstein


Kristin Lauenstein

Subscribed and sworn to before me this
22 day of November, 2016.


Notary Public

Notary Stamp or Seal



This instrument was Drafted By:
Washington County Dept. of Public Works and
Washington County Attorney's Office
11660 Myeron Road North
Stillwater, MN 55082