

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: March 11, 2014
Re: Three Rivers Park Agreements – LRT Trail Bridge

Three Rivers has provided the attached agreements for our review. Staff has also attached a chain of emails with questions regarding the timeline and property acquisitions.

Three Rivers would like final consideration for these agreement during the March 25th City Council Meeting. Also, pay attention to the property acquisition support statement that is better clarified in the attached email.

Council Action Requested:
Review and Discuss.

Joe Kohlmann

From: Alex Meyer <AMeyer@threeriversparkdistrict.org>
Sent: Wednesday, March 05, 2014 4:20 PM
To: Joe Kohlmann
Subject: RE: Lake Minnetonka Regional Trail - County Road 19 Bridge Cooperative Agreement

Joe,

That statement is in reference to the acquisition of private property and the acquisition of permanent easements. For this project the Park District is currently only looking for temporary easements for construction purposes. The Park District has had appraisals completed for the two properties where temporary easements are needed and those offers have been mailed to the property owners. The second part of that statement states that the City would support the Park District pursuing permanent easements through condemnation if an agreement cannot be reached for the temporary easements in a reasonable time frame. It is the Park Districts position that this would be a last resort type action to keep the project funding available for the construction of the bridge.

Alex Meyer, PLA
Landscape Architect
Design Department
ameyer@threeriversparkdistrict.org
Phone# 763-559-6758
Fax# 763-557-5248

From: Joe Kohlmann [mailto:jkohlmann@cityoftonkabay.net]
Sent: Wednesday, March 05, 2014 3:45 PM
To: Alex Meyer
Subject: RE: Lake Minnetonka Regional Trail - County Road 19 Bridge Cooperative Agreement

Alex,

Maybe you can clarify this statement:

WHEREAS, the Agreement will require the City to approve acquisition by Park District of said property rights and approve condemnation of property rights if Park District is unable to acquire property through direct purchase; and

Is Three Rivers looking to condemn property? Or is this is reference to the temporary easements that you are seeking?

Please let me know.

Thanks,

Joe

From: Alex Meyer [mailto:AMeyer@threeriversparkdistrict.org]
Sent: Wednesday, March 05, 2014 2:04 PM
To: Joe Kohlmann
Subject: RE: Lake Minnetonka Regional Trail - County Road 19 Bridge Cooperative Agreement

Joe,

Would it be possible to have resolution of support go to the 11th Meeting regarding city approval to acquire temporary easements, and we will plan on being at March 25th meeting. Hopefully your legal counsel will have addressed any concerns prior to the 25th meeting. Is there a work session where council might have a chance to review before the March 25th meeting?

Alex Meyer, PLA
Landscape Architect
Design Department
ameyer@threeriversparkdistrict.org
Phone# 763-559-6758
Fax# 763-557-5248

From: Joe Kohlmann [<mailto:jkohlmann@cityoftonkabay.net>]
Sent: Wednesday, March 05, 2014 1:55 PM
To: Alex Meyer
Subject: RE: Lake Minnetonka Regional Trail - County Road 19 Bridge Cooperative Agreement

Alex,

I haven't decided yet if I will place it on the 11th....I will for sure put it on the March 25th meeting.. Can representatives be present on the 25th to answer questions?

Joe

From: Alex Meyer [<mailto:AMeyer@threeriversparkdistrict.org>]
Sent: Wednesday, March 05, 2014 1:48 PM
To: Joe Kohlmann
Subject: RE: Lake Minnetonka Regional Trail - County Road 19 Bridge Cooperative Agreement

Hi Joe,

The sooner the better for both the agreement and resolution of support, By the end of March would be great. Let me know if legal counsel has any questions and I will get responses back ASAP. What are meeting dates you will be targeting for this month so I can place on my project calendar.

Alex Meyer, PLA
Landscape Architect
Design Department
ameyer@threeriversparkdistrict.org
Phone# 763-559-6758
Fax# 763-557-5248

From: Joe Kohlmann [<mailto:jkohlmann@cityoftonkabay.net>]
Sent: Wednesday, March 05, 2014 1:42 PM
To: Alex Meyer
Subject: RE: Lake Minnetonka Regional Trail - County Road 19 Bridge Cooperative Agreement

Hi Alex,

I have passed this along to our legal counsel. What kind of time frame works for Three Rivers? If I had it reviewed and okayed by the end of March, does that work? Middle of April?

