

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: IV. E.

From: Chad A. Millner, PE, Director of Engineering

Action

Discussion

Date: February 3, 2015

Information

Subject: Resolution No. 2015-16 Approving City of Edina and Three Rivers Park District
Nine Mile Regional Trailway Cooperative Agreement

Action Requested:

Approve Resolution No. 2015-16 authorizing Mayor and City Manager to sign attached Trailway Cooperative Agreement between City of Edina and Three Rivers Park District (TRPD) for the Nine Mile Regional Trail: Trunk Highway 169 to Xerxes Avenue.

Information / Background:

This trailway cooperative agreement supersedes the trailway cooperative agreement dated August 6, 2012, which addressed only a portion of the trail. This agreement covers the entire length of the trail within the City of Edina. The TRPD Board approved the agreement at their January board meeting.

Please recall the final alignment of the trail was approved by the City Council on July 15, 2014.

Attachments:

Resolution No. 2015-16
Trailway Cooperative Agreement

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**RESOLUTION NO. 2015-16
APPROVING
CITY OF EDINA AND THREE RIVERS PARK DISTRICT
NINE MILE REGIONAL TRAIL:
TRUNK HIGHWAY 169 TO XERXES AVENUE
TRAILWAY COOPERATIVE AGREEMENT**

WHEREAS, the City of Edina and Three Rivers Park District approved a corridor route for the Trail in 2010 and 2011, respectively and the City approved a refined final trail alignment on July 15, 2014;

WHEREAS, this agreement supersedes the Nine Mile Creek Regional Trail: Fred Richards Golf Course to Xerxes Avenue Trailway Cooperative Agreement dated August 6, 2012;

NOW, THEREFORE, BE IT RESOLVED, Mayor James B. Hovland and City Manager Scott H. Neal, are hereby authorized and directed for and on behalf of the City to execute and enter into a cooperative agreement with the Three Rivers Park District for Nine Mile Regional Trail: Trunk Highway 169 to Xerxes Avenue Trailway, a copy of which said agreement was before the City Council and which is made a part hereof by reference.

ADOPTED this 3rd day of February, 2015.

Attest:

Debra A. Mangen, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of February 3, 2015, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 20____.

City Clerk

ENGINEERING DEPARTMENT

**CITY OF EDINA
AND
THREE RIVERS PARK DISTRICT**

**NINE MILE CREEK REGIONAL TRAIL:
TRUNK HIGHWAY 169 TO XERXES AVENUE**

TRAILWAY COOPERATIVE AGREEMENT

This agreement (the "Agreement") is made and entered into this 22nd day of January 2015, 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 Edina, 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 and trail systems; and

WHEREAS, Park District promulgates master plans for the development of park facilities including trail systems; and

WHEREAS, Park District's master plans are submitted to the Metropolitan Council for approval; and

WHEREAS, Park District's First Tier Trails, Greenways, and Parks Master Plan includes Nine Mile Creek Regional Trail ("Trail") through the City of Edina; and

WHEREAS, City and Park District approved a creek-based corridor route for the Trail in December 2010 and March 2011 respectively and City approved a refined final trail alignment on July 15, 2014; and

WHEREAS, Park District prepared a specific master plan for the Trail in cooperation with the City that was approved by the Metropolitan Council on December 11, 2013; and

WHEREAS, Park District and City entered into the Nine Mile Creek Regional Trail: Fred Richards Golf Course to Xerxes Avenue Trailway Cooperative Agreement on August 6, 2012, which requires the City to construct, at Park District expense, and provide necessary property rights to Park District for a segment of the Trail along Gallagher Drive ("Gallagher Drive Trail Segment") in conjunction with the City's Gallagher Drive Improvement Project; and

WHEREAS, this agreement supersedes the Nine Mile Creek Regional Trail: Fred Richards Golf Course to Xerxes Avenue Trailway Cooperative Agreement dated August 6, 2012; and

WHEREAS, Park District and City desire to cooperate to obtain and/or transfer property rights, design, construct, reconstruct, operate and maintain a continuous and contiguous Trail corridor located in the City employing their own powers; and

WHEREAS, this agreement defines the roles and responsibilities for each party for the Trail through the City of Edina; and

WHEREAS, Park District and City desire to further cooperate to develop segments of the Trail where the City is conducting adjacent road reconstruction and the City will act as the agent for the Park District for the design, construction, and construction administration for these segments of the Trail.

