

**MAINTENANCE AGREEMENT BETWEEN THE CITY OF MARINE ON ST. CROIX AND THE
CARNELIAN-MARINE-ST. CROIX WATERSHED DISTRICT FOR MAINTENANCE OF
STORM WATER FACILITIES AT OAK STREET IN MARINE ON ST. CROIX**

THIS AGREEMENT, by and between the City of Marine on St. Croix, a political subdivision of the State of Minnesota, hereinafter referred to as the “CITY” and the Carnelian-Marine-St. Croix Watershed District, a special-purpose unit of government, hereinafter referred to as the “CMSCWD”.

WITNESSETH:

WHEREAS, the CMSCWD has authority under Minnesota Statutes chapters 103B and 103D to design and implement projects to improve water quality and protect water resources; and

WHEREAS, the CITY desires to mitigate current and future effects of impervious surfaces and to protect and improve the water quality of the St. Croix River; and

WHEREAS, the CITY owns right-of-way, in areas tributary to the St. Croix River (as depicted in Exhibit A, attached to and incorporated into this agreement as a term hereof); and

WHEREAS, the CMSCWD desires to reduce thermal and pollutant loading in runoff from Oak Street and surrounding catchment areas to the St. Croix River and has developed plans for bioretention basins and a channel stabilization (“the Project”) to accomplish these goals; and

WHEREAS The Project will be built by the CMSCWD, and the Project will be constructed entirely within the CITY owned right-of-way and MNDOT owned right-of-way; and

WHEREAS, this Agreement is made pursuant to statutory authority contained in Minnesota Statute 471.59.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

A. PURPOSE

The purpose of this agreement is set forth in the above recitals, which are incorporated herein as terms of this agreement. This agreement is effective when fully executed and will remain effective for 25 years thereafter. Thereafter, this agreement will automatically renew for successive five-year periods unless terminated by either party by written notice to the other at least 90 days in advance of the renewal date.

B. MAINTENANCE / OWNERSHIP

1. Upon completion of the Project, the CMSCWD shall maintain the following, if constructed as part of the Project for two years:
 - a. weirs
 - b. pipes and other conveyances
 - c. adjustable drains
 - d. iron-enhanced sand bed below grade
 - e. annual sediment removal from pre-treatment raingardens
 - f. native plantings

- g. weed and invasive species control
 - h. minor erosion
- 2. Upon completion of the Project, the CITY shall own the PROJECT and maintain all landscaping elements of the Project, including:
 - a. trees
 - b. sod and grass seeding
 - c. shrubs
- 3. All maintenance required to be performed by this Agreement by the Parties shall be performed in a manner which shall be at the sole discretion of the party so obligated.
- 4. Any Party performing maintenance pursuant to this Agreement shall be responsible for payment of said maintenance, including payment to any contractors and/or subcontractors, pursuant to Minnesota Statute 471.425.
- 5. The CMSCWD will obtain all regulatory approvals required for maintenance activities CMSCWD is obligated to perform under this agreement, and will notify the CITY at least 24 hours in advance of any maintenance activities requiring a lane closure or permit to complete work within the CITY right-of-way.

C. ACCESS RIGHT

The CITY hereby grants CMSCWD, its contractors, agents and assigns all necessary rights to access and use the CITY'S right-of-way to fulfill its obligations under and the purposes of this Agreement and the agreement entered into by the parties for purposes of construction of the Project, incorporated in executed form by reference. The rights granted herein will be ongoing, and this agreement may not be amended to vacate CMSCWD's access and use rights for 25 years from the date the Project is substantially complete for the intended purposes. The CITY's authorization hereunder is nonexclusive, except that CMSCWD, on reasonable notice to and in compliance with all necessary regulatory approvals from the CITY, may temporarily restrict or preclude use of the right-of-way to ensure safety while maintenance activities are under way. The CITY will forbear from any activity that interferes with CMSCWD's ability to exercise its rights or meet its obligations under this Agreement.

D. CIVIL RIGHTS AND NON-DISCRIMINATION

The provisions of Minn. Stat. 181.59 and of any applicable ordinance relating to civil rights and discrimination shall be considered part of this Agreement as if fully set further herein, and shall be part of any Agreement entered into by the parties with any contractor, subcontractor, or material suppliers.

E. WORKERS COMPENSATION

It is hereby understood and agreed that any and all employees of the CITY and all other persons employed by the CITY in the performance of construction and/or construction engineering work or services required or provided for under this agreement shall not be considered employees of the CITY and that any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of said employees while so engaged and any and all claims made by any third parties as a consequence of any act or omission on the part of said CITY employees while so

engaged on any of the construction and/or construction engineering work or services to be rendered herein shall in no way be the obligation or responsibility of the CMSCWD.

F. INDEMNIFICATION

1. The CMSCWD agrees that it will defend, indemnify and hold harmless the CITY against any and all liability, loss, damages, costs and expenses which the CITY may hereafter sustain, incur or be required to pay by reason of any negligent act by the CMSCWD, its agents, officers or employees during the performance of this Agreement.
2. The CITY agrees that it will defend, indemnify and hold harmless the CMSCWD against any and all liability, loss, damages, costs and expenses which the CMSCWD may hereafter sustain, incur or be required to pay by reason of any negligent act by the CITY, its agents, officers or employees during the performance of this Agreement.
3. To the fullest extent permitted by law, actions by the parties to this Agreement are intended to be and shall be construed as a “cooperative activity” and it is the intent of the parties that they shall be deemed a “single governmental unit” for the purposes of liability, as set forth in Minnesota Statutes, Section 471.59, subd. 1a(b). The parties to this Agreement are not liable for the acts or omissions of another party to this Agreement except to the extent they have agreed in writing to be responsible for the acts or omissions of the other parties as provided for in Section 471.59, subd. 1a.
4. Each party’s liability shall be governed by the provisions of Minnesota Statutes, Chapter 466 and other applicable law. The parties agree that liability under this Agreement is controlled by Minnesota Statute 471.59, subdivision 1a and that the total liability for the parties shall not exceed the limits on governmental liability for a single unit of government as specified in 466.04, subdivision 1(a).

G. DATA PRIVACY

All data collected, created, received, maintained, or disseminated, or used for any purposes in the course of this Agreement is governed by the Minnesota Government Data Practices Act, Minnesota Statutes 1984, Section 13.01, et seq. or any other applicable state statutes and state rules adopted to implement the Act, as well as state statutes and federal regulations on data privacy.

IN TESTIMONY WHEREOF the parties have duly executed this agreement by their duly authorized officers.

CITY OF MARINE ON ST. CROIX

By _____
Mayor Date

By _____
City Clerk Date

Approved as to form:

By _____
City Attorney Date

CARNELIAN-MARINE-ST. CROIX WATERSHED DISTRICT

By _____
Board President Date

By _____
CMSCWD Administrator Date

Approved as to form:

By _____
CMSCWD Attorney Date