Joe

From: Alex Meyer [<mailto:AMeyer@threeriversparkdistrict.org>]

Sent: Tuesday, March 04, 2014 4:08 PM

To: Joe Kohlmann (jkohlmann@cityoftonkabay.net)

Subject: Lake Minnetonka Regional Trail - County Road 19 Bridge Cooperative Agreement

Joe,

Attached is final draft copy of the trail agreement between City and Park District, please review and send any comments back for TRPD review. As time is of the essence for getting final submittals in for review by State Aid before we can get final project authorization could you provide me with a schedule of when this would go before the City Council for approval as I will need to coordinate with our Board.

The second document is a resolution of support from the City for the Park District to secure the necessary easements for construction of the trail Bridge. Please call with any questions.

Alex Meyer, PLA
Landscape Architect
Design Department
Three Rivers Park District
3000 Xenium Lane North
Plymouth, MN 55441-1299
ameyer@threeriversparkdistrict.org
Phone# 763-559-6758
Fax# 763-557-5248

**CITY OF TONKA BAY
HENNEPIN COUNTY, MINNESOTA**

RESOLUTION NO. _____

**A RESOLUTION OF SUPPORT
FOR THE ACQUISITION OF THE LAKE MINNETONKA REGIONAL TRAIL
COUNTY ROAD 19 GRADE SEPARATED CROSSING
IN THE CITY OF TONKA BAY**

WHEREAS, the City of Tonka Bay (City) supports the Park District's efforts to design and construct a new Lake Minnetonka Regional Trail grade separated crossing of County Road 19 ('Project'); and

WHEREAS, the City intends to enter into a Cooperative Agreement ('Agreement') for the Project with the Park District in March 2014; and

WHEREAS, the Agreement will require the Park District to acquire at Park District cost non-public property rights as may be necessary to safely and effectively construct the Project where achievable through direct purchase; and

WHEREAS, the Agreement will require the City to approve acquisition by Park District of said property rights and approve condemnation of property rights if Park District is unable to acquire property through direct purchase; and

WHEREAS, at this time it is necessary to acquire two (2) temporary construction easements from a total of two (2) private property owners in order to safely and effectively construct the Project; and

WHEREAS, the Park District is actively negotiating with the property owner with the intent to acquire property rights for the property described below through direct purchase:

Temporary Construction Easements

Location	Description
5425 MANITOU ROAD PID: 33-117-23-12-0001 & 33-117-23-12-0006	17,483 square feet for a twelve (12) month easement term commencing no sooner than July 1, 2014 and terminating no later than July 30, 2015.
5420 MANITOU ROAD PID: 33-117-23-12-0048	5,792 square feet from July 1, 2014 and terminating no later than November 20, 2015.

WHEREAS, failure to secure property rights for the aforementioned property jeopardies the availability of a \$1.04 Million Federal Transportation Enhancement Grant and ultimately the ability of the Park District to construct the Project; and

WHEREAS, the City continues to support the Park District efforts to design, construct, operate, and maintain the regional trail and associated structures and acquire any necessary property rights to do so; and

THEREFORE, BE IT RESOLVED, that the City, in accordance with M.S. 398.09 subd. b1, approves the direct purchase of the aforementioned property by the Park District for the Lake Minnetonka Regional Trail County Road 19 Grade Separated Crossing and approves condemnation of property rights described in this resolution if direct purchase is not successful.

NOW THEREFORE, BE IT FURTHER RESOLVED,

Adopted this _____ day of March, 2014.

CITY OF TONKA BAY

BY: _____
Gerry De La Vega, MAYOR

BY: _____
Joe Kohlmann, CITY ADMINISTRATOR

DRAFT

**CITY OF TONKA BAY
AND
THREE RIVERS PARK DISTRICT**

**LAKE MINNETONKA REGIONAL TRAIL
COUNTY ROAD 19 BRIDGE COOPERATIVE AGREEMENT**

This agreement (the "Agreement") is made and entered into this ____ day of _____ 2014, by and between the Three Rivers Park District, a body corporate and politic and a political subdivision of the State of Minnesota ("Park District"), and the City of Tonka Bay, a Minnesota municipal corporation ("City").