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:

The terms of this agreement shall supersede the terms of Nine Mile Creek Regional Trail: Fred Richards Golf Course to Xerxes Avenue Trailway Cooperative Agreement dated August 6, 2012.

1. Property Rights.

A. Limited Use Permit:

For the segments of Trail Route within City property or rights-of-way as illustrated in the attached Exhibit A, City shall convey to Park District a Permanent Irrevocable Limited Use Permit, where it has rights to, for trail purposes attached hereto as Exhibit B – LUP (hereinafter "LUP"). Said LUP shall provide a continuous and contiguous Trail corridor, and shall be conveyed upon execution of this Agreement.

For the segments of Trail Route on private property as illustrated in the attached Exhibit A, Park District shall acquire property rights through direct purchase or eminent domain as necessary at no cost to City. City shall approve and provide a resolution of support to Park District for acquisition of property rights through direct purchase or eminent domain as necessary to provide a continuous and contiguous corridor. In the event the City acquires property rights from private parties to assist the Park District in securing a continuous and contiguous trail corridor of adequate width, the Park District will reimburse City for the amount paid for the property rights, if amount paid is first deemed reasonable by the Park District.

If City cannot acquire and convey the LUP to Park District, where it has rights to do so, within six (6) months following execution of this Agreement, the Park District shall not be obligated to proceed with any obligation under this Agreement and further this Agreement may be terminated by Park District.

In the event City's right to maintain Trail within the LUP are lost by vacation, condemnation, revocation of license or permit, or otherwise, City will acquire such additional rights, titles and interests as are needed to assure a continuous and contiguous Trail corridor of adequate width at City expense. If the loss of such right to maintain a trail within the LUP area occurs after construction of the Trail, the City shall acquire such additional right, title or interest and reconstruct the Trail, if necessary, at City expense. The City represents that it currently has the legal right and authority to construct and maintain Trail within all areas where City is providing an LUP in accordance with Exhibits A and B.

The parties recognize that certain Trail segments and road/railroad crossings may require agreements with third parties such as the Minnesota Department

of Transportation or Hennepin County. The parties shall cooperate to secure necessary permissions to use such crossings and bridges.

B. Edina Promenade

City agrees to allow the use of the Edina Promenade for regional trail purposes and in doing so shall maintain and operate the Edina Promenade in a manner that is consistent and complimentary to the entire Trail corridor. The City accepts all design, construction, operations, maintenance, funding, ownership, and liability responsibilities of the Edina Promenade and its use for regional trail purposes. The City shall consult with Park District regarding any changes to the design, operation, or maintenance of the Edina Promenade which may affect regional trail user safety or use of Edina Promenade as a regional trail. If the City is unable to fulfill these regional trail responsibilities, the City will provide a permanent limited use permit for trail purposes for the Edina Promenade Trail segment to the Park District in accordance with Paragraph 1.A. In addition, the parties agree that the Edina Promenade Trail segment will become subject to the remaining terms and conditions of this Agreement.

C. Amundson Avenue Public Works Site

City currently uses a parcel (Parcel Identification Number 053-0811621110008) on the east side of Amundson Avenue and south side of 70th Street ("Amundson Site") for public works purposes, including storage of materials and equipment. City shall include the entire parcel within the LUP granted to Park District in accordance with Paragraph 1.A. City shall remove any encroachments from adjacent properties or other impediments to construction of the Trail, at City expense, by June 1, 2015 unless otherwise negotiated with Park District. Following conveyance of the LUP and construction of the Trail, Park District shall be responsible for operation and maintenance of the Trail and any Trail-related amenities located within the parcel. In the event that portions of this parcel are used to construct non Trail-related amenities, including but not limited to storm water best management practices, City shall be responsible for the operation and long-term maintenance of said amenities.

Park District shall design and construct, at their own expense, an alternate comparable public works facility at a location that is agreed upon and approved by City. City shall provide in-kind public works resources where available and feasible to reduce construction costs of said alternative site. Park District will be responsible for preparing construction documents, obtaining required regulatory permits, and performing construction observation during construction of the facility. Prior to construction, Park District shall submit construction documents to City for approval. City shall retain full use of the Amundson Site until the alternate facility is constructed, unless otherwise negotiated with Park District. Within 14 days of satisfactory completion of the alternate facility, City shall remove all stockpiled materials and equipment from the Amundson Site and turn over full use of the site to Park District.

