

elm creek Watershed Management Commission

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TECHNICAL OFFICE
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AGENDA June 12, 2019 REVISED

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.*
 - 1) 10.q. 2019-013 Boston Scientific Parking Expansion, Maple Grove.*
 - 2) 10.u. 2019-017 French Lake Industrial Park, Dayton.*
 - b. 2020 Operating Budget.*
 - 1) Member Assessments.*
 - c. 2019 Hennepin County Cooperative Agreement.*
5. Old Business.
 - a. Commission Procedures – Table of Contents Commissioner Handbook.*
 - b. 2019 CAMP Monitoring - update.
 - c. Expansion of CIP to Include Nonstructural Practices.*
6. New Business.
7. Communications.
 - a. L_Medina re MPA for purchase of Enhanced Street Sweeper.*
 - b. L_Maximum Capital Levy.*
 - c. Closed Project Policy.*
 - d. Rogers Buckthorn Event.*
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.*)

| | | | | | | |
|-----|---|---|--|----|-----------|--|
| a. | | | | | 2015-004 | Kinghorn Outlet A, Rogers. |
| b. | | | | | 2016-040 | Kinghorn 4 th Addition, Rogers. |
| c. | | | | | 2016-047 | Hy-Vee North, Maple Grove. |
| d. | | | | | 2017-039 | Rush Creek Apartments, Maple Grove. |
| e. | | | | | 2017-050W | Ernie Mayer Wetland/floodplain violation, Corcoran. |
| f. | | | | | 2018-014 | Refuge at Rush Creek, Corcoran. |
| g. | | | | | 2018-020 | North 101 Storage, Rogers. |
| h. | | | | | 2018-021 | 113th Lane Extension/Brockton/101, Rogers. |
| i. | | | | | 2018-038 | Vincent Woods of Roger. |
| j. | | | | | 2018-046 | Graco, Rogers |
| k. | | | | | 2019-001 | Fernbrook View Apartments, Maple Grove. |
| l. | | | | | 2019-007 | Westin Ridge, Plymouth. |
| m. | | | | | 2019-009 | Beacon Ridge, Plymouth. |
| n. | | | | | 2019-010 | Hindu Temple Solar Array, Maple Grove. |
| o. | | E | | | 2019-011 | Ravinia 11 th Addition, Corcoran. |
| p. | | | | | 2019-012 | Brockton Lane Reconstruction Project, Plymouth. |
| q. | A | E | | | 2019-013 | Boston Scientific Parking Expansion, Maple Grove. |
| r. | | E | | | 2019-014 | Bellwether 2nd Addition, Corcoran. |
| s. | | | | | 2019-015 | Timbers Edge, Plymouth. |
| t. | | | | | 2019-016 | Rogers Retail Development, Rogers. |
| u. | A | E | | | 2019-017 | French Lake Industrial Park, Dayton. (previously 2015-011) |
| v. | | | | | 2019-018 | Peony Lane Trail, Plymouth. |
| w. | | | | | 2019-019 | Primrose, Rogers. |
| x. | | | | | | |
| y. | | | | | | |
| z. | | | | | | |
| ag. | | | | AR | 2013-046 | Woods of Medina, Medina. |
| ah. | | | | AR | 2014-015 | Rogers Drive Extension, Rogers. |
| ai. | | | | AR | 2015-030 | Kiddiegarten Child Care Center, Maple Grove. |
| aj. | | | | AR | 2016-002 | The Markets at Rush Creek, Maple Grove. |
| ak. | | | | AR | 2016-005W | Ravinia Wetland Bank Plan, Corcoran. |
| al. | | | | AR | 2017-014 | Laurel Creek, Rogers. |
| am. | | | | AR | 2017-017 | Mary Queen of Peace Catholic Church, Rogers. |
| an. | | | | AR | 2017-029 | Brayburn Trails, Dayton. |
| ao. | | | | AR | 2018-018 | Summers Edge Phase II, Plymouth. |
| ap. | | | | AR | 2018-026 | Windrose, Maple Grove. |
| aq. | | | | AR | 2018-028 | Tricare Third Addition, Maple Grove. |
| ar. | | | | AR | 2018-044 | OSI Phase II, Medina. |
| as. | | | | AR | 2018-048 | Faithbrook Church Phase 2, Dayton. |
| at. | | | | AR | 2019-002 | Parkside Villas, Champlin. |