WHEREAS, Park District is a political subdivision of the State of Minnesota authorized by statute to acquire, establish, operate, and maintain park facilities and regional trail systems; and

WHEREAS, Park District currently owns, operates, and maintains the Lake Minnetonka Regional Trail ("Trail") through the City via Permit Agreement No. A09222 ("Permit") from Hennepin County Regional Rail Authority ("HCRRA"); and

WHEREAS, the Trail currently crosses County Road 19 ("CR 19") at grade; and

WHEREAS, Hennepin County ("County") has previously modified this crossing to better address safety concerns; and

WHEREAS, Trail crossing safety concerns still exist; and

WHEREAS, the Park District, City, and County agree that a grade separated crossing is necessary to adequately improve the existing crossing; and

WHEREAS, the Park District has secured a federal Transportation Enhancement grant in the amount of \$1,040,000, a Hennepin County Bikeway Grant in the amount of \$200,000, and Metropolitan Council Legacy grants in the approximate amount of \$1,790,000 for the design and construction costs of a new regional trail bridge over CR 19 (Project); and

WHEREAS, Park District and City desire to cooperate to design, construct, operate, and maintain a new grade-separated Trail crossing of CR 19 located in the City; and

NOW THEREFORE, in consideration of the mutual covenants herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, City and Park District agree as follows:

A. Project.

The project is defined as the design and construction of a new Trail pedestrian/bike bridge over CR 19 in Tonka Bay ("Trail Bridge") and includes design, construction, and removal of a temporary Trail detour ("Trail Detour") and design and construction of two permanent local trail connections ("Local Trail Connections") as shown on Exhibit A ("Project").

B. Property Rights. Park District shall not be obligated to proceed with any obligation under this Agreement until all property rights identified by Park District required to complete the Project are obtained.

1. HCRRA Permit. The Park District currently owns, operates, and maintains the Trail via Permit from HCRRA. In the event the Permit is lost or otherwise terminated, the Park District shall have no obligation hereunder except to return or otherwise terminate property rights acquired for this Project.
2. Temporary Construction/Access Permit from City. This Agreement serves as a temporary construction and access permit from the City to the Park District for purposes of constructing the Project within City right-of-way and parkland.
3. Other Public Permits. The parties recognize that this Project may require property right permits, agreements, and licenses with other public entities such as the County. The parties to this Agreement shall cooperate to secure necessary permissions. In the event that necessary permissions cannot be secured, this Agreement may be terminated by the Park District in its sole discretion.
4. Property Rights Acquisition. In the event additional temporary or permanent property rights are required to complete this Project from private parties, the City agrees to approve Park District acquisition of property rights through direct purchase or eminent domain. City shall take all necessary measures to support and assist the Park District's acquisition of said property rights including but not limited to providing Resolutions of Support and authorizing acquisition through direct purchase or eminent domain.

C. Financing. Park District is responsible to fund property rights acquisition, design, and construction of the Project and operation and maintenance of the Trail Bridge over CR 19 for its useful life. A fundamental component of the Project's financing plan is a \$1.04 Million Federal Transportation Enhancement Grant, a \$200,000 Hennepin County Bikeway Grant, and approximately \$1,790,000 in Metropolitan Council Legacy grants. If for any reason one or more of the aforementioned grants is lost or otherwise terminated, the Park District may, at its sole discretion, terminate this Agreement and shall not be obligated to fulfill any outstanding terms and conditions of this Agreement not previously performed except to return property rights obtain for purposes of completing this project.

City is not responsible for providing Project funding; however, City is responsible for providing operation and maintenance funding for the useful life which shall be defined as no less than 20 years from substantial completion of the two Local Trail Connections constructed as part of the Project.

- D. Design and Construction.** Design and construction of the Project shall be in accordance with Typical Trail Sections (Exhibit B) and standards and guidelines adopted by the Park District. The Park District will have final discretion over Project design and the interpretation and execution of engineering best practices.

The Park District will coordinate and fund design of the Project. Park District may, in its sole discretion, contract with consultants to provide professional design services including, but not limited to design development, bidding documents, construction plans and specifications; contract document preparation, construction administration, and project close out. Park District shall submit all Project plans to City for review and approval, provided however, that approval shall not be unreasonably withheld.

Park District shall be responsible for bidding and construction of the Project in accordance with approved construction plans and specifications. In the event City has a franchise agreement or similar with utility companies requiring utility companies to move utilities within public right-of-way for projects with public benefit, City shall be responsible to relocate utilities as necessary to construct, operate, and maintain the Project in accordance with this Agreement at no cost to the Park District. If City does not have said franchise or similar agreement with utility companies, Park District shall be responsible to relocate utilities as required to by the Project or operation and maintenance of the Trail at no cost to the City.

