AGENDA REVISED
Regular Meeting
April 10, 2019

1. Call Regular Meeting to Order.
   a. Approve Agenda.*

2. Consent Agenda.
   a. Minutes last Meeting.*
   b. Treasurer’s Report and Claims.*

3. Open Forum.

4. Action Items.
   a. Project Reviews – see Status Report.*
   b. 2018 Annual Activity Report.*
   c. Recommendations from the TAC.
   d. Fish Lake Phase 2 Alum Treatment.
      1) Amended Cooperative Agreement.*
      2) HAB Contract.*
      3) Performance Bond.*

5. Old Business.


7. Communications.

8. Education.
   a. WMWA Update.**

9. Grant Opportunities and Updates.

The meeting packet may be found on the Commission’s website: http://elmcreekwatershed.org/minutes-meeting-packets.html

*in meeting packet
**available on website
10. Project Reviews. (See Staff Report.*)

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<td>b.</td>
<td>2014-015 Rogers Drive Extension, Rogers.</td>
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<td>c.</td>
<td>2015-004 Kinghorn Outlet A, Rogers.</td>
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<td>2016-002 The Markets at Rush Creek, Maple Grove.</td>
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<td>2017-029 Brayburn Trails, Dayton.</td>
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<td>2017-039 Rush Creek Apartments, Maple Grove.</td>
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<td>2017-050W Ernie Mayer Wetland/floodplain violation, Corcoran.</td>
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<td>2018-014 Refuge at Rush Creek, Corcoran.</td>
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<td>2018-018 Summers Edge Phase II, Plymouth.</td>
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<td>2018-020 North 101 Storage, Rogers.</td>
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<td>2018-021 113th Lane Extension/Brockton/101, Rogers.</td>
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<td>2018-026 Windrose, Maple Grove.</td>
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<td>2018-028 Tricare Third Addition, Maple Grove.</td>
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<td>2018-048 Faithbrook Church Phase 2, Dayton.</td>
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<td>2018-052 Rogers Tennis Center, Rogers.</td>
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<td>2018-053 Elm Creek Stream Stabilization, Champlin.</td>
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<td>2019-001 Fernbrook View Apartments, Maple Grove.</td>
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<td>2019-002 Parkside Villas, Champlin.</td>
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<td>2019-003 Rogers High School Tennis Court, Rogers.</td>
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<td>2019-005 UBOL I-94 MnDot project, Maple Grove, Rogers.</td>
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<td>2019-008 Residences on elm Creek, Medina.</td>
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<td>2019-010 Hindu Temple Solar Array, Maple Grove.</td>
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= Action item  E = Enclosure provided  I = Informational update will be provided at meeting  RPFI - removed pending further information  
R = Will be removed  RP= Information will be provided in revised meeting packet..... D = Project is denied  AR awaiting recordation

11. Other Business.

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*in meeting packet
**available on website
Sundance Greens

Dayton, Project #2018-005

Overall Regional Stormwater Management, Wetland and Buffer Plan
Sundance Greens West Grading & Erosion Control Plans
Sundance Greens 2nd Addition Grading and Erosion Control Plans

Project Overview: This site consists of 7 parcels that total 310 acres. Approximately ½ is the Sundance Golf Course and the other ½ agricultural land. The applicant is proposing a long term phased residential development with 645 residential units while maintaining a portion (9 of the 18 holes) of the golf course. 100 of the units is proposed a senior housing facility in phase 3B. Total new impervious area will be 71 acres. The Commission will review the complete site build-out for Stormwater Management (Rule D), Floodplain Alteration (Rule F), and Buffer Strips (Rule I). As part of the submittal for this project, the Sundance West and Sundance 2nd Addition phases will be reviewed for E&SC. As the site is phased in, the Commission will review each addition for consistency with the approved stormwater management, floodplain and buffer strip rules and for Erosion and Sediment Control (Rule E).

Applicant: Sundance Development, LLC, Attn. Mr. Tom Dehn, 11261 Fernbrook Lane N., Maple Grove, MN 55369. Phone: 612-328-2215. Email: tom.dehn@powerlodge.com.