= Action item E = Enclosure provided I = Informational update will be provided at meeting R PFI - removed pending further information
R = Will be removed RP= Information will be provided in revised meeting packet..... D = Project is denied AR = awaiting recordation/final documentation

11. Other Business.

Z:\Elm Creek\Meetings\Meetings 2019\06 Regular meeting agenda_revised.docx

*in meeting packet
**available on website

elm creek

Watershed Management Commission

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French Lake Industrial Park (Spears Building)

Dayton

Project #2019-017

Project Overview: This project is a 188 acre industrial park in the city of Dayton. The overall stormwater management plan was reviewed and approved as application 2015-011. Since approval, Phase I was completed, which included 50 acres of grading to prepare building sites. A new intermediate phase is being proposed, and since it is was not included in the originally approved plan, it is being reviewed for consistency with ECWMC rules. It includes construction of the first of four planned buildings for the site.

Applicant: Jack Grotkin, R.J. Ryan Construction, Inc., 1100 Mendota Heights Road, Mendota Heights, MN 55120

Engineer/Agent: Chad Ayers, Sambatek, 12800 Whitewater Drive, Suite 300, Minnetonka, MN 55343

Exhibits:

- 1) ECWMC Request for Plan Review and Approval and fee of \$2,875 were received on May 22, 2019.
- 2) Storm Water Management memo, prepared by Sambatek, dated May 20, 2019.
 - a. Project History
 - b. Current Project Description
 - c. Proposed Treatment Summary
 - d. Future Project Description
 - e. Permit Considerations
 - f. Phase I Grading / Spears Building Exhibit
 - g. Future Possible Building B layout
 - h. Drainage Map

Findings:

General

- 1) A complete plan was received on May 22, 2019. The initial 60-day review period per MN Statute 15.99 expires July 21, 2019.
- 2) Overall stormwater management plan was approved for the entire 188 acre site under application 2015-011. The original configuration and drainage plan has been altered enough to warrant an additional review of the plans to make sure the interim condition meets ECWMC standards.

Stormwater Management

- 3) The proposed building site for this phase is 12.3 acres. The impervious area will increase from 1.9 acres (15.4%) to 8.6 acres (70%).
- 4) Stormwater in this interim phase will be managed with a single detention pond and a biofiltration basin.
- 5) Rate controls meet the Commission's standards as the peak runoff rates leaving the site via Pond #1 for the 2-, 10-, and 100-year events are all less than peak rates to the west for existing conditions. They are as follows:

Overall Site drainage to French Lake.

| FRENCH LAKE | 2-yr (cfs) | 10-yr (cfs) | 100-yr (cfs) |
|-----------------------|------------|-------------|--------------|
| Pre-Development Rate | 56.1 | 116.6 | 254.8 |
| Post-Development Rate | 21.9 | 42.1 | 105.1 |

| Pond 3 Rate | 2-yr (cfs) | 10-yr (cfs) | 100-yr (cfs) |
|--------------------|------------|-------------|--------------|
| 2015 Approval | 7.6 | 22.5 | 43.7 |
| 2019 Proposal | 4.1 | 18.0 | 41.1 |

- 6) Since overall water quality management was approved in 2015, updated computations were not requested for this interim stage.
- 7) The 1.1" abstraction requirement is proposed to be achieved by using the project wide conservation easements. The new impervious area requires 0.61 ac-ft of abstraction and the conservation easements provide 0.73 ac-ft of credit.
- 8) The detention pond permanent pool volume meets NURP dead storage standards of at least the volume of runoff from an equivalent 2.5-inch precipitation event.

Wetland and Stream Buffer

- 9) No new wetland impacts or buffers will be a part of this interim phase.

Erosion and Sediment Control

10) The erosion and sediment control plan was approved for the previously approved Phase I of the project. Staff has requested some additional information for this interim phase.

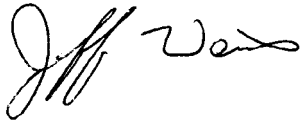
Floodplain Impacts

11) There is no construction within the 100-year floodplain.

Recommendation:

Staff recommends the interim phase (Spears Building) of the French Lake Industrial Park be approved with the following conditions.

