RESOLUTION 2018-19

RICE CREEK WATERSHED DISTRICT
BOARD OF MANAGERS

RESOLUTION APPROVING
CITY of HUGO LOCAL WATER MANAGEMENT PLAN

Manager Nagamou offered the following Resolution and moved its adoption, seconded by Manager Walker.

WHEREAS pursuant to Minnesota Statutes §103B.231, on January 4, 2010, the Rice Creek Watershed District ("District") adopted its watershed management plan (WMP), detailing the existing physical environment, land use and development in the watershed and providing for water resource management to protect water resources, improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B, 103D and 103E;

WHEREAS on November 12, 2014, and November 9, 2016, the District amended the WMP;

WHEREAS when a watershed district has adopted its WMP, each municipality within the district must prepare a local water management plan (LWMP) meeting the requirements of Minnesota Statutes §103B.235, Minnesota Rules 8410.0160 and the WMP, and the district must approve the LWMP;

WHEREAS on October 11, 2017, the City submitted a draft LWMP, which subsequently has been reviewed and revised through communication between City and District staff and consultants, and has resulted in the proposed LWMP submitted to the District on July 2, 2018 for consideration by the District Board of Managers ("Board");

WHEREAS the Metropolitan Council received a copy of the draft LWMP and advised the District that it had no comment on the LWMP;

WHEREAS pursuant to Minnesota Statutes §103B.211, subdivision 1(a)(3), and a memorandum of understanding signed by the City and District on April 28, 2004, the City presently exercises sole regulatory authority within city boundaries with respect to stormwater management, erosion and sediment control, and floodplain and wetland alterations;

WHEREAS the City wishes to continue to exercise sole regulatory authority in these areas, which requires that the LWMP, and the City’s official controls to implement the LWMP, meet the standards for “Level 2” approval set forth under Section 8.3 of the District WMP, and that the City adopts inspection and administrative procedures to support an effective City regulatory program;
WHEREAS the LWMP states that the City intends to adopt District Rule C (Stormwater Management Plans), Rule D (Erosion and Sediment Control Plans), Rule E (Floodplain Alteration) and Rule F (Wetland Alteration) by reference, which will meet District requirements for the City to retain sole regulatory authority;

WHEREAS the LWMP states that the City wishes to act as the Local Government Unit responsible to implement the Minnesota Wetland Conservation Act;

WHEREAS the WMP, at Subsection 8.3.2, states that when the LWMP is approved, the parties will document in writing their mutual roles and responsibilities with respect to regulatory implementation;

WHEREAS the City and District have developed a memorandum of understanding (MOU) to accomplish this, however the City requests that MOU execution be deferred until it has adopted its revised ordinances and its inspection and administrative procedures;

WHEREAS the Board finds that the City LWMP meets the requirements of Minnesota Statutes §103B.235 and Minnesota Rules 8410.0160, and is consistent with, and meets the requirements of, the District WMP;

THEREFORE BE IT RESOLVED that the City of Hugo LWMP is approved;

BE IT FURTHER RESOLVED that, pursuant to Minnesota Statutes §103B.235, subdivision 4: (a) within 120 days, the City shall adopt its LWMP; and (b) within 180 days, it shall adopt official controls and inspection and administrative procedures that have been approved by the District; the controls and procedures will be in effect; and the MOU, conforming materially to the MOU draft attached to and incorporated into this Resolution, shall be executed;

BE IT FINALLY RESOLVED that if the 180-day deadline in the preceding clause is not met, the District may reassume regulatory authority under District Rules C, D, E and F within the City.

The question was on the adoption of the resolution and there were 11 yeas and 0 nays as follows:

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RCWD Resolution 2018-19, 7/25/2018
Upon vote, the Chair declared the Resolution passed.

Barbara Haake
Acting Secretary

Dated: July 25, 2018

* * * * * * * * * * *

I, Barbara Haake, Acting Secretary of the Rice Creek Watershed District, do hereby certify that I have compared the above resolution 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 hereunto set my hand this 25th day of July 2018.

Barbara Haake
Acting Secretary
MEMORANDUM OF UNDERSTANDING

Between the Rice Creek Watershed District
and the City of Hugo
for Local Water Planning and Regulation

This Memorandum of Understanding (MOU) is made by and between the Rice Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D ("District"), and the City of Hugo, a statutory city of the State of Minnesota ("City").

Recitals and Statement of Purpose

WHEREAS on April 28, 2004, the City and the District executed a memorandum of understanding for local water planning and regulation;

WHEREAS pursuant to Minnesota Statutes §103B.231, on January 4, 2010, the District adopted, and on November 9, 2016 it amended, its watershed management plan (WMP) detailing the existing physical environment, land use and development in the watershed and providing for water resource management to protect water resources, improve water quality, prevent flooding, and otherwise achieve the goals of Minnesota Statutes Chapters 103B, 103D and 103E;

WHEREAS to achieve the policies and purposes of the WMP and pursuant to Minnesota Statutes §103D.341, the District has adopted and implements rules requiring permits for and otherwise regulating land disturbance;

WHEREAS pursuant to Minnesota Statutes §103G.2242 and associated statutes and rules, the District serves as the local government unit (LGU) for implementation of the Minnesota Wetland Conservation Act (WCA) except within the boundaries of a municipality that has undertaken to fulfill the role of LGU;