Construction shall commence following (1) assembly of property rights in accordance with Paragraph 2 of this Agreement, (2) Park District and City approval of plans and specifications for the Project, and (3) Park District securement of adequate Project funding.

- E. Permits and Assessments.** City shall not unreasonably withhold City approvals, permits, and other official permissions necessary for the Park District to fulfill Park District responsibilities as defined by this Agreement. In consideration of the Park District's performance under this Agreement including its maintenance obligations, City hereby agrees that the Park District shall not be subject to assessment by the City pertaining to improvements made on the lands included in, or adjacent to, the Project and in which the Park District has rights to.
- F. Inconsistent Rights.** The City, for itself, its successors and assigns, hereby covenants that it will not construct nor grant others the right to construct any structures or improvements within the Project area and in which the Park District has rights to, which are inconsistent with the rights and interests herein granted to Park District, but the City shall otherwise have the right to use the Project area and to grant to others such rights.
- G. Operation and Maintenance of Trail Bridge by Park District.** Park District and its agents and licensees shall have the sole and exclusive right and authority to operate and control the Trail Bridge and all portions of the Project within the Permit area and to establish rules and regulations governing its use to the extent not in conflict with ordinances of the City.

Park District will be responsible for the renovation, replacement, repair, maintenance, and upkeep of the Trail Bridge and all portions of the Project within the Permit area, and as provided in Section J for their useful life as defined by the Park District. Park District shall be solely responsible for establishing maintenance standards for the Trails, which will be consistent district wide.

Park District reserves the right to remove any vegetation or object that obstructs the use or safety of the Trail including adjacent safety zones in accordance with Exhibit B – Typical Trail Section.

- H. Operation and Maintenance of Local Trail Connections by City.** Upon Project completion, City and its agents and licensees shall have the sole and exclusive right and authority to operate and control the two permanent Local Trail Connections outside the Permit area and to establish rules and regulations governing its use to the extent not in conflict with ordinances of the Park District or this Agreement.

City will be responsible for the renovation, replacement, repair, maintenance, and upkeep of the Local Trail Connections.

- I. Uses and Purposes.** Trail and Local Trail Connections shall be open to the general public and be used exclusively for outdoor recreation and commuter activities, including but not limited to non-motorized uses such as walking, jogging, skating, and biking. The use of electric-assisted bicycles as defined in Minnesota State Law and Other Power Limited Mobility Devices as defined by the American with Disabilities Act and in accordance with Park District Policy are permitted. Equestrian uses are prohibited.

In addition, motor vehicles used by the City or Park District for maintenance, law enforcement or other public uses will be permitted.

- J. Winter Use.** As of the date of this Agreement, Park District policy is to leave the Trail open to the public in winter, but perform no winter maintenance. Park District reserves the right to operate and maintain the Trail for winter use in its sole discretion. The City may request a Park District Winter Use Permit to operate and maintain the Trail during winter months. Such permit, if granted by Park District, will require the City, among other things, to assume responsibility for trail maintenance, operation and liabilities associated with winter use.

- K. Signage.** The Park District shall be responsible to furnish, install, and maintain the Trail information sign/kiosk program at Park District expense. Signage will indicate that the Trail is a regional trail of the Park District. City may provide additional signage within the regional trail corridor, provided however, that Park District and HCRRRA shall approve additional signage, and that City shall be responsible for providing and maintain respective signage.

The Park District shall provide all trail regulatory signs as prescribed by the Minnesota Manual on Uniform Traffic Control Devices (Mn MUTCD), as a part of the design and construction of the Project. Park District shall be responsible for the maintenance of Trail regulatory signs post-construction at Park District expense. City shall be responsible for the maintenance of Local Trail

Connection regulatory signs post-construction at City expense in accordance with original design.

- L. **Utilities.** City shall at all times retain the right to maintain, repair or replace any utilities and related facilities in, on, or under said Trail and install such utilities and related facilities provided, that if any such activities by the City shall or may damage or limit the use of the Trail, the City will give the Park District thirty (30) days prior written notice of the same (except in cases of emergency), and in any event the City will upon completion of such activities so affecting the Trail or any portion thereof, restore the Trail as near as possible to its condition existing before such maintenance, repair, replacement or other activities of the City.