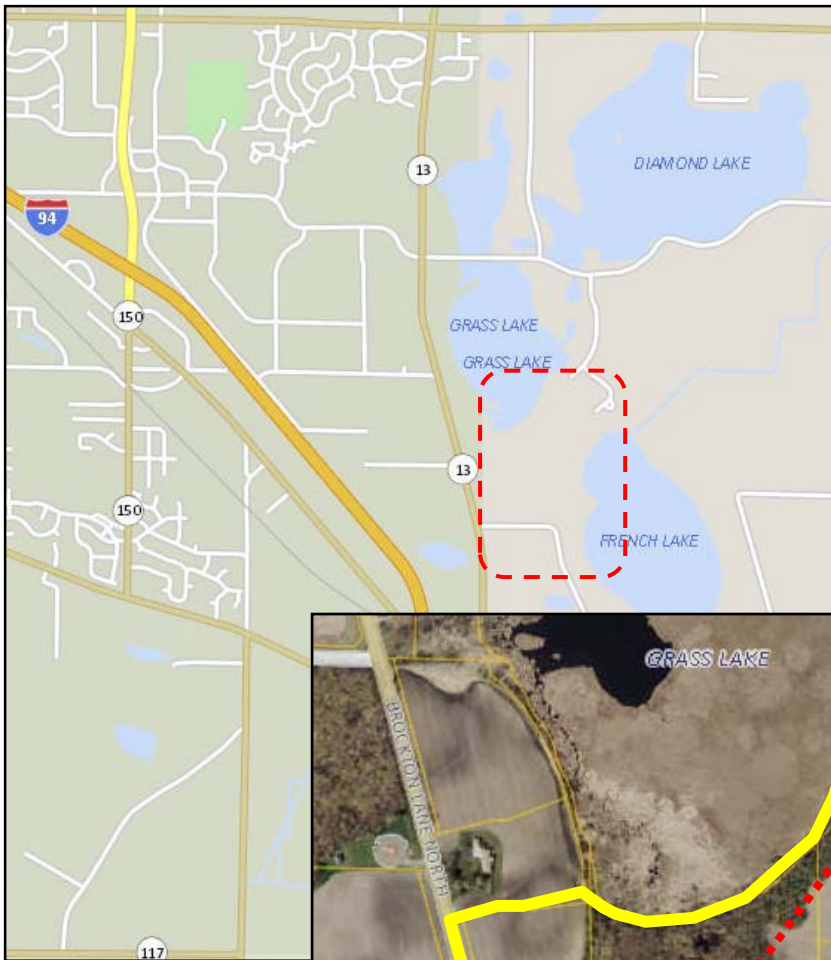
- 1) Provide a more detailed erosion control plan to ensure compliance with ECWMC standards.



Jeff Weiss, P.E.
Barr Engineering Company
Advisor to the Commission

June 11, 2019
Date

Location Map



COOPERATIVE AGREEMENT

THIS AGREEMENT made and entered into by and between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, (COUNTY), A-2300 Government Center, Minneapolis, Minnesota 55487, on behalf of the Hennepin County Environment and Energy Department, 701 Fourth Avenue South, Suite 700, Minneapolis, Minnesota 55415-1600, (DEPARTMENT) and the Elm Creek Watershed Management Commission, a joint-powers board organized under the Laws of the State of Minnesota, 3235 Fernbrook Lane, Plymouth, Minnesota, 55447, (COMMISSION).

RECITALS:

WHEREAS, the COMMISSION and the COUNTY, wish to protect natural resources within the Elm Creek watershed in Hennepin County, and

WHEREAS, the COMMISSION and the COUNTY benefit from a cooperative effort to protect these resources, and

WHEREAS, the COMMISSION wishes to retain the DEPARTMENT to provide technical services related to conservation promotion and education, technical assistance, monitoring, inventory and assessment and administrative services as set forth in the attached Exhibits, and

WHEREAS, the COMMISSION wishes to contribute to the volunteer monitoring programs and educational services performed by the DEPARTMENT in the Elm Creek watershed, and

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, the COUNTY, on behalf of the DEPARTMENT, and the COMMISSION agree as follows:

1. TERM AND COST OF THE AGREEMENT

The DEPARTMENT agrees to furnish technical services set forth in the attached Exhibits to the COMMISSION commencing January 1, 2019 and terminating December 31, 2019.

The DEPARTMENT, in collaboration with the COMMISSION, will designate qualified staff to serve as technical advisors to the COMMISSION. Other DEPARTMENT personnel will be called upon as appropriate to the nature of the work.

In full consideration for services under this Agreement, the DEPARTMENT shall charge the COMMISSION for actual wages and personnel costs as set forth in Section 2. Costs for services for activities detailed in the attached Exhibits include:

Exhibit A: Technical Services: Not-to-exceed \$219,573.08

Exhibit B: Volunteer Monitoring/Educational Programs: Not-to-exceed \$7,000.00

Total 2018 Technical Service Agreement: Not-to-exceed \$226,573.08

Any additional costs for extended work load after the "not-to-exceed" limit has been reached, special studies, or capital projects, must be set forth in a written amendment to this Agreement and will be billed on an hourly basis set forth in Section 2.

