



MEMORANDUM

Comfort Lake-Forest Lake Watershed District

Date: April 21, 2023
To: CLFLWD Board of Managers
From: Mike Kinney, District Administrator
Subject: Forest Lake Downtown Agreement



Forest Lake
Management District

Background/Discussion

The purpose of this agenda item is to consider authorizing the Board President to sign the attached agreement with the City of Forest Lake. District staff, legal counsel, and engineers have been coordinating closely with City of Forest Lake staff and legal counsel on this topic for months now. The proposed agreement is the result of many discussions among this group.

As a part of the City's downtown redevelopment planning efforts, the City and CLFLWD staff began a discussion in 2019 regarding stormwater management in this area. In 2020, the District committed to assisting in funding a portion of the study used to support this agreement. The results of the study were presented to the Board on Oct. 28, 2021. The reimbursement for the District's portion of the study was made in January 2022. Staff and counsels have since been collaborating on the many elements of the vision regarding how this work would be accomplished.

At this juncture, the agreement represents specific elements that required a substantial amount of negotiation. Of particular note are the following. At the bottom of page 1, under Terms, Section 2. Completion of Facilities, the City initially wanted the review and inspection to be completed by just 7 days.

Another item of interest is the last paragraph of Section 3. Compliance with District Rule 2.0. The City wanted the agreement to be unencumbered by future rule changes since they are planning to size the regional treatment facility based on today's rules. Initially, they requested a 30-year timeframe for this "freeze" while the District felt a shorter timeframe was needed. Ultimately, we landed at a 25-year timeframe which aligns with most of our BWSR Clean Water Fund grant timelines.

Overall, the agreement may not meet all the initial expectations of District staff regarding various components of the mechanics. However, given that this is a framework that is years ahead of where such stormwater efforts were just 20 years prior, this provides a structure for addressing a challenging area of the District to meet current rules which were updated just a few years ago. As such, the District should have confidence in this agreement aligning with watershed management goals.



MEMORANDUM

Comfort Lake-Forest Lake Watershed District

Recommended Motion

Proposed Motion: Manager _____ moves to authorize the President on advice of counsel, to make final non-substantive changes, and to enter into the Forest Lake Downtown Agreement with the City of Forest Lake. Seconded by Manager _____.

Attached: EOR memo
Memorandum of Agreement – City of Forest Lake and CLFLWD

Project Name | Forest Lake Downtown Redevelopment & Regional Treatment**Date** | 5-2-2023**To / Contact info** | CLFLWD Board of Managers**Cc / Contact info** | Mike Kinney**From / Contact info** | Greg D. Graske, P.E.**Regarding** | Memorandum of Agreement

Background

The City of Forest Lake, in collaboration with the CLFLWD, completed a Downtown Stormwater Planning Study. This study was presented at the October 28, 2021, CLFLWD Board Meeting. This study identified drainage areas within the Forest Lake downtown area where redevelopment is likely to occur in the future.

District rules require that stormwater management be addressed on redevelopment sites that have new or reconstructed impervious surfaces. Stormwater management can be challenging on many of these sites, particularly in locations where existing buildings are built right up to the lot line and there is a desire to keep a small-town downtown feel. Many of these areas developed prior to stormwater rules and are currently contributing to stormwater discharges that include sediment and nutrient loads that affect downstream water resources. The City of Forest Lake planning effort collected detailed stormwater infrastructure data and identified regional treatment opportunities that could address stormwater management for downtown areas. The City intends to collect fees from future developers to offset the costs of these treatment facilities.

Discussion

The City of Forest Lake has completed plans for the first set of regional BMPs. These BMPs include multiple biofiltration basins located on the east side of the Forest Lake – Lake 1. These BMPs will capture untreated runoff from North Shore Trail and the adjacent neighborhood. The BMPs will treat approximately 20 acres of watershed area that contain about 5 acres of impervious area. Stormwater from these areas is currently routed directly to Forest Lake via outlet pipes under North Shore Trail. The City has estimated that the constructed treatment volume of the proposed BMPs will be 21,105 cubic feet of treatment volume. Because treatment will not be provided for the immediate downtown areas, three hydrodynamic separator devices will be installed in the downtown area concurrently with the redevelopment to remove sediment and floatable materials before they get to the lake.

The City proposes to utilize the treatment volume from the North Shore Trail BMPs for redevelopment in the immediate downtown area. The city has identified approximately 5.5 acres of impervious area they feel is likely to redevelop and is intending to collect fees from developers to recoup the construction cost of the North Shore Trail BMPs. Credits will be available on a first-come, first-serve basis as the credits from the proposed BMPs are only estimated to provide credits for approximately 3.2 acres of impervious area in the downtown area.