City and Park District recognize that prior notice is needed to develop temporary Trail detour routes and temporary signage. City and Park District will cooperatively determine and implement a temporary detour route when feasible.

- M. **Law Enforcement.** The City will patrol and police the Trail in such manner and by such persons as the City shall deem necessary, and may enforce all rules and ordinances of the City except as provided herein. Notwithstanding anything herein to the contrary, the Park District shall have the right to enforce its rules, regulations and ordinances with respect to the Trail. City shall not promulgate any ordinance, rule or regulation which contravenes any ordinance, rule or regulation of Park District with respect to the Trail or which contravenes this Agreement.

- N. **Indemnification.** Each party is responsible for its own acts and omissions and the results thereof to the extent authorized by law. Minnesota Statutes Chapter 466 and other applicable law govern the parties' liability. To the full extent permitted by law, this Agreement is 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, all as set forth in Minnesota Statutes, Section 471.59, Subd. 1a (a); provided further that for purposes of that statute, each party to this Agreement expressly declines responsibility for the acts or omissions of the other party. In addition to the foregoing, nothing herein shall be construed to waive or limit any immunity from, or limitation on, liability available to either party, whether set forth in Minnesota Statutes, Chapter 466 or otherwise.

- O. **Successor and Assigns.** The Agreement shall be binding upon the parties hereto and their respective successors and assigns, provided, however, that neither City nor Park District shall have the right to assign its rights, obligations and interests in or under this Agreement to any other party without the prior written consent of the other party.

- P. **Amendment, Modification or Waiver.** No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing and signed by the party or parties to be bound, or its duly authorized representative. Any waiver by either party shall be effective only with respect to the subject matter thereof and the particular occurrence described therein, and shall not affect the rights of either party with respect to any similar or dissimilar occurrences in the future.

- Q. Rights and Remedies Cumulative.** The rights and remedies provided by this Agreement are cumulative and no right or remedy at law or in equity which either party hereto might otherwise have by virtue of a default under this Agreement nor the exercise of any such right or remedy by either party will impair such party's standing to exercise any other right or remedy.
- R. No Agency.** Nothing contained herein and no action by either party hereto will be deemed or construed by such parties or by any third person to create the relationship of principal and agent or a partnership or a joint venture or any other association between or among the parties hereto.
- S. Saving Provision.** If any provision of the Agreement shall be found invalid or unenforceable with respect to any entity or in any jurisdiction, remaining provision of the Agreement shall not be affected thereby, and such provisions found to be unlawful or unenforceable shall not be affected as to their enforcement or lawfulness as to any other entity or in any other jurisdiction, and to such extent the terms and provisions of this Agreement are intended to be severable.
- T. Termination.** This Agreement may be terminated by Park District or City by mutual agreement or as otherwise provided in this Agreement. This Agreement shall be terminable by either party upon a material breach by the other party.

The provisions of Section N survive termination with respect to claims that arise from actions or occurrences that occurred prior to termination.

- U. Governing Laws.** This Agreement will be construed in accordance with the laws of the State of Minnesota.
- V. Time is of the Essence.** Time is of the essence under this Agreement.
- W. Title.** City warrants that it owns good and marketable title to the Easement and that the undersigned is authorized to execute this Agreement.
- X. Enforcement.** In the event either party should bring an action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other all of the legal or other expenses of the prevailing party, including reasonable attorneys' fees, and to have the same awarded as part of the judgment in the proceeding in which legal expenses and attorneys' fees were awarded.
- Y. Notices.** Any notice given under this Agreement shall be deemed given on the first business day following the date the same is deposited in the United States Mail (registered or certified) postage prepaid, addressed as follows:

If to the Park District:

Superintendent
Three Rivers Park District
c/c Legal Counsel
3000 Xenium Lane North
Plymouth, MN 55441

If to City:

City Manager
City of Tonka Bay
c/c Legal Counsel
4901 Manitou Road
Tonka Bay, MN 55331

DRAFT

IN WITNESS WHEREOF, Park District and City have entered into this Agreement as of the date and year first above written.