WHEREAS the City has developed a local water management plan under Minnesota Statutes §103B.235, titled "Water Resource Management Plan for the City of Hugo, Minnesota" and dated [date], that describes the existing and proposed physical environment and land use within the City and sets forth an implementation plan for bringing local water management into conformance with the WMP ("Local Plan");

WHEREAS on [date], 2018, the District Board of Managers conditionally approved the Local Plan by adoption of Resolution __________, which resolution is attached and incorporated herein;

WHEREAS Minnesota Statutes §103B.211 and the WMP provide that at the City’s election and on the District’s approval of the Local Plan, the District shall cease to apply its rules within the
City boundaries, except as the District and City have agreed, and further that the District and City shall agree as to which will act as the WCA LGU;

WHEREAS pursuant to Minnesota Statutes §103B.235 and WMP subsection 8.3.2, District approval of the Local Plan requires a finding that the official controls of the City will protect water resources to a degree equivalent to that of the District rules, and further is conditioned on District approval of inspection and administrative procedures for the City’s effective implementation and enforcement of its official controls, and on mutual establishment of a framework for the District’s periodic review of the City’s regulatory program; and

WHEREAS District approval of the Local Plan is conditioned on execution of this MOU setting forth the respective roles and responsibilities of the District and the City in regulating potential water resource impacts within the City;

NOW THEREFORE the parties enter into this MOU in order to document the understanding of the parties as to the roles and responsibilities of each, and to replace the April 28, 2004 MOU.

Terms

1. The City may exercise all present and future authority it otherwise may possess to issue permits for and regulate activities affecting water resources within the City.

2. The City in its Local Plan commits to adopting ordinances materially identical to those attached hereto as Exhibit A. The District will continue to refrain from exercising regulatory authority under its Rules C (Stormwater Management Plans), D (Erosion and Sediment Control Plans), E (Floodplain Alteration) and F (Wetland Alteration) within municipal boundaries provided that within 180 days of District adoption of Resolution ________: 

   a. The District has confirmed that the City’s ordinances are adopted and in effect; and

   b. The District and City have agreed on written protocols for: (i) City inspection and administrative procedures to administer and enforce its water resource ordinances, including maintenance of those stormwater practices constructed or installed for compliance with City ordinances pursuant to this MOU and that the City owns or has assumed the obligation to maintain; (ii) City transmission of information to the District regarding changes to the City’s hydrology or conveyance systems that the District finds warranted to keep its watershed models and data systems current; and (iii) District procedures for periodic field inspection of development projects and operational audits of the City’s regulatory program implementation.

3. The City shall serve as the WCA LGU within municipal boundaries on the City’s acknowledgement to the Minnesota Board of Water and Soil Resources pursuant to Minnesota Rules 8420.0200.
4. The District shall exercise its authority under its Rules in the following circumstances:

   a. With respect to all District rules other than Rules C, D, E and F;

   b. As to work by any public body that the City does not have the legal authority to regulate;

   c. If the work requires a variance from City water resource ordinances, unless the variance is from a standard stricter than the District standard and the proposal would meet the District standard, in which case the City will notify District regulatory staff but the District will not exercise its authority;

   d. If the City, in a specific case or programmatically, requests that the District exercise its regulatory jurisdiction; or

   e. As required for the District to meet its legal obligations under its NPDES municipal stormwater (MS4) permit or any other independent law.

5. The City need not issue a permit for its own work, but shall document its review demonstrating that the work conforms to its water resource ordinances.

6. The District retains approval authority with respect to a comprehensive stormwater management plan under Rule C.5(f).

7. In issuing a permit under its stormwater management or floodplain alteration ordinance, the City shall require the drainage system repair easement set forth at Rules C.10(b) and E.4(b), as amended, to be conveyed to the District, which easement shall be subject to prior District review and approval.

8. If the District revises its Rule C, D, E or F in a manner that it considers significant and so advises the City in writing, the City shall revise its own ordinance to maintain equivalent water resource protection. If the District has not approved the City's revision within six months or such other time as the parties may agree, the District may reassert regulatory jurisdiction with respect to the affected rule.

9. The District retains all authority that it may possess under Minnesota Statutes Chapters 103B, 103D and 103E and any other provision of law, except as explicitly reposed in the City under this Agreement.

10. The District will exercise its right under Minnesota Statutes Chapter 103B to resume regulatory jurisdiction if its Board of Managers finds that the City is not implementing its Local Plan.
11. This MOU may be amended only by a writing signed by both of the parties. This MOU will expire, and the District will reassume regulatory jurisdiction under its Rules C, D, E and F, two years after the District’s adoption of its next decennial WMP revision. Notwithstanding the preceding sentence, this MOU will remain in effect until the District and City enter into a superseding MOU, and the District will not reassume regulatory jurisdiction, provided: (a) the City has adopted a Local Plan that conforms to the District’s decennial WMP revision within the time specified by Minnesota Statutes §103B.235, subdivision 1, and Minnesota Rules 8410.0160, subpart 6; (b) the City’s revised official controls are effective within 180 days of the City’s adoption of its Local Plan; and (c) the City has conformed to all conditions of the District’s Local Plan approval.

IN WITNESS WHEREOF, the parties hereto execute this MOU.

CITY OF HUGO

By ______________________________
Tom Weidt, Mayor

Date:

By ______________________________
Bryan Bear, City Administrator

Date:

RICE CREEK WATERSHED DISTRICT

By ______________________________
Patricia Preiner, President
Board of Managers

Date:

Approved as to Form & Execution

By ______________________________
Its Attorney