Agent/Engineer: Campion Engineering Services, Inc., Attn. Marty Campion, 1800 Pioneer Creek Center, Maple Plain, MN 55359. Phone: 763-479-5172. Email: mcampion@campioneng.com

Exhibits:

1) ECWMC Request for Project Review and Approval, received February 2, 2018.
2) Request from Agent/Engineer for project extensions to May 5, 2019.
3) Project review fees for a low density (<40% impervious area) new development with floodplain impacts > 100 cubic yards. $6550.
4) Preliminary Plans for; Sundance Greens by Campion Engineering, dated January 5, 2018, no signature, revision date of February 20, 2019 and for sheets 28 to 37 and sheet 45, March 20, 2019.
   a) Sheet 1 of 45, Cover Sheet
   b) Sheets 2-6 of 45, Existing Conditions.
   c) Sheet 7 of 45, Phasing Exhibit,
   d) Sheets 8-12 of 45, Preliminary Plat
   e) Sheets 13-17 of 45, Preliminary Sanitary Sewer & Watermain Plan
   f) Sheets 18-22 of 45, Preliminary Street and Storm Sewer Plan
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g) Sheets 23-27 of 45, Preliminary Grading Plan (updated July 31, 2018)
h) Sheets 28-32 of 45, Preliminary Storm Water Pollution Plan
i) Sheets 33-37 of 45, Preliminary Wetland Impact & Buffer Exhibit (revised March 20, 2019),
j) Sheet 38, Preliminary Tree Inventory
k) Sheets 39-43 of 45, Preliminary Tree Survey & Removal Plan
l) Sheet 44 of 45, Street Details,
m) Sheet 45 of 45, Outlet Control Structure Details, revised March 20, 2019.

2) Grading Plans for Sundance Greens West by Campion Engineering dated September 11, 2018, updated September 27, 2018, 7 of 7 sheets.
4) Grading Plans for Sundance Greens 2nd Addition, by Campion Engineering dated November 6, 2018 with latest revision date of February 18, 2019. 9 of 9 sheets.
6) Sundance Greens West Floodplain Exhibit Sheet 1 of 1, dated September 27, 2018.
7) Sundance Greens Floodplain Exhibit, Sheet 1 of 1 dated March 18, 2019.
6) Stormwater Management Plan, Sundance Greens, by Civil Methods, Inc. revision date February 12, 2019.
7) Sheet 1 of 1 by Civil Methods, Inc., Sundance Greens Impervious Area Disconnection (1 electronic submittal)
8) Response to ECWMC February 23, 2018 findings. Response letter includes updated stormwater management plan information. Letter and SWMP updates are dated April 19, 2018. Received at ECWMC on July 31, 2018.
9) Wetland Delineation Information;
   b) Sundance/Dehn Development Wetland Boundary Map and Approval Notice of Decision dated February 13, 2017,

Findings:

1) A complete application was received February 2, 2018. The decision deadline per MN Statute 15.99 has been extended by the Agent/Engineer to May 5, 2019.
2) The complete site consists of 310 acres. The Sundance Golf Course is approximately 160 acres of the site with the remaining areas being agriculture fields (~122 acres) with approximately 20 acres of woods and small areas of farmsteads and wetlands. Rush Creek Parkway was constructed through the SE parcel in 2014 for access to the Sundance Woods Development (EC #2013-025).
3) The developer proposes to reconfigure the golf course from an 18-hole to a 9-hole course (approximately 80 acres of the site). The remaining areas will be phased in over several
years, creating 465 single family lots, 80 multiple family homes and a senior housing facility (645 total residential units).

4) This review will cover the overall stormwater management, wetland buffer, floodplains and grading plans. Only the Sundance Greens West and Sundance Greens 2nd Addition erosion and sediment control plans are being reviewed at this time for the Commission’s requirements for erosion control (Rule E). Future phasing of the grading plans must be submitted separately for the Commission’s review for Rule E and consistency with other approvals from the ECWMC.

5) Sundance Greens West proposes to grade approximately 15 acres and develop approximately 5.5 acres into 15 single family residential lots.

