

elm creek

Watershed Management Commission

ADMINISTRATIVE OFFICE
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AGENDA REVISED
Technical Advisory Committee
March 8, 2023 | 10:00 a.m.

1. Call to Order.
 - a. Approve agenda.*
 - b. Approve Minutes of December 13, 2022, meeting.*
2. Framework for TMDL – 10 year Review.*
3. Preliminary Scopes of work.*
 - a. South Fork Rush Creek SWA.
 - b. Rush Creek Remeander.
4. Other Business.
 - a. Consider CIP for funding 2023/pay 2024 – CSAH12/Dayton River Road Ravine Stabilization.* This project is on the Commission’s 2023 CIP at a cost of \$95,500.
5. Next TAC meeting – _____.
6. Adjournment.

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*in meeting packet
**available at meeting

**CSAH 12 RAVINE STABILIZATION
WATER RESOURCES MANAGEMENT PROJECT
COOPERATIVE AGREEMENT**

BETWEEN

Three Rivers Park District

AND

Elm Creek Watershed Management Commission

1. BACKGROUND

This is a Cooperative Agreement that defines the responsibilities and cost-share contributions of each party for the County State Aid Highway (CSAH) 12 Ravine Stabilization Project. The project is located within the Elm Creek Watershed along Hennepin County CSAH 12 on Three Rivers Park District property that will provide future access to the West Mississippi River Regional Trail from Dayton to Champlin. This stabilization of the ravines will reduce excessive sediment and nutrients discharged directly to the Mississippi River as well as providing stability to adjacent roadway infrastructure. The parties enter into this Agreement to better facilitate the water quality improvements through the development and implementation of best management practices. The Agreement will memorialize the partnership and outline each party's cost-share contributions and maintenance responsibilities for the Project.

2. PARTIES

Elm Creek Watershed Management Commission (hereinafter referred to as "the Commission") and the Three Rivers Park District (hereinafter referred to as the "the Park District"), both being governmental units of the State of Minnesota, and acting through their respective governing bodies, hereby enter into this Joint Powers Agreement ("agreement"). The Commission and the Park District from time to time may be referred to hereinafter as "the parties."

3. AUTHORITY

The parties enter into this 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.

4. DUTIES OF THE PARK DISTRICT

In recognition of the staff resources and capabilities of the Park District, the Park District will be responsible for:

- I. The Park District will administer the construction for the stabilization of two ravines on Three Rivers Park District property in collaboration with Hennepin County. Hennepin County will be the lead agency in Project designs, engineering, permitting, and construction administration on the project. The Park District will mediate the administration of all construction activity through Hennepin County.
- II. Performance Criteria – At the request of the Commission, the Park District shall provide the Commission with any design plans or reports at any time during the construction process. The Park District will ensure that all work for the Project shall be completed in compliance with the approved plans and specifications; and will ensure any changes in plans or construction will be performed and completed in a satisfactory manner. At the request of the Commission, the Park District shall coordinate access with Hennepin County Engineer staff to enter upon the job site to make any inspections deemed necessary.
- III. Project Reporting Summary – The Park District will provide project progress and construction updates at the request of the Commission. The Park District will also provide the Commission an update on any proposed construction work order changes that reasonably deviate from approved plans and specifications. The Commission shall have the right to review any proposed changes which necessitate a re-engineering of the design and/or specifications within the original scope of the Project.
- IV. Cost Participation – The Park District’s Cost participation shall be a sum of \$182,000 as their cost-share commitment to the Project.
- V. Project Maintenance – The Park District will be responsible for all maintenance activities of the drainage area to fully support hydrology while minimizing future sediment erosion and nutrient loading to the Mississippi River.
 - i. Culverts and Storm Sewer Structures – The Park District shall be responsible for maintenance of the culverts and storm sewer structures revised or installed as part of the Project within its property without any cost or expense to the Commission.
 - ii. Slopes – The Park District shall maintain and inspect the slopes stabilized under the Project, within its property without any cost or expense to the Commission, according to its practices to ensure no erosion or ground water and drainage problems exist which may cause potential slide areas. Park District staff shall ensure that enough surface cover such as vegetation or turf are established to mitigate erosion.
 - iii. Maintenance Access Paths – The Park District shall be responsible for maintenance of the maintenance access paths installed as part of the Project within its property without any cost or expense to the County.

