**MAINTENANCE AGREEMENT**

**Between Nine Mile Creek Watershed District and**

**[NAME OF PUBLIC ENTITY]**

This maintenance agreement is made by and between the Nine Mile Creek Watershed District, a watershed district with purposes and powers set forth at Minnesota Statutes chapters 103B and 103D (NMCWD), and \_\_\_\_\_\_\_\_\_\_\_\_, *a statutory city and body corporate and politic of the State of Minnesota* (City).

**Recitals and Statement of Purpose**

WHEREAS pursuant to Minnesota Statutes section 103D.345, NMCWD has adopted and implements the Wetlands Management Rule, Stormwater Management Rule and the Waterbody Crossings and Structures Rule;

WHEREAS under the Wetlands Management Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner’s perpetual obligation to protect undisturbed buffer adjacent to a wetland;

WHEREAS under the Stormwater Management Rule, certain land development activity triggers the requirement that the landowner record a declaration establishing the landowner’s perpetual obligation to inspect and maintain stormwater-management facilities;

WHEREAS, under the Waterbody Crossings and Structures Rule, certain land development activity requires the landowner to record a declaration establishing the landowner’s perpetual obligation to inspect and maintain waterbody crossings and structures in accordance with approved plans;

WHEREAS in each case, a public landowner, as an alternative to a recorded instrument, may meet the maintenance requirement by documenting its obligations in an unrecorded written agreement with the NMCWD;

WHEREAS in accordance with the NMCWD rules and as a condition of permit \_\_\_\_\_\_\_\_\_, the City’s perpetual obligation to maintain wetland buffer, stormwater management facilities and waterbody crossings must be memorialized in a maintenance agreement specifying requirements and restrictions;

WHEREAS City and the NMCWD execute this agreement to fulfill the condition of permit no. \_\_\_\_\_\_\_\_\_, and concur that it is binding and rests on mutual valuable consideration;

THEREFORE City and NMCWD agree as follows that City, at its cost, will inspect and maintain the wetland buffer, waterbody crossings and stormwater facilities] as shown in the site plan attached to and incorporated into this agreement as Exhibit A in perpetuity as follows:

1. **Wetland Buffer**. Buffer on wetlands, as delineated on the scaled site plan for the Property, attached hereto and incorporated herein as Attachment A, must be planted and established (as necessary) and maintained in perpetuity in accordance with the following:
   1. Buffer area that is not vegetated at the time of or is disturbed during construction authorized by permit \_\_\_\_\_\_\_\_ (as shown in Attachment A) must be planted with native vegetation and maintained to retain natural resources and ecological value. Wetland buffer areas that are vegetated and not disturbed must be preserved and managed in a naturalized condition to encourage growth of native vegetation and eliminate invasive species.
   2. Buffer vegetation must not be cultivated, cropped, pastured, mowed, fertilized, subject to the placement of mulch or yard waste, or otherwise disturbed, except for:
      1. periodic cutting or burning that promotes the health of the buffer,
      2. actions to address disease or invasive species,
      3. mowing for purposes of public safety,
      4. temporary disturbance for placement or repair of buried utilities, or
      5. other actions to maintain or improve buffer quality, each as approved by the NMCWD in advance in writing.

Pesticides and herbicides may be used in accordance with Minnesota Department of Agriculture rules and guidelines. No new structure or hard surface may be placed within a buffer. No fill, debris or other material may be excavated from or placed within a buffer. Boardwalks and trails designed for nonmotorized use and stormwater management facilities may be located within a buffer area upon approval of the NMCWD.