Three Rivers Park District, a public corporation and political subdivision of the State of Minnesota

Dated: _____ By: _____
Its Chair – Board of Commissioners

Dated: _____ By: _____
Its Superintendent
And Secretary to the Board

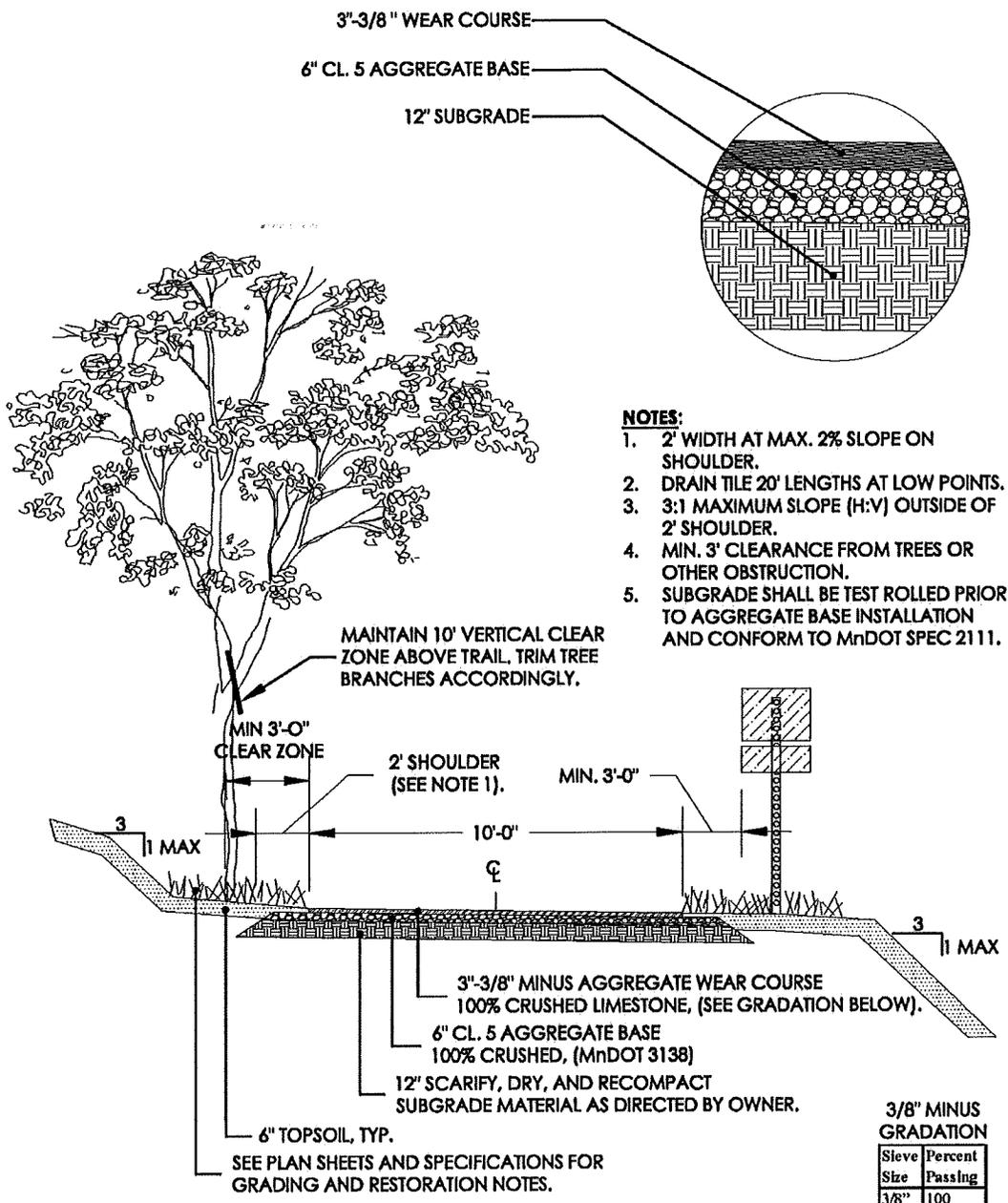
City of Tonka Bay, a Minnesota municipal corporation

Dated: _____ By: _____
Its Mayor

Dated: _____ By: _____
Its City Manager

DRAFT

EXHIBIT B Typical Trail Section Lake Minnetonka Regional Trail



3/8" MINUS GRADATION

Sieve Size	Percent Passing
3/8"	100
#4	70 - 100
#40	20 - 50
#200	10 - 30

TR-3 TYPICAL TRAIL SECTION 10' GRAVEL
NTS