6) Sundance Greens 2nd Addition will result in approximately 50 acres and develop 101 single family and 24 multifamily lots.

Floodplain.

7) There is a large FEMA zone A (no base flood elevation determined) floodplain complex that extends through this site.

8) Technical Memo dated September 12, 2016 from Civil Methods Inc. models the 100-year floodplain in this area at an elevation of 907.9.
   a) Modeling methods appear to be consistent with acceptable hydrology/hydraulic approaches.

9) The Civil Methods memo and supporting documentation are being submitted to the MNDNR and FEMA for a letter of map amendment (LOMA).

10) Using 907.9 as the 100-year elevation throughout this site floodplain impacts will occur at the following locations;
   a) The west edge of Block 9,
   b) The access road (Street 2) to and portions of Block 7
   c) The west portion of Block 1.

11) Floodplain exhibits dated 9/27/18 and 3/18/19 provide for 887 cy of fill vs 1019 cy cut in the floodplain for this area mitigation.

12) This floodplain mitigation plan meets the Commission’s requirements under Rule F.

Stormwater Management Plan. Site plans conform to Rule D.

13) The project proposes to manage storm water using 8 NURP ponds, 3 pre-treatment ponds and 6 biofiltration basins.

14) There are three main discharge points from this property before and after development.
   a) Flows to the southwest through a wetland/floodplain complex before it discharges into Rush Creek approximately ½ mile away.
   b) Flows to the south where it discharges in two areas from this property traveling about 500’ before entering Rush Creek.
   c) Flows that run to the east/northeast to the Fernbrook Lane ROW then flow for approximately ¼ of a mile where it discharges into Powers Lake which flows into the floodplain/wetland complex before it hits Elm Creek.
15) Pre and post-development flow rates for the 2, 10- and 100-year storm events are as follows:

<table>
<thead>
<tr>
<th></th>
<th>2-Year (2.9&quot;) Runoff Rate (cfs)</th>
<th>10-Year (4.3&quot;) Runoff Rate (cfs)</th>
<th>100-year (7.3&quot;) Runoff Rate (cfs)</th>
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<tr>
<td></td>
<td>Pre-Dev</td>
<td>Post-</td>
<td>Pre-Dev</td>
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<tr>
<td>#1-Southwest</td>
<td>30.9</td>
<td>14.4</td>
<td>68.3</td>
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<tr>
<td>#2-South</td>
<td>20.5</td>
<td>8.0</td>
<td>55.1</td>
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<tr>
<td>#3-East/Northeast</td>
<td>36.2</td>
<td>17.7</td>
<td>64.2</td>
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16) Total treatment volume requirements for 70.54 acres of new impervious areas = 281,666 cubic feet prior to any volume credit. With volume credits (1.13 acres of disconnected flows) there must be 277,154 cubic feet (6.36-acre feet) of abstraction provided on this site.
   a) Actual filtration (abstraction credits) volume will be 278,249 cubic feet in 7 biofiltration ponds. (required abstraction = 277,154 cubic feet)
   b) All biofiltration ponds will draw down within 48 hours or less.
   c) To properly establish native vegetation, a long-term maintenance plan is essential. We highly recommend a 3 to 5-year vegetation maintenance plan on all the native vegetation planting areas.
   d) The City of Dayton will be responsible for operating and maintaining the storm sewer system on site.

17) Phosphorus loads are based on ECWMC phosphorus Loads for pre-existing conditions and PondNet for post development loads. TSS loads are based on P8 before and after development. TP and TSS loads meet the Commission’s standards.
   a) TP before development = 200.9 lbs/year
   b) TP after development = 139.5 lbs/year
   c) TSS before development = 200,491 lbs/year
   d) TSS after development = 8,285 lbs/year.