2. Financing.

A. Gallagher Drive Trail Segment:

The Park District Board of Commissioners approved funding in the amount of one hundred and fifty thousand dollars (\$150,000) for design and construction of the Gallagher Drive Trail Segment, as shown on Exhibit A. Park District shall reimburse City for all direct costs of design services incurred by the City to

design the trail and trail related structures and construction paid or owed to the contractor engaged by City to build the trail and trail related structures. The maximum total reimbursement for design and construction is one hundred fifty thousand dollars (\$150,000).

Reimbursement shall not be due until City has conveyed the required LUP to Park District in accordance with Paragraph 1.A of this Agreement. Park District will not reimburse City for indirect City costs incurred by City including, but not limited to, staff costs, costs of consultants and advisors, legal fees, filing fees, permit fees, or any other expense, which do not represent direct approved design or construction costs. City shall provide all records necessary for audit of costs. City shall not seek reimbursement from Park District for design and construction costs related to the non-regional trail items of the Gallagher Drive Street Improvement Project. Park District shall reimburse City within thirty (30) days following receipt of verified statement of direct design and construction expenses for all costs authorized by this Paragraph.

B. Parklawn Avenue and Tracy Avenue/Valley Lane Intersection Trail Segments:

For the Parklawn Avenue and the Tracy Avenue/Valley Lane Intersection Trail Segments as shown on Exhibit A, the Park District shall reimburse City for all direct costs of design services incurred by the City to design the Trail and trail related structures and construction paid or owed to the contractor engaged by City to build the Trail and trail related structures.

For the Parklawn Avenue Trail Segment, the maximum total reimbursement for design and construction is one hundred and seventy thousand dollars (\$170,000) or as negotiated and agreed to by the City Manager and Park District Superintendent after receipt of bids. For Tracy Avenue/Valley Lane Segment, the maximum total reimbursement for design and construction is four hundred and twenty thousand dollars (\$420,000) or as negotiated and agreed to by the City Manager and Park District Superintendent after receipt of bids.

Reimbursement shall not be due until 1) Park District approves the construction plans and specifications, 2) Trail and trail related structures are constructed in accordance with the Park District approved construction plans and specification, and 3) City has conveyed required LUP to Park District in accordance with Paragraph 1.A of this Agreement. Park District will not reimburse City for indirect City costs incurred by City including, but not limited to, staff costs, costs of consultants and advisors, legal fees, filing fees, permit fees, or any other expense, which do not represent direct approved design or construction costs except as provided herein. In the event the City uses its own forces to design and administer the construction of the Trail and trail related structures, the City may seek reimbursement for direct and reasonable staff costs if first approved by the Park District. Park District will not reimburse City for any item not related to the Trail. City shall provide all records necessary for audit of costs. Park District shall reimburse City within thirty (30) days following receipt of verified statement of direct design and construction expenses for all costs authorized by this Paragraph.

3. Design and Construction.

Design and construction of the Trail and associated structures and road crossings shall be in accordance with the Typical Trail Sections (Exhibit C) and

standards and guidelines adopted by the Park District. Park District will have final discretion over regional trail and safe crossing design and the interpretation and execution of engineering best practices.

A. Design and Construction by Park District:

The Park District will coordinate design and construction of Trail and trail related structures between Trunk Highway 169 and Xerxes Avenue as shown on Exhibit A, excluding the trail segments previously defined as the Edina Promenade, Gallagher Drive Trail Segment, Parklawn Avenue Trail Segment, and Tracy Avenue/Valley Lane Intersection Segment. 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 for the Trail. Park District shall submit all Trail plans to City for review and approval, provided however, that approval shall not be unreasonably withheld.

Park District will coordinate the relocation of utilities as necessary to construct the Trail in accordance with this Agreement. Park District shall not be responsible for utility relocation costs within City rights-of-way except for any necessary relocation of city-owned utilities. Park District shall pay for the relocation of any city-owned utilities. City shall enforce its franchise agreements with utility companies and require utility companies to relocate utilities at their own expense.

Park District shall be responsible for bidding and construction of the Trail and trail related structures except as provided in Paragraph 2 and Paragraph 4B and in accordance with approved construction plans and specifications. Construction shall commence following (1) conveyance to Park District of LUP in accordance with paragraph 1.A of this Agreement, (2) Park District and City approval of plans and specifications for the Trail, and (3) project funding approval by Park District Board of Commissioners.