2. BILLING RATES AND PAYMENT FOR SERVICES

- a) Services in Exhibit A are billed on an hourly basis at the rate of \$ 59.44 to \$74.12 per hour, based on personnel and task, except where exceptions are noted in Exhibit A.

| | |
|--|------------------|
| Professional Engineer, Water Resources | \$74.12 per hour |
| Sr. Environmentalist, Water Resources | \$65.40 per hour |
| Environmentalist | \$59.44 per hour |

b) Payment for services shall be made directly to the DEPARTMENT after completion of the services upon the presentation of a claim in the manner provided by law governing the COUNTY'S payment of claims and/or invoices. The DEPARTMENT shall submit an invoice for services provided in Exhibit A on a quarterly basis, while services in Exhibit B will be billed on an annual lump sum basis in December. Payment shall be made within thirty-five (35) days from receipt of the invoice.

i. Any capital equipment or material expenses purchased as part of this Agreement shall be pre-approved by the COMMISSION, be billed as they are accrued, and shall be the property of the COMMISSION.

3. EQUAL EMPLOYMENT OPPORTUNITY- CIVIL RIGHTS

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

4. STANDARDS

The COUNTY shall comply with all applicable Federal and State statutes and regulations as well as local ordinances now in effect or hereafter adopted. Failure to meet the requirements of the above may be cause for cancellation of this contract effective the date of receipt of the Notice of Cancellation.

5. INDEPENDENT CONTRACTOR

It is mutually understood that the DEPARTMENT acts as an independent contractor. The DEPARTMENT shall select the means, method, and manner of performing the services herein. DEPARTMENT employees shall not be considered to be either temporary or permanent employees of the COMMISSION.

6. INDEMNIFICATION

The COUNTY and the COMMISSION mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless for any and all damages, liability or cost (including reasonable attorneys' fees and costs of defense) arising from their own negligent acts, errors or omissions in the performance of their services under this agreement, to the extent each party is responsible for such damages and losses on a comparative basis of fault. Parties agree to provide proof of contractual liability insurance upon request. This paragraph does not diminish, with respect to any third party, any defense, immunity or liability limit that the COUNTY or the COMMISSION may enjoy under law.

7. DATA PRACTICES

All data collected, created, received, maintained, or disseminated, or used for any purpose in the course of the COUNTY's performance of the Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, which may include the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and/or the Health Information Technology for Economic and Clinical Health Act (HITECH), adopted as part of the American Recovery and Reinvestment Act of 2009. The COUNTY agrees to abide by these statutes, rules and regulations and as they may be amended.

18. MERGER AND MODIFICATION

- a) The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
- b) Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. The express substantive legal terms contained in this Agreement including but not limited to the License, Payment Terms, Warranties, Indemnification and Insurance, Merger and Modification, Default and Cancellation/Termination or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope or work, development specification or other development process or document.

9. DEFAULT AND CANCELLATION

Either the COUNTY or the COMMISSION may terminate this Agreement with or without cause by giving the other party forty-five (45) days written notice prior to the effective date of such termination. If the COMMISSION terminates this Agreement, it may specify work to be performed by the COUNTY before termination is effective and shall pay the COUNTY for services performed by the COUNTY up to the time specified for termination. If the COUNTY terminates the Agreement, it will not be compensated for part completion of a task except to the extent part completion has value to the COMMISSION.

10. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

All property of the COMMISSION used, acquired or created in the performance of work under this Agreement, including documents and records of any kind, shall remain the property of the COMMISSION. The COMMISSION shall have the sole right to use, sell, license, publish, or otherwise disseminate any product developed in whole or in part during the performance of work under this Agreement.

11. CONTRACT ADMINISTRATION

In order to coordinate the services of the DEPARTMENT with the activities of the COMMISSION so as to accomplish the purposes of this Agreement, Karen Galles, Supervisor, Land and Water Unit, or his/her successor, shall manage this Agreement on behalf of the Department and serve as liaison between the COUNTY and the COMMISSION. COMMISSION

will designate in writing to the DEPARTMENT the name and telephone number of the person responsible for managing this contract on behalf of the COMMISSION.