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<tr>
<th>CONDITION</th>
<th>TP LOAD (LBS/yr)</th>
<th>TSS LOAD (LBS/yr)</th>
<th>FILTRATION (CU. FT.) (69.4 AC. IMPERVIOUS)</th>
<th>ANNUAL VOLUME (AC. FT.)</th>
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<tr>
<td>Pre-development</td>
<td>200.9*</td>
<td>12,236*</td>
<td>N/A</td>
<td>352.0*</td>
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<tr>
<td>Post-development</td>
<td>338.4*</td>
<td>200,491</td>
<td>277,154</td>
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<td>without BMPs</td>
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<tr>
<td>Post-development</td>
<td>139.5*</td>
<td>8,285</td>
<td>278,249</td>
<td>365.7*</td>
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<tr>
<td>Net Change</td>
<td>-61.4</td>
<td>-3,951</td>
<td>-1,095</td>
<td>+13.7*</td>
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*Staff Estimate

Erosion and Sediment Controls

18) Final grading plans for Sundance Greens West were submitted on September 27, 2018. Sundance Greens West generally corresponds to Phase 1a west of Sundance Ridge Drive in the phasing plan on sheet 7 of 45 in the preliminary plan set.
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a) Sundance West E&SC Plan;
   i. Grading and erosion control plans for Sundance West meet the Commission Standards. Administrative approval of the grading was granted by the ECWMC staff in the fall of 2018 with the understanding the applicant and agent accept responsibility for any changes necessary for final site approval by the ECWMC.

19) Final Grading and Construction Plans were received for Sundance Greens 2nd Addition on April 4, 2019. Sundance Greens 2nd Addition corresponds to Phases 5B, 6B, 7B and 8B in the phasing plan on sheet 7 of 45 in the preliminary plan set. These meet the Commission’s requirements.

Wetlands and Wetland Buffers

20) The City of Dayton is the Local Government Unit in charge of administering the Wetland Conservation Act for this site.
   a) 1.013 acres of impacts in 5 wetlands are proposed over the entire site.
   b) 2.026 acres of wetland banking credits are proposed to mitigate for these impacts.

21) Overall wetland buffer monumentation meet the Commission’s standard of;
   a) A maximum spacing of 200 feet
   b) As necessary to accurately define the edge of the buffer strip and
   c) At each parcel line where it crosses a buffer strip.

22) The area adjacent to green 7 on the golf course has a 2-foot buffer, which does not meet the Commission standard of 10’ minimum, 25’ average. An alternative wetland protection is proposed by the developer by expanding the buffer in other areas around wetlands 3 and 5. These additional buffer areas provide an extra 0.5 acres of buffers around the two wetlands. The average buffer width around wetlands 3 and 5 will be 34 feet.

23) All other buffer areas have 10’ minimum buffers with an average of 25’ per the Commission standards.

24) Wetland Buffer plans for Sundance West as submitted on September 27, 2018, meet the Commission Standards.

Summary:

- Grading and erosion control plans for Sundance Greens West meet the Commission’s standards.
- Stormwater management plans for the complete buildout of the site meet the Commission’s standards
- Floodplain mitigation plans meet the Commission’s Standards
- Wetland Buffer monumentation meet the Commission’s standards.
- Wetland Buffers on Green #7 adjacent to wetland 3 do not meet the Commission’s standards
- Grading and erosion control plans for Sundance Greens 2nd Addition meet the Commission standards.

Recommendations:

1. Staff recommends approval of the stormwater management plans and floodplain plans for the Sundance Greens Preliminary Plans
2. Staff recommends approval of the grading and erosion control plans for Sundance Greens West and Sundance Greens 2nd Addition.
3. Wetland Buffer on Green #7 adjacent to wetland 3 does not meet the Commission’s standard of 10’ minimum. Actual is 2 feet. Staff recommends the additional buffers proposed adjacent to wetlands 3 and 5 be considered an adequate alternative protection method for wetland 3. These additional buffer widths increase the average buffer width around Wetlands 3 and 5 to 34 feet.
1. BACKGROUND

This is an Amendment to the Cooperative Joint Powers Agreement (hereinafter referred to as the “Amended Agreement”) that was initially executed in April 4th of 2017. The “Amended Agreement” defines the responsibilities and cost-share contributions of each party for the Fish Lake Alum Treatment project. The reason for the Amendment is due to an increase in the total project costs that has resulted in adjustments to the initial cost-share contributions for each party. The amended cost share numbers are shown as strike outs with revisions shown as underlined in the body of the Amended Agreement.