This is only the first phase of the City Downtown Stormwater Planning Study. Additional BMPs have been identified for both the drainage areas going directly to Forest Lake and regional facilities for areas draining north to the Sunrise River and eventually to Comfort Lake. The city anticipates moving projects forward in phases over time as both development pressure and funding dictate.

A Memorandum of Understanding has been drafted between the City of Forest Lake and CLFLWD to allow for the stormwater facilities to be constructed prior to redevelopment in the downtown area such that these facilities can be utilized to satisfy the CLFLWD stormwater management requirements for redevelopment of downtown parcels.

Conclusion

The proposed BMPs located along North Shore Trail and the implementation of Hydrodynamic Separators in the immediate downtown area will result in treatment of stormwater at several locations that currently flow directly to Forest Lake without treatment. This will be an overall benefit to the water quality of Forest Lake along with ancillary benefits to water bodies downstream of Forest Lake while also allowing the City of Forest Lake to redevelop and revitalize the downtown area.

MEMORANDUM of AGREEMENT
City of Forest Lake and the Comfort Lake - Forest Lake Watershed District

This Memorandum of Agreement (“MOA”) is made by the City of Forest Lake (“Forest Lake”) and the Comfort Lake - Forest Lake Watershed District (“CLFLWD”), governmental subdivisions of the State of Minnesota.

Recitals and Statement of Purpose

A. Pursuant to Minnesota Statutes §§ 103B.211, 103D.341 and 103D.345, CLFLWD has adopted and implements Rule 2.0, Stormwater Management (“District Rule 2.0”), which imposes water quality and runoff retention requirements on qualifying land-disturbing projects.

B. Forest Lake recognizes that areas within the City’s downtown are likely to be redeveloped in the near future and in anticipation of such redevelopment, the City has prepared a general map of likely redevelopment areas that are delineated and labeled “Redevelopment Area” (all together “Delineated Areas”) attached hereto as **Exhibit A**.

C. For the purpose of promoting and supporting the future redevelopment of the downtown area, Forest Lake intends to construct stormwater management biofiltration facilities (“Facilities”) within City right-of-way to be used by future CLFLWD permit applicants located within the Delineated Areas to satisfy water quality, rate control, and volume control requirements of District Rule 2.0.

D. Construction of the Facilities before redevelopment ensures that stormwater impacts from redevelopment activities are proactively designed, determined and managed, providing better redevelopment opportunities with less waste of natural resource such as land and reduced impact to the surrounding environment.

E. CLFLWD recognizes that Forest Lake needs adequate assurance from CLFLWD that the Facilities will satisfy CLFLWD District Rule 2.0 requirements for the future Delineated Areas.

Terms

1. Plans and Specifications. The following plans and specifications for the Facilities are incorporated into this MOA:

- Construction Plans for Downtown Stormwater BMP (Sheets G0.01 – G0.02, G1.01, G2.01, C0.01, C1.01, C2.01 – C2.03, C3.01 – C3.03, C8.01, C9.01 – C9.03) for the stormwater management Facilities dated May 22, 2023. Plans include Title Sheet, Legend, Statement of Estimated Quantities, Location Plan, Existing Conditions & Removals Plan, Erosion Control Plan, Grading Plan, Standard Detail Plates, and Cross Sections.
- Project Manual for Downtown Stormwater BMPs including Contract Documents, Conditions of Contract, and Technical Specifications.

Copies of these documents are maintained at Forest Lake and CLFLWD offices.

2. Completion of Facilities. Forest Lake shall provide CLFLWD with written certification that

includes a label stating “Notice of Stormwater Facilities Completion” when the construction of all Facilities has been substantially completed in material conformance with the plans and specifications listed in Section 1, and Forest Lake shall provide in the same document, the capacity calculation for the Facilities as defined in District Rule 2.0 (collectively the “Notice”). CLFLWD shall have thirty (30) days from receipt of the Notice to inspect the Facilities and if it finds that the Facilities do not materially conform to the plans and specifications, disagrees with the capacity calculation, or in good faith cannot complete its review within 30 days, provide a written notice of objection. If CLFLWD does not provide written notice of objection within thirty (30) days of receipt of the Notice, the Facilities and the capacity calculation provided by Forest Lake shall be deemed to have been automatically accepted.

In the event CLFLWD provides written notice of objection to the Facilities within thirty (30) days of receipt of the Notice, the parties shall work together in good faith to resolve the objections. Once completed, Forest Lake shall provide a subsequent Notice to CLFLWD pursuant to the procedures stated above.