12. AMENDMENTS TO AGREEMENT

This Agreement may be amended as agreed to by the COMMISSION and COUNTY in the form of an agreement amendment executed by both parties.

13. NOTICES

Any notice or demand which must be given or made by a party hereto under the terms of this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator with a copy to the originating Department at the address given in the opening paragraph of the Agreement. Notice to the COMMISSION shall be sent to the address stated in the opening paragraph of the Agreement.

14. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the herein parties and their performance. The appropriate venue and jurisdiction for any litigation hereunder will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the herein parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

COUNTY ADMINISTRATOR AUTHORIZATION

Reviewed by the County Attorney's Office

COUNTY OF HENNEPIN
STATE OF MINNESOTA

Assistant County Attorney

By: _____
David J. Hough, County Administrator

By: _____
Assistant County Administrator - Public Works

Date: _____

Recommended for Approval

By: _____
Director, Environment and Energy Department

Date: _____

ELM CREEK WATERSHED MANAGEMENT COMMISSION

The COMMISSION certifies that the person who executed this Agreement is authorized to do so on behalf of the COMMISSION as required by applicable articles, bylaws, resolutions or ordinances.*

Printed Name: _____

Signed: _____

Title: _____

Date: _____

* COMMISSION shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time COMMISSION returns the Agreement to the County. Documentation is not required for a sole proprietorship.

EXHIBIT A

2019 WATERSHED GENERAL TECHNICAL ASSISTANCE

TASKS

The Hennepin County Environment and Energy Department (DEPARTMENT) will provide Elm Creek Watershed Management Commission (COMMISSION) with a variety of technical assistances in support of its Watershed Management Plan and the Elm Creek TMDL.

Services are delivered on a time and materials basis, with a not-to-exceed amount of listed in Section 1 of this Agreement, except as may be authorized via separate work order or agreement amendment approved prior by both parties.

1. Meeting attendance

As requested by the COMMISSION, DEPARTMENT staff will attend regular Board and technical advisory committee (TAC) meetings and advise the COMMISSION regarding other technical issues that may come before the COMMISSION.

Estimated Effort:

A Water Resources Engineer and Senior Environmentalist will attend each Board and TAC meeting. Environmentalist will attend meetings as necessary. Assuming 12 Board meetings and 4 TAC meetings.

| | Estimated Hours | Estimated Cost |
|--------------------------|-----------------|----------------|
| Water Resources Engineer | 48 | \$3,557.76 |
| Senior Environmentalist | 48 | \$3,139.20 |
| Environmentalist | 24 | \$1,368.72 |

2. Site plan reviews

Per the request of the COMMISSION, DEPARTMENT staff will provide applicants with information regarding COMMISSION requirements, will oversee the work of COMMISSION engineering consultants, and collaborate with engineering consultants to review site development plans for compliance with Elm Creek watershed, state and federal requirements for erosion and sediment control, stormwater management, wetlands and floodplain protection. Prepare and present recommendations regarding plan approvals for the COMMISSION.

Estimated Effort:

| | Estimated Hours | Estimated Cost |
|--------------------------|-----------------|----------------|
| Water Resources Engineer | 400 | \$29,648.00 |
| Senior Environmentalist | 1000 | \$65,400.00 |

3. Wetland Conservation Act Assistance

Although the COMMISSION is no longer serving as the Wetland Conservation Act local government unit for its members, there will still be instances where it is in the COMMISSION'S best interest to send a representative to participate in the administration and enforcement of the Wetland Conservation Act. In these instances, DEPARTMENT staff will represent the COMMISSION'S interests and provide information and interpretation of the COMMISSION'S rules as they relate to the Wetland Conservation Act. Under no circumstances, will DEPARTMENT staff representing the COMMISSION take the place of LGU staff or consultants.

Estimated Effort:

| | | |
|-------------------------|-----------------|----------------|
| | Estimated Hours | Estimated Cost |
| Senior Environmentalist | 120 | \$7,848.00 |

4. Respond to Inquiries from the public and conservation promotion

Due to the high priority nature of this work to the DEPARTMENT'S goals, DEPARTMENT agrees to request reimbursement for the following services at 50% the rate of other tasks. See agreement Section 2.

A. General outreach and assistance: At the request of the COMMISSION and/or as prompted by public inquiry, DEPARTMENT staff will reach out to landowners within the Elm Creek watershed to develop high priority water quality BMP projects, and respond to inquiries from the public to provide conservation program information, technical assistance, and information regarding COMMISSION requirements.

