RESOLUTION NO. 2015-14
RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

DIRECTING DISTRICT STAFF as to BLUE THUMB PROGRAM TRANSITION

Manager, [Signature] offered the following resolution and moved its adoption, seconded by Manager, [Signature]:

WHEREAS the Blue Thumb - Planting for Clean Water® program, started by the Rice Creek Watershed District ("District") in 2006, is a partnership of public and private sector groups to help residents plant native gardens, raingardens and shoreline stabilizations to improve water quality;

WHEREAS the Blue Thumb program has grown to include some 65 public and private partners within and outside Minnesota;

WHEREAS the District has administered the Blue Thumb program but, as the program has grown, the District finds that its bearing both the responsibility to administer the program and most of the public cost of doing so has become less tenable;

WHEREAS for these reasons, in 2014 the District contracted with Metro Blooms, a non-profit organization based in the Twin Cities, to carry out the program's administrative functions for the remainder of 2014;

WHEREAS in 2014 the District also initiated a process to examine transitioning the Blue Thumb program to a self-sustaining financial and administrative structure, and in the process engaged a steering committee of Blue Thumb partners, the Blue Thumb partnership more broadly, and Metro Blooms as a candidate to assume a substantial role in the program going forward;

WHEREAS after consideration in December 2014 and January 2015, those participating in the transitioning exploration, including District staff, concluded that as among options considered, a merger of the Blue Thumb program with Metro Blooms, including an assignment of the registered Blue Thumb trademark from the District to Metro Blooms, is the preferred option;

WHEREAS at the request of the District Board of Managers ("Board"), the involved parties drafted and have continued to refine a detailed transition plan addressing the governance, financial accountability, communication and engagement plan and related features of the new Metro Blooms/Blue Thumb structure during and after the transfer, which is not intended as legally binding but will guide Metro Blooms and the partners collaboratively;

WHEREAS in the course of consideration, District staff and public Blue Thumb partners have identified issues that must be adequately addressed to effect the program transfer, including as most fundamental the following:
• Ensuring that the program as transferred is structured and administered to preserve the effective participation of the public partners, and to continue to produce the public benefits that justify the substantial public investment in the program; and

• Establishing an “objective” referral system by which members of the public are afforded a range of choices for fee-for-service design and landscaping providers;

WHEREAS the Board must formally approve an assignment of the Blue Thumb trademark;

WHEREAS the Board concurs that the above-identified issues are critical to protecting the District’s public investment in the Blue Thumb program and ensuring that it will continue to maintain an active and broad partner base and thereby fulfill its public purposes;

WHEREAS on March 26, 2015, District staff met with Metro Blooms representatives to develop terms of a transfer agreement that would address the above issues, and on March 30, 2015, District staff transmitted to Metro Blooms a term sheet seeking to memorialize that discussion;

WHEREAS on March 30, 2015, Metro Blooms delivered a statement to the District expressing frustration at what it perceives as a delay in the transfer; objecting to a proposed period during which Metro Blooms would use the program trademark by license to allow it to refine program operation to ensure that public partners continue to be served; and requesting that the Board approve the transfer at this time, with the representation that the above issues will be cooperatively resolved thereafter;

WHEREAS the Board finds that resolution of the identified issues is essential, both for the District’s program goals and, on advice of counsel, so that its investment of public funds in the program conforms to the legal framework of the public purpose doctrine;

WHEREAS the Board therefore finds that this resolution cannot be entrusted to voluntary efforts but must be adequately reflected in the transfer agreement; and

WHEREAS until such time as arrangements are made for organizational transition of the Blue Thumb program, it is important that the program continue to be administered so that the public continues to be served and partners continue to perceive the program’s operational stability;

THEREFORE BE IT RESOLVED that the Rice Creek Watershed District Board of Managers will not approve a transfer of the Blue Thumb program or an assignment of the registered trademark until it finds, on advice of District staff and counsel, that the transfer agreement prescribes the governance and operation of the program sufficiently to give reasonable assurance that the program’s partner base will be preserved and enhanced and that the public benefits of the program will endure;
BE IT FURTHER RESOLVED that, specifically but not exclusively, the agreement must provide for an “objective” referral system for fee-for-service program activity and must provide for an opportunity for the parties to evaluate the referral system and otherwise collaborate on features of program governance and operation, for a period adequate to assess the program, before trademark assignment is irrevocable, to ensure the program’s continued partner base and sustainability;

BE IT FURTHER RESOLVED that the transfer agreement shall state measurable benchmarks that will be used to determine that public outcomes are satisfactory for final program transfer and trademark assignment to Metro Blooms;

BE IT FURTHER RESOLVED that the District administrator and District staff will work in good faith with Metro Blooms representatives, and with all due speed consistent with other demands, to resolve outstanding concerns, and will bring a transfer agreement to the Board for consideration by May 27, 2015, or else by that date will advise the Board as to why an agreement has not been achieved;

BE IT FURTHER RESOLVED that in working out outstanding concerns, District staff will engage Blue Thumb partners as staff determines to be achievable, but that the District, through the Board, will retain its prerogative to determine and approve final terms of the transfer agreement; and

BE IT FINALLY RESOLVED that the District Education, Outreach and Communication Coordinator is to take reasonable steps to ensure that the Blue Thumb program continues to be available and of benefit to the public until such time as the District ceases to have responsibility for day-to-day program administration, and for that purpose may, in writing, task Metro Blooms to perform administration functions on an hourly rate basis, up to an aggregate amount of $3,000, with an end date of May 27, 2015.

The question was on the adoption of Resolution 2015-14 and there were 5 yea’s and 0 nay’s as follows:

<table>
<thead>
<tr>
<th></th>
<th>Yea</th>
<th>Nay</th>
<th>Absent</th>
<th>Abstain</th>
</tr>
</thead>
<tbody>
<tr>
<td>WALLER</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>HAAKE</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>BRADLEY</td>
<td>☒</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>WAGAMON</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>PREINER</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

Upon vote, the President declared the Resolution passed.

Michael Bradley, Secretary

Dated: April 8, 2015
I, Michael Bradley, Secretary of the Rice Creek Watershed District, do hereby certify that I have compared the above resolution 2015-14 with the original thereof as the same appears of record and on file with the District and find the same to be a true and correct transcript thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 8th day of April, 2015.

Michael Bradley, Secretary