2. PARTIES

The City of Maple Grove (hereinafter referred to as "Maple Grove"), the Elm Creek Watershed Management Commission (hereinafter referred to as "the Commission") and the Three Rivers Park District (hereinafter referred to as "the Park District"), all being governmental units of the State of Minnesota, and acting through their respective governing bodies, hereby enter into this Amended Agreement. Maple Grove, the Commission, and the Park District from time to time may be referred to hereinafter as "the Parties."

3. PURPOSE

Maple Grove, the Park District, and the Commission recognize that intergovernmental cooperation in achieving internal phosphorus loading reduction called for in the Elm Creek Watershed Management Commission TMDL to improve water quality in Fish Lake is in the mutual interest of the Parties, the citizens of Hennepin County, and the metropolitan area. The Parties enter into this Amended Agreement to facilitate the improvement of Fish Lake water quality through the implementation of a batch alum treatment.
4. AUTHORITY

The parties enter into this Amended Agreement pursuant to Minn. Stat. § 471.59, regarding joint exercise of powers which allows two or more governmental units, by agreement entered into through action of their governing bodies, to jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised.

5. DUTIES OF THE PARK DISTRICT

The Park District will be responsible for:

a. Preparation of the Clean Water Fund project work plan and grant agreement and delivering the grant agreement to the Commission for signature.

b. Securing regulatory approval from the MN Pollution Control Agency to allow the project to proceed.

c. Leading a project coordinating committee to facilitate communication about the project and manage project execution.

d. Securing the services of a qualified contractor to execute the alum treatment(s). The Park District will go through a formal bidding process as per Minnesota Statutes Section 471.345 to select and hire the contractor.

e. Securing a fully executed contract between the selected contractor, the Park District, and the Commission to carry out the project.

f. Provide coordination with, and supervision of, the contractor to assure proper application of the alum.

g. Coordinate the invoicing process for the work, including review of the invoices from the contractor and forwarding of the contractor invoices to the Commission for payment consistent with the project contracts.

h. Preparation of project reports as required by the granting agency.

i. Providing a cash contribution of 32% of the costs of the project not covered by grant funding (BWSR Clean Water Fund and Hennepin County Opportunity Grant) or the Elm Creek Watershed Management Commission up to $8,000 $19,713.04 as the Park District’s share of the capital cost of the project.
6. DUTIES OF THE COMMISSION,

The Commission will be responsible for:

j. Acting as the signatory for the Clean Water Fund grant contract with the Board of Soil and Water Resources (BWSR) and for the Hennepin County Opportunity Grant contract with Hennepin County as well as being party to a fully executed contract between the selected contractor, the Park District and the Commission to carry out the project.

k. Acting as the Fiscal Agent for the Clean Water Fund grant and Hennepin County Opportunity Grant. This includes receipt and management of CWF grant funds issued by BWSR and Hennepin County Opportunity Grant Funds issued by Hennepin County for the project as per the terms of the grant contracts, prompt payment of invoices received by the alum application contractor, invoicing the Parties to pay their share of the project cash cost (as specified in Sections 4i.) and 6c.), and such other duties as are required for the successful fiscal management of the Project.

l. Providing a cash contribution of 25% of the total project cost up to a maximum of $93,867.75 as the Commission’s share of the capital cost of the project.

m. Designation of one individual to represent the Commission on the coordinating committee for the Project.

n. Assuring timely and responsive participation from that individual.

7. DUTIES OF THE CITY OF MAPLE GROVE

o. Designation of one individual to represent Maple Grove on the coordinating committee for the Project.

p. Assuring timely and responsive participation from that individual.

q. Providing a cash contribution of 68% of the costs of the project not covered by grant funding (BWSR Clean Water Fund and Hennepin County Opportunity Grant) or the Elm Creek Watershed Management Commission up to $41,890.21 as its share of the capital cost of the project. It is anticipated that the City will work with the Fish Lake Area Residents Association (FLARA) to reach agreement on a contribution from that organization to defray a portion of this local cost share.