3. Compliance with District Rule 2.0. For the purpose of District Rule 2.0, automatically upon acceptance of the Facilities pursuant to paragraph 2, CLFLWD recognizes (a) the Delineated Areas located on **Exhibit A** are the “contributing area” to the Facilities; and (b) the Facilities provide water quality treatment and volume control for future District Rule 2.0 triggering land disturbing activities within the Delineated Area. Forest Lake will allocate the capacity of the Facilities to any applicant with property in the Delineated Area who enters into an agreement with the City to use the Facilities in the order of application for a District Rule 2.0 permit.

CLFLWD has determined that, within the meaning of Rules 2.3.2(e) and (f), infiltration and alternative practices are not feasible within the Delineated Area, and CLFLWD will not require a permit applicant within the Delineated Area to demonstrate infeasibility of on-site management or perform other location or method sequencing required by Rule 2.0 before it uses the Facilities. CLFLWD retains the authority under Rule 2.3.8 to require that an applicant revise a design, or to include conditions in a permit, in order to avoid impact to neighboring property as a result of stormwater peak flow or volume.

This MOA does not limit the CLFLWD’s authority or discretion to revise its permitting rules, however, because the parties’ intention for the Facilities is to provide stormwater treatment for future redevelopment of Forest Lake’s downtown area, future permit applicants for the Delineated Areas on **Exhibit A** who utilize the Facilities for at least 50% of their stormwater treatment capacity as required by CLFLWD rules, shall be entitled to permit review for District Rule 2.0 as it exists as of the date of the Facilities completion and shall be entitled to do so until end of 2048, subject to any District obligation under state or federal law to apply a revised regulatory standard.

4. Facilities Use by Future Permittees. Before approving the use of the Facilities by a future permit applicant, CLFLWD may require the applicant to provide a written statement from Forest Lake that the applicant is authorized to use Facilities’ capacity and that the Facilities continue to operate in accordance with the built design. To the extent that the Facilities’ capacity does not fully meet District Rule 2.0 as defined in Paragraph 3, the impacted permittee will be required to provide additional stormwater management to meet District Rule 2.0 as defined in Paragraph 3.

5. Hydrodynamic Separators. In accordance with CLFLWD Rule 2.3.3(b), Forest Lake will ensure that properly sized hydrodynamic separators (labeled as “Proposed Structures” on **Exhibit A**) are installed before or concurrent with redevelopment in areas tributary to those structures.

6. Maintenance of Facilities. Forest Lake will inspect and maintain the Facilities in perpetuity in accordance with the terms stated in **Exhibit B**, attached hereto and incorporated into this MOA. This obligation is established for the benefit of the CLFLWD as a public body and appurtenant public resources, and is not intended as a “private covenant, condition or restriction” within the meaning of Minnesota Statutes § 500.20 or like term as the statute may be amended. Forest Lake may in its sole discretion engage third parties to perform the necessary maintenance and/or repairs of the Facilities and may charge or assess the related costs to impacted property owners or other third parties. Notwithstanding the foregoing, Forest Lake will remain responsible to CLFLWD to meet the obligations of this section.

7. Duties of the Parties. The parties concur that this MOA is binding and rests on good and valuable consideration. Nothing in this MOA creates or establishes a partnership, joint venture or agency relationship between the parties. CLFLWD review or approval of any plan, certification or other construction document is solely for its own assessment of its responsibilities under this MOA. As between the parties, Forest Lake is solely responsible for design of the Facilities; the means, method and manner of construction; and ensuring that it conforms to all applicable laws. Nothing in this MOA creates any right in any third party or affects any immunity, defense or liability limitation enjoyed by either party.

8. This MOA is effective as of the date on which it is executed by both parties. It may be amended only in a writing signed by both parties. The recitals stated above are incorporated as part of this MOA.

[Signatures on following page]

IN WITNESS WHEREOF, the parties execute this Agreement.

Approved for form and execution

CLFLWD Attorney

Comfort Lake – Forest Lake Watershed District

By _____ Date _____

Name (print) _____

Its President, Board of Managers

City of Forest Lake

By _____ Date _____

Mara Bain

Its Mayor

Exhibit B

Forest Lake, at its cost, will operate, inspect and maintain the following stormwater management Facilities indicated within the plans and specification cited in Section 1 of the MOA: pond facilities, drain tile, storm sewer, and hydrodynamic separators.

Forest Lake agrees to:

- a. Inspect stormwater facilities annually.
- b. Remove accumulated sediment and debris and correct erosion or structural problems as needed for the Facilities to operate as designed.
- c. Maintain healthy vegetative cover in biofiltration basins.
- d. Perform routine maintenance activities.