1. **Stormwater Facilities**. The stormwater management facilities shown and labeled in Attachment A must be maintained as follows:
   1. All stormwater *retention, detention and treatment basins* must be inspected at least once a year to determine that basin retention and treatment characteristics are adequate. A storage treatment basin will be considered inadequate if sediment has decreased the wet storage volume by 50 percent or dry storage volume by 25 percent of its original design volume. Based on this inspection, if a stormwater basin requires sediment cleanout, the basin will be restored to its original design contours and vegetated state within one year of the inspection date. A log of the dates, conditions and results of the inspections conducted in accordance with the schedule, as well as corrective actions taken to response to inspection results and results of corrective actions taken, must kept onsite and made available to the District and its designated agents with reasonable notice during normal business hours.
   2. *Volume control facilities and contributing drainage areas* must be inspected every three months during the operational period (between spring snowmelt and first substantial snowfall) and monitored after rainfall events of 1 inch or more to ensure that the contributing drainage area is clear of litter and debris, inflow pipes and overflow spillways are clear, inlet areas are clean, undesirable vegetation is removed and there is no erosion impairing or threatening to impair the function of a facility. If sediment has accumulated in a infiltration feature, within 30 days of inspection deposited sediments must be removed, the infiltration capacity of the underlying soils must be restored, and any surface disturbance must be stabilized. Inspection must ensure that sediment traps and forebays are trapping sediment and that more than 50 percent of the storage volume remains, the contributing drainage area is stable (i.e., no erosion is observed), and inlets and outlet/overflow spillways are in good conditions with no erosion. Maintenance techniques used must protect the infiltration capacity of the practice by limiting soil compaction to the greatest extent possible (e.g., by using low-impact earth-moving equipment).
      1. In addition, *rain gardens* must be kept clean of excess sediment and debris. Healthy plant growth must be maintained in rain gardens by removing dead vegetation in the spring of each year, and the top two to five inches of media must be removed and replaced every three to five years so as not to impede filtration of sediment and oils.
   3. *Pervious pavers and pervious concrete* must be inspected at least once each year after a major storm and otherwise annually; surface openings must be vacuumed in dry weather to remove dry, encrusted sediment as necessary; and broken units that impair the structural integrity of the surface must be replaced. If water stands for an extended period, base materials must be replaced.
   4. *Swales and pervious* *areas* must be preserved in perpetuity in a pervious, vegetated state.
   5. *Underground storage chambers* must be inspected at least once a year to ensure that adequate storage capacity remains. Capacity will be considered inadequate if sediment has decreased the storage volume by 50 percent of its original design volume. Accumulated debris and sediment will be removed, and inlet and outlet structures will be cleared of any flow impediments.
   6. *Proprietary systems and facilities* must be maintained in accordance with the manufacturer and installer specifications and recommendations attached to and hereby incorporated into this declaration as terms hereof.
   7. *Grit chambers, sump catch basins, sump manholes, outlet structures, culverts, outfall structures and other stormwater facilities for which maintenance requirements are not otherwise specified herein* must be inspected in the spring, summer and fall of each year. Within 30 days of the inspection date, all accumulated sediment and debris must be removed such that each stormwater facility operates as designed and permitted. Contributing drainage areas must be kept clear of litter and vegetative debris, inflow pipes and overflow spillways kept clear, inlet areas kept clean, and undesirable vegetation removed. Erosion impairing the function or integrity of the facilities, if any, will be corrected, and any structural damage impairing or threatening to impair the function of the facilities must be repaired.
2. **Waterbody Crossings.** The waterbody crossing(s) shown in Attachment A must be maintained in good repair at all times to ensure no material degradation from designed hydraulic and navigational capacity; to assure no net increase in the flood stage on adjacent property; to prevent adverse effects to water quality, changes to the existing flowline/gradient and increased scour, erosion or sedimentation; and to minimize the potential for obstruction of the waterbody.
3. **Reporting.** City will submit to the NMCWD annually abrief written report that describes stormwater facility maintenance activities performed under this declaration, including dates, locations of inspections and the maintenance activities performed.
4. **Property Transfer.** If City conveys into private ownership a fee interest in the property that is the subject of this agreement, it will require as a condition of sale, and enforce: (a) that the purchaser record a declaration on the property incorporating the maintenance requirements of this agreement; and (b) that recordation occur either before any other encumbrance is recorded on the property or, if after, only as accompanied by a subordination and consent executed by the encumbrance holder ensuring that the declaration will run with the land in perpetuity. If City conveys into public ownership a fee interest in any property that has become subject to this agreement, it will require as a condition of the purchase and sale agreement that the purchaser accept an assignment of all obligations vested under this agreement.
5. This Agreement may be amended only in a writing signed by the parties.
6. The recitals above are incorporated as a part of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

# NINE MILE CREEK WATERSHED DISTRICT

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

President, Board of Managers

# City of City

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its Mayor

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its Administrator

**ATTACHMENT A**

Scaled Site Plan