8. AMENDMENT

Any amendment to this agreement must be in writing and approved by the Parties. The Parties shall have full power to amend this agreement to add or delete items from the scope of this agreement upon such terms as are agreed to between the Parties.
9. TERMINATION

This agreement will terminate upon completion of the Fish Lake alum treatment project or on December 31, 2019, whichever comes first. Notwithstanding, this Agreement shall terminate in the event the State of Minnesota terminates the Grant Agreement with the Commission. In the event of termination, all parties will pay pro rata for that portion of the Project completed in accordance with Sections 4 and 5.

IN WITNESS WHEREOF, the parties have caused this joint powers agreement executed and effective as of the date of signature of the last party to the agreement.

CITY OF MAPLE GROVE

Dated: __________, 

(Name), (position)

Ken Ashfeld, Director of Public Works

ELM CREEK WATERSHED MANAGEMENT COMMISSION

Dated: __________, 

_______________________________________

Doug Baines, Chair

_______________________________________

Judie A. Anderson, Exec. Secretary

THREE RIVERS PARK DISTRICT

Dated: __________, 

_______________________________________

John Gunyou, Chair

_______________________________________

Boe Carlson, Superintendent
and Secretary to the Board
DOCUMENT 00 5200

AGREEMENT FORM

Contract No: FIS 1901

Date of Award: February 21, 2019

Contract For: FISH LAKE ALUMINUM SULFATE (ALUM) TREATMENT II

Agreement:

This Agreement is entered into under the authority granted by Three Rivers Park District’s Board of Commissioners and Elm Creek Watershed Management Commission after the consideration of sealed bids which were submitted to the Superintendent and Secretary to the Board of Three Rivers Park District at a public opening at 10:00 AM on January 3, 2019. The Agreement is between Three Rivers Park District and Elm Creek Watershed Management Commission existing under the laws of the State of Minnesota, hereinafter referred to as the Owner, party of the first part, and HAB Aquatic Solutions hereinafter called the Contractor, party of the second part.

Witnesseth:

Article 1:

The Contractor, for and in consideration of the payment or payments, herein specified, hereby covenants and agrees to perform all Work as indicated and related on the attached Bid Form for the completion of the Work in strict conformance with the Contract Documents consisting of this Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. Said Contract Documents are hereby referred to and made a part of this Contract to the same extent as if herein set forth.

Article 2:

Nondiscrimination:

A. During the performance of this Contract the Contractor agrees as follows:

1. In the hiring of common or skilled labor for the performance of any work under any contract or any subcontract, no contractor, material supplier, or vendor, shall by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

2. No contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or person identified in the preceding paragraph or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

3. A violation of the nondiscrimination article is a misdemeanor;

Revised May 2017
4. This contract may be canceled or terminated, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this nondiscrimination article.

Article 3:

The current minimum wage rate per hour to be paid for each classification of work shall be the local prevailing rate, including fringe benefits as defined in Minnesota Statute 177.41-177.44.

Article 4:

The Contractor agrees to commence said work as herein provided on or after April 15, 2019 when water temperatures are above 42º F and to prosecute the same diligently and without delay, and substantially complete this work no later than July 31, 2019. Full application will be completed in seven (7) consecutive days, once initiated, depending on weather conditions.

Article 5:

The Contractor further agrees to make, execute and deliver to the Owner, a Performance Bond and Labor and Material Payment Bond executed by himself and a surety company approved by the Owner, each in the sum of $199,092.00, for the use of said Owner and of all persons doing work or furnishing skill, tools, machinery or materials under or for the purpose of this Contract by said Contractor, and this Contract shall not become effective until said Bonds have been received and approved by the Owner.