5. DUTIES OF THE ELM CREEK WATERSHED MANAGEMENT COMMISSION

In recognition of the staff resources and capabilities of the Commission, the Commission will be responsible for:

- I. Review of Design Plans – The Commission shall have the right to review any proposed changes which necessitate a re-engineering of the design and/or specifications within the original scope of the Project to ensure conformance to the watershed rules and standards identified in their Watershed Management Plan.
- II. Site Access – The Commission shall request and coordinate any site access through the Park District. At the request of the Commission, the Park District shall coordinate access with Hennepin County Engineer staff to enter upon the job site to make any inspections deemed necessary.
- III. Project Updates – The Commission shall have the right to request project updates from the Park District at any time during the construction of the project.
- IV. Cost Participation - The Commission's Cost Participation shall be a sum of \$110,000 as their cost-share commitment to the Project.

6. PAYMENT

- I. The Park District will submit payment for the Project on behalf of both Parties to Hennepin County as defined in a previous Agreement for a total cost-share sum of \$292,000.
- II. The Park District will request reimbursement from the Commission not-to-exceed a sum of \$110,000 as their cost-share commitment to the Project. The Park District will invoice the Commission for their portion of the Cost Participation after the project has been substantially completed. The Park District cost-share contribution will be \$182,000 after receiving reimbursement from the Commission.
- III. Any additional costs for extended workload after the "not-to-exceed" limit must be approved by both parties and set forth in a written amendment to this Agreement.

7. AMENDMENT

Any amendment to this Agreement must be in writing and approved by the Commission and the Park District. 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.

8. TERMINATION

This Agreement will terminate upon submittal and receiving payment reimbursement after the project has been completed. Notwithstanding, either party may terminate this Agreement for any reason by providing 30 days written notice to the other party. In the event of termination, the Parties will remain responsible for cost participation as provided in this Agreement for obligations incurred up through the effective date of the termination subject to any equitable adjustment that may be required.

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

**ELM CREEK WATERSHED MANAGEMENT
COMMISSION**

Dated: _____

Doug Baines, Chair

Judie Anderson, Administrator

THREE RIVERS PARK DISTRICT

Dated: _____

John Gibbs, Chair

Boe Carlson, Superintendent

CSAH12/Dayton River Road Ravine Stabilization

From: Joel Jamnik <JJamnik@ck-law.com>
Sent: Tuesday, March 7, 2023 3:51 PM
To: Judie Anderson <Judie@jass.biz>
Subject: RE: Elm Creek

Yes. We often will put in a paragraph in agreements that make the agreement conditional on adequate appropriation of funds, or allow termination if there is insufficient funding for the project. Here is an example of that language:

12. Termination

12.1 Termination for Insufficient Funding by County. The County may immediately terminate this Agreement if it does not obtain funding from the Minnesota Legislature, other funding sources, or if funding cannot be continued at a level sufficient to allow for the payments provided herein. Termination must be by written notice to the City and LMRWMO. The County is not obligated to pay for any costs of the Project that are incurred after the notice and effective date of termination. The County will not be assessed any penalty if the Agreement is terminated because of the decision of the Minnesota Legislature or other funding sources, to not appropriate funds.

12.2 Termination for Insufficient Funding by LMRWMO. The LMRWMO may immediately terminate this Agreement if it does not obtain CWF funding from the Board of Water and Soil Resources or if funding cannot be continued at a level sufficient to allow for the payments provided herein. Termination must be by written notice to the City and County. The LMRWMO is not obligated to pay for any costs of the Project except CWF grant monies.

If you don't want to revise the contract and/or delay approval, you can simply have the motion approving the contract be conditioned on the subsequent budget/levy approval by the County and Park District.

No cautionary words come to mind....

Joel

Joel J. Jamnik

Attorney

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From: Judie Anderson <Judie@jass.biz>
Sent: Tuesday, March 7, 2023 3:26 PM
To: Joel Jamnik <JJamnik@ck-law.com>
Subject: Elm Creek

This project is on the Commission's CIP for 2023/pay 2024. Can the parties enter into the agreement prior to it being levied by the County? I believe the Park District can proceed with the project prior to such levying??? Any other cautionary words before the TAC discusses it tomorrow?

- Judie

Judie A. Anderson

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Representing Elm Creek, Shingle Creek, West Mississippi, and Pioneer-Sarah Creek WMOs and Clearwater River WD

☐ Please consider the environment before printing this email.