B. Rush Creek Subwatershed Focus: About 20 landowners have been identified where grassed waterways and alternative tile intakes would generate significant pollutant reductions in Rush Creek. Many of those landowners have already expressed interest in completing a project. The DEPARTMENT has been awarded a Clean Water Fund grant for the implementation of these projects. Both the DEPARTMENT and the COMMISSION have committed to providing implementation funds to this effort (Activity 5). DEPARTMENT staff support is needed to develop and manage BMP projects that are part of the Clean Water Fund Projects and Practices grant. In addition, the DEPARTMENT has contracted with a private firm to survey county ditches 3 and 16 in the Rush Creek Subwatershed and identify potential water quality improvements. Based on the results of the survey and potential project identification, DEPARTMENT staff will do outreach to private landowners, complete and application to BWSR's Multi-purupose Drainage Management grant program, and initiate survey and design on some projects, in anticipation of beginning implementation activities in 2020.

C. Manure management rule assistance and outreach: As the COMMISSION'S new manure management rules go into effect, there is likely to be a need for information/communication to generate understanding of the new rule, an increase in requests for technical assistance, and an increased interest in developing projects that will help landowners comply with the rule. DEPARTMENT staff will coordinate a targeted outreach campaign to landowners likely to be impacted by the rule, and be available to make site visits and assist landowners with project development as appropriate for projects that go above and beyond the rule requirements. This may also include assisting landowners with NRCS programs in order to leverage additional funds.

Estimated Effort:

| | Estimated Hours (COMMISSION) | Estimated Cost (COMMISSION) | Estimated Cost (DEPARTMENT) |
|---|---------------------------------|--------------------------------|--------------------------------|
| A. General Outreach and Assistance | | | |
| Environmentalist | 160 | \$4,755.20 | \$4,755.20 |
| | | | |
| B. Rush Creek Subwatershed Focus | | | |
| Environmentalist | 520 | \$15,454.40 | \$15,454.40 |
| Senior Environmentalist | 80 | \$2,616.00 | \$2,616.00 |
| Water Resources Engineer | 40 | \$1,482.40 | \$1,482.40 |
| | | | |

| | | | |
|--|-----|------------|------------|
| C. Manure Management Rule Assistance and Outreach | | | |
| Environmentalist | 160 | \$4,755.20 | \$4,755.20 |

5. Rush Creek Subwatershed Project Implementation

As partners in the Rush Creek SWA Implementation Projects and Practices grant application, COMMISSION will contribute to cost sharing landowner BMP projects identified in the Rush Creek SWA and initiated under the grant program. Cost of this cost share contribution will be set for 2019 by the COMMISSION'S TAC. Total 2019 cost share contribution will be tracked by the DEPARTMENT and reported to the COMMISSION quarterly. Cost share contributions for 2019 will be invoiced to the COMMISSION and reimbursed to the DEPARTMENT in the first quarter of 2020.

6. Elm Creek Floodplain Mapping

As directed by the COMMISSION, DEPARTMENT staff will fulfill the obligations of an agreement with the Minnesota DNR to complete updated hydrologic and hydraulic analyses of the watershed in the service of creating and updated floodplain map.

Estimated Effort:

| | Estimated Hours | Estimated Cost |
|--------------------------|-----------------|----------------|
| Senior Environmentalist | 100 | 6,540.00 |
| Water Resources Engineer | 985 | 73,008.20 |

TOTAL ESTIMATED EFFORT

| | Estimated Hours | COMMISSION NTE |
|--|-----------------|---------------------|
| Activity 1: Meeting attendance | 120 | \$8,065.68 |
| Activity 2: Site plan reviews | 1400 | \$95,048.00 |
| Activity 3: Wetland Conservation Act Assistance (non-LGU) | 120 | \$7,848.00 |
| Activity 4: Respond to public inquiries and conservation promotion | 960 | \$29,063.20 |
| Activity 5: Rush Creek Subwatershed Project Implementation | N/A | N/A |
| Activity 6: Elm Creek Floodplain Mapping | 1085 | 79,548.20 |
| Total (estimated) | 3,685 | \$219,573.08 |

EXHIBIT B

2019 VOLUNTEER MONITORING PROGRAMS AND EDUCATIONAL SERVICES

TASKS

The Hennepin County Environment and Energy Department (DEPARTMENT) will provide Elm Creek Watershed Management Commission (COMMISSION) with a variety of volunteer monitoring and environmental education and outreach oversight in support of its Watershed Management Plan and the Elm Creek TMDL.