Article 6:

In consideration of the covenants and agreements stated above, the Owner agrees to pay the Contractor the Contract Sum of $199,092 (with modifications upward or downward, if any, due to increased or decreased quantities of unit price items if applicable) as mentioned in the Bid of said Contractor which is made a part of this Contract and attached hereto. Installment payments, if any, on account of work done and the materials furnished by said Contractor under this Contract and actually in place in said project, shall be made in accordance with the provisions of the General Contract Conditions and final payment therefore shall be due and payable on or before thirty (30) days after receipt by the Owner of a certificate by the Owner's representative that the work has been fully completed and this Contract fully performed by the Contractor and the opinion of the Owner's attorney that the Owner is then obligated to pay the sum contracted for herein.
THREE RIVERS PARK DISTRICT

Witnessed By:

__________________________________________
John Gunyou, Board Chair
Date

__________________________________________
Boe R. Carlson, Superintendent
and Secretary to the Board
Date

ELM CREEK WATERSHED MANAGEMENT COMMISSION

Witnessed By:

__________________________________________
Doug Baines, Board Chair
Date

__________________________________________
Judie A. Anderson, Exec Secretary
Date

Witnessed By:

CONTRACTOR

__________________________________________
Tadd M. Barrow - Owner
Date

CORPORATE SEAL

END OF DOCUMENT 00 5200
Performance Bond

CONTRACTOR:
(Name, legal status and address)
HAB Aquatic Solutions
735 South 56th Street, Suite 2
Lincoln, NE 68510

SURETY:
(Name, legal status and address)
Merchants National Bonding Inc.
P O Box 14498
Des Moines, IA 50306-3498

OWNER:
(Name, legal status and address)
Three Rivers Park District
3000 Xenium Lane North
Plymouth, MN 55441-1299

CONSTRUCTION CONTRACT
Date:    February 21, 2019
Amount:  $199,092.00
Description:  Fish Lake Aluminum Sulfate (Alum) Treatment II, Contract No. FIS 1901

BOND
Date:    March 05, 2019
(Not earlier than Construction Contract Date)
Amount:  $199,092.00

Modifications to this Bond:  □ None    □ See Section 16

CONTRACTOR AS PRINCIPAL
Company:  (Corporate Seal)
HAB Aquatic Solutions

Signature:  
Name:  Tadd M. Barrow, Owner
and Title:
(Any additional signatures appear on the last page of this Performance Bond)

SURETY
Company:  (Corporate Seal)
Merchants National Bonding Inc.

Signature:  
Name:  James M. King, Attorney-in-Fact
and Title:

AGENT or BROKER:
Gene Lilly Surety Bonds, Inc.
735 So, 56th
Lincoln, NE 68510
(402) 475-7700

OWNER'S REPRESENTATIVE:
(Engineer or other party)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

By arrangement with the American Institute of Architects, the National Association of Surety Bond Producers (NASBP) (www.nasbp.org) makes this form document available to its members, affiliates, and associates in Microsoft Word format for use in the regular course of surety business. NASBP requests that the original text of this document remains exactly as the text in AIA Document A312-2010; Performance Bond and Payment Bond. Subsequent modifications may be made to the original text of this document by users, to careful review of its wording and consultation with an attorney are encouraged before its completion, execution or acceptance.
§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety’s obligation under this Bond shall arise after

1. the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor’s performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner’s notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety’s receipt of the Owner’s notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner’s rights, if any, subsequently to declare a Contractor Default;

2. the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3. the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety’s obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety’s expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner’s concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

1. After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

2. Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surey perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for:
1. the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
2. additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
3. liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions
§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.
§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: (Corporate Seal)

SURETY
Company: (Corporate Seal)

Signature: ____________________________
Name and Title: ______________________
Address: ____________________________

Signature: ____________________________
Name and Title: ______________________
Address: ____________________________

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Payment Bond

CONTRACTOR:  
(Name, legal status and address)  
HAB Aquatic Solutions  
735 South 56th Street, Suite 2  
Lincoln, NE 68510  

OWNER:  
(Name, legal status and address)  
Three Rivers Park District  
3000 Xenium Lane North  
Plymouth, MN 55441-1299

SURETY:  
(Name, legal status and principal place of business)  
Merchants National Bonding Inc.  
P O Box 14498  
Des Moines, IA 50306-3498