Services are delivered on a time and materials basis, with a not-to-exceed amount listed in Section 1 of this Agreement, except as may be authorized via separate work order or agreement amendment approved prior by both parties.

1. Coordination of volunteer monitoring programs

The DEPARTMENT staff will coordinate the following volunteer water quality monitoring programs in the Elm Creek Watershed: River Watch; Wetland Health Evaluation Program (WHEP);

2. Volunteer Outreach

The DEPARTMENT staff, in collaboration with COMMISSION, will work to find school groups and/or adult volunteers to monitor up to three (3) designated stream sites for the River Watch program.

In addition, DEPARTMENT staff, in collaboration with COMMISSION, will work to find a team of adult volunteers to monitor up to four (4) designated wetland sites within the Elm Creek Watershed.

3. Volunteer monitor training and oversight

As part of the volunteer programs, DEPARTMENT staff will coordinate and offer training for each programs' monitoring and provide continual assistance in sample collection and identification.

4. Data quality assurance

The DEPARTMENT staff will provide all quality assurance checks on invertebrate and vegetative data for the Wetland Health Evaluation Program (WHEP), and all quality assurance checks on field and invertebrate data for the River Watch.

5. Reporting

Following the year's monitoring and compilation of collected data, DEPARTMENT will prepare an annual report of monitoring results and to COMMISSION.

6. Costs

- a) **River Watch Program:** The COMMISSION shall pay the DEPARTMENT \$1,000.00 per River Watch site for stream monitoring up to three (3) sites as part of the 2019 River Watch Program for data and educational services. Fees will be used to cover all training, equipment and transportation for the students to and from the site, Quality Assurance/Quality Control, reporting and presentations as requested. The total amount of work authorized by this Agreement for stream monitoring and educational services associated with the River Watch Program shall not-exceed three thousand dollars (\$3,000.00).
- b) **Wetland Health Evaluation Program:** The COMMISSION shall pay \$1,000.00 per monitored wetland site and \$1,000.00 per quality assurance re-check in 2019 for data and

educational services related to the WHEP. The total amount of work authorized by this Agreement for wetland monitoring and educational services associated with the WHEP shall not-exceed four thousand dollars (\$4,000.00).

In 2019 the total for providing a variety of volunteer monitoring and environmental education and outreach oversight shall not-exceed seven thousand dollars (\$7,000).

Technical Memo



Responsive partner.
Exceptional outcomes.

To: Shingle Creek/West Mississippi WMO TAC

From: Ed Matthiesen, P.E.
Diane Spector

Date: May 29, 2019

Subject: CIP Capital Equipment Language

**Recommended
Commission Action**

If the TAC wishes to proceed with expanding the CIP to include certain nonstructural practices, begin discussing the guidelines for implementation.

Options for reducing nutrients and other pollutants transported by stormwater have multiplied since the National Urban Runoff Program (NURP) study conducted by the EPA in 1979-1983 first comprehensively studied urban stormwater runoff. That study concluded that wet detention basins when designed appropriately were a very effective method of removing pollutants in urban runoff. Stormwater ponds, often called NURP ponds, became the Best Management Practice (BMP) of choice. Other structural practices followed as infiltration and filtration became more prevalent.

§103B.231 of Minnesota Statutes requires watersheds in the Metro Area to complete Watershed Management Plans including various information, including a capital improvement program (CIP), defined in Minnesota Statutes §103B.205, Subd 3 as "...means an itemized program for at least a five-year prospective period, and any amendments to it, subject to at least biennial review, setting forth the schedule, timing, and details of specific contemplated capital improvements by year, together with their estimated cost, the need for each improvement, [and] financial sources...." The Shingle Creek and West Mississippi Commissions Second and Third Generation Watershed Management Plans have included such a CIP of projects submitted by the member cities or research projects developed by the Commissions. The management plans are amended from time to time to modify the CIP. In 2007 the Commissions adopted a Cost Share Policy for Capital Improvement Projects. Under the authority provided by §103B.251, the Commissions have since that time elected to certify a levy request to Hennepin County for the Commissions' share of these CIP projects.

In recent years volume and pollutant loading BMPs have expanded to include nonstructural practices such as street sweeping, soil amendment, reforestation, native plantings, and - for reducing chloride from road salt - pre-wetting and brining. Nonstructural practices also include certain internal load reducing actions such as alum treatments, management of excessive rough fish populations, and control of invasive aquatic vegetation that is negatively influencing water quality and biotic integrity. These nonstructural practices may be as effective at reducing pollutant loading and mitigating runoff volumes, and enhancing biotic integrity as structural BMPs.

However, it is not clear that those nonstructural practices fit the meaning of “capital project” as defined in Minnesota Rules 8410, whereby BWSR establishes the rules by which it will interpret and enforce the statutes set forth in Chapter 103B governing Water Planning and Project Implementation.

While 103B.231 of the Statutes does not define “capital improvement,” Rule 8410.0020 Subp. 3. states that “Capital improvement” means a **physical improvement** that has an extended useful life. A capital improvement is **not** directed toward **maintenance** of an in-place system during its life expectancy. *(Emphasis added.)*

This seems to be in conflict with Rule 8410.0105 Subp. 2. which states that “Each plan must consider the feasibility of implementing structural solutions for attaining the goals defined under part 8410.0080 that cannot be resolved by nonstructural, preventative actions. Each plan must include a table for a **capital improvement program that identifies structural and nonstructural alternatives** that would lessen capital expenditures and sets forth, by year, details of each contemplated capital improvement that includes the need, schedule, estimated cost, and funding source.” *(Emphasis added.)*

The conflict is that a “capital improvement” is defined as a physical improvement - a structural solution - whereby a “capital improvement program” is defined as both structural and nonstructural solutions. At issue is whether the authority under §103B.251 to “...certify for payment by the county as provided in this section all or any part of the cost of a capital improvement contained in the capital improvement program of the plan” extends to nonstructural solutions.

The Shingle Creek Commission has received a request from the City of Plymouth to add the purchase of a regenerative air sweeper to the CIP as a phosphorus and sediment load reduction BMP, and to share 25% of the cost of its purchase. The City commits to funding the remaining 75% from other sources, and to staff and maintain the equipment. The sweeper would be used to perform more intensive street sweeping of the city, especially in the directly connected untreated areas discharging directly to lakes, streams, and wetlands. Weekly sweeping with a regenerative air sweeper has been shown by the Center for Watershed Protection to reduce TSS loading by up to 31% and TP loading by up to 8%. The annual load of nutrient and sediment removal through street sweeping can often exceed the annual load removed by structural practices such as rain gardens or biofiltration basins.

Discussion

We have been in discussion with the Commissions’ Attorney, who has consulted with the Hennepin County Attorney’s office, with Hennepin County Environment and Energy staff, and with BWSR. We have also consulted with the Commissions’ independent auditor. At issue is:

1. Are there certain types of nonstructural practices that we can agree are clearly similar in nature to structural BMPs in that they are primarily load or volume reducing practices and not ongoing maintenance.
2. Can we agree that these nonstructural practices may be included in capital improvement programs and could be considered for cost share funding using the authority under §103B.251 for payment using the county’s levy authority.

The TAC had previously discussed question 1 and had agreed that with certain qualifications and stipulations some nonstructural practices could be so considered. Hennepin County and BWSR agree, and BWSR notes that the “capital improvement” definition in 8410 hasn’t kept up with the advances in various technologies and practices. The auditor notes that there is no GASB standard that would limit how the Commissions define “capital improvement.” BWSR, Hennepin County staff, and Hennepin County Attorney’s office also agree that nonstructural practices that meet the conditions in #1 would be eligible for levy certification under §103B.251.

Next Steps

Neither the Commissions’ Cost Share Policy for Capital Improvement Projects adopted in 2007 nor the subsequent Third Generation Plan defines “capital improvement” for the purposes of cost sharing by levy. It is clear in the guidance developed in implementing the policy that 1) funds may not be used for BMPs to meet Commission requirements; 2) funds may be used to “upsized” a BMP above and beyond those requirements; 3) maintenance projects are not eligible.

If the TAC desires to move forward with amending the Management Plan to revise the Cost Share Policy, then some explicit definitions should be established, either in the Plan itself or in the guidance document. The following are some potential requirements for discussion:

1. Capital improvements must be for water quality or ecological integrity improvement, and must be for improvement above and beyond what would be required to meet Commission rules or common practice. Only the cost of “upsizing” a BMP above and beyond is eligible.
2. Routine maintenance activities are not eligible.
3. The effectiveness of the proposed nonstructural improvement must be supported by literature or academic/practitioner experience and documentation.
4. The applicant must agree to document the effectiveness of the BMP and report those results to the Commissions for at least five years.
5. The standard Commission/Member Cooperative Agreement will be executed prior to BMP implementation.