CONSTRUCTION CONTRACT  
Date:  February 21, 2019  
Amount:  $199,092.00

Description:  
Fish Lake Aluminum Sulfate (Alum) Treatment II, Contract No. FIS 1901

BOND  
Date:  March 05, 2019  
(Not earlier than Construction Contract Date)  
Amount:  $199,092.00

Modifications to this Bond:  
☐ None  ☐ See Section 18

CONTRACTOR AS PRINCIPAL  
Company:  
HAB Aquatic Solutions  
(Corporate Seal)

Signature:  
[Signature]

Name and Title:  
JADA M. BURROW, OWNER

SURETY  
Company:  
Merchants National Bonding Inc.  
(Corporate Seal)

Signature:  
[Signature]

Name and Title:  
JAMES M. KING, ATTORNEY-IN-FACT

AGENT or BROKER:  
Gene Lilly Surety Bonds, Inc.  
735 So. 56th  
Lincoln, NE 68510  
(402) 475-7700

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable. This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety’s obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner’s property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety’s expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety’s obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

1. have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

2. have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant’s obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety’s expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety’s failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney’s fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety’s total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney’s fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner’s priority to use the funds for the completion of the work.
§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:
1. the name of the Claimant;
2. the name of the person for whom the labor was done, or materials or equipment furnished;
3. a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
4. a brief description of the labor, materials or equipment furnished;
5. the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
7. the total amount of previous payments received by the Claimant; and
8. the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company:
(Corporate Seal)

SURETY
Company:
(Corporate Seal)

Signature:
Name and Title:
Address:

Signature:
Name and Title:
Address:

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MERCHANDS BONDING COMPANY
POWER OF ATTORNEY

Know All Persons By These Presents, that MERCANTS BONDING COMPANY (MUTUAL) and MERCANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Jacob J Buss; James M King; Robert T Cirone; Tamala J Hurlbut; Thomas L King

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of MERCANTS Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of MERCANTS National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and authority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State Department of Transportation. It is fully understood that signing to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 14th day of May, 2016.

MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By
Larry Taylor
President

STATE OF IOWA
COUNTY OF DALLAS ss.
On this the 14th day of May 2018, before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCANTS BONDING COMPANY (MUTUAL) and MERCANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

ALICIA K. GRAM
Commission Number 7697430
My Commission Expires
April 1, 2020

(Expiration of notary's commission does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCANTS BONDING COMPANY (MUTUAL) and MERCANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 5th day of March, 2019.

William Warner, Jr.
Secretary

POA 0018 (3/17)
MULTIPLE OBLIGEE RIDER

To be attached to and form part of Bond Number NMN 1705

with Merchants National Bonding Inc. as Surety,

HAB Aquatic Solutions as Principal, and

Three Rivers Park District as Obligee,

for valuable consideration, hereby agree respectively in connection with a contract for

Fish Lake Aluminum Sulfate (Alum) Treatment II, Contract No. FIS 1901

which bond and contract are made a part hereof by reference, shall now include as additional Obligee(s)

Elm Creek Watershed Management Commission

The rights of the additional Obligee(s) shall be subject to the following conditions:

(a) The Surety shall not be liable under this bond to the Obligee, or any additional Obligee, unless the Obligee, or any additional Obligee, shall make payments to the principal in accordance with the terms of said contract as to payments and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.

(b) The aggregate liability of the Surety under the Bond to the Obligees, as their interest may appear, is limited to the penal sum of this Bond.

(c) The Surety, may at its option, make any payments under this Bond by check issued jointly to the Obligees.

(d) The Surety shall not be liable to any of the Obligees if the contract between the Principal and Obligee is void or unenforceable.

This rider is effective as of March 5, 2019

HAB Aquatic Solutions
By: [Signature]
(Principal)

Merchants National Bonding Inc.
By: [Signature]
(Surety) James M. King, Attorney-in-Fact

Three Rivers Park District

By: [Signature]
(Obligee)

Elm Creek Watershed Management Commission
By: [Signature]
(Obligee)

By: [Signature]
(Obligee)