B. Design and Construction by City:

City may contract with consultants to provide professional services for Trail and trail related structures, including, but not limited to design development, bidding documents, construction plans and specifications, contract document preparation, construction administration, and project closeout for the Parklawn Avenue and Tracy Avenue/Valley Lane Intersection Trail Segments. City may do no work on the Trail or trail related structures until it has submitted all Trail plans, including substantial changes, to Park District for review and has received approval from Park District. Park District will delegate authority to approve substantial changes to appropriate staff. Approvals shall not be unreasonably withheld.

City shall be responsible for bidding and construction of the Trail and trail related structures for the Parklawn Avenue and Tracy Avenue/Valley Lane Intersection Trail Segments and in accordance with the Park District approved construction plans and specifications. Bids shall segregate Trail and road redevelopment costs and shall utilize unit costs where possible.

City shall be responsible for construction administration for the Parklawn Avenue and Tracy Avenue/Valley Lane Intersection Trail Segments, including

but not limited to construction supervision. Park District may observe construction and may consult with City regarding construction issues. City shall inform the Park District of final construction and shall schedule inspection by all parties and other appropriate agencies prior to closing the construction contract. Upon correction of any concerns identified in the inspections, City shall notify Park District in writing indicating completion of the project. Upon completion, Park District shall assume Park District responsibilities under this Agreement. Park District may, at its sole discretion, withhold reimbursement for construction costs as provided by this Agreement for construction of the Trail and trail-related structures completed prior to Park District issuance of Notice to Proceed to City. Park District will issue a Notice to Proceed following Park District approval of construction plans and specifications for Trail and trail related structures and funding approval by the Park District Board of Commissioners.

If the Park District does not issue the Notice to Proceed within thirty days of the City completing the construction plans and specifications to the satisfaction of the Park District, either party may terminate this agreement and the parties hereto shall have no obligation, except that the Park District shall take such measures as may be necessary to cancel the LUP.

4. Permits and Assessments.

City shall grant the Park District all City approvals, City permits, and other official City permissions necessary to operate, maintain, construct and reconstruct Trail. 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 LUP area.

5. 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 on the LUP area, which are inconsistent with the rights and interests herein granted to Park District, but the City shall otherwise have the right to use the LUP area and to grant to others such rights.

6. Operation of Trail.

Park District and its agents and licensees shall have the sole and exclusive right and authority to operate and control the Trail and to establish rules and regulations governing its use to the extent not in conflict with ordinances of the City.

7. Trail Uses and Purposes.

Trail shall be open to the general public and be used exclusively for non-motorized outdoor recreation and commuter activities, including but not limited to 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 Americans with Disabilities Act and in accordance with Park District Policy are permitted.

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

8. Winter Use.

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

9. Maintenance of Trail.

Park District will be responsible for the renovation, replacement, repair, maintenance, and upkeep of Trail except bridges, tunnels and other structures owned by others, and as provided in Paragraphs 1.B and 10. Park District shall be solely responsible for establishing maintenance standards for Trail, which will be consistent district-wide.

City shall be responsible for maintaining lawn areas adjacent to Trail. City shall be responsible for removing vegetation from outside the LUP area which obstructs the use or safety of Trail including adjacent safety zones in accordance with Exhibit C – Typical Trail Section.

10. Signage.

The party responsible for design and construction shall be responsible to provide all trail regulatory signs as prescribed by the Minnesota Manual on Uniform Traffic Control Devices (Mn MUTCD). Park District shall be responsible for the maintenance of regulatory signs following construction.

City shall be responsible for providing and maintaining roadway crossing treatments such as pedestrian striping, road signs and/or other treatments per the original design, unless otherwise agreed upon by City and Park District, when the Trail crosses a City, County, or State roadway and where a City obligation exists.

11. 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 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 detour routes and temporary signage. City and Park District will cooperatively determine and implement a temporary detour route when feasible.

12. Law Enforcement.

The City may 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 that contravenes any ordinance, rule, or regulation of Park District with respect to the Trail or that contravenes this Agreement.

13. 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.

14. Successor and Assigns.

The Agreement shall be binding upon the parties hereto and their respective successors and assigns, provided, however, that neither Park District nor City 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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 Paragraph 13 survive termination with respect to claims that arise from actions or occurrences that occurred prior to termination.

20. Governing Laws.

This Agreement will be construed in accordance with the laws of the State of Minnesota.

21. Time is of the Essence.

Time is of the essence under this Agreement.

22. Title.

City warrants that it owns good and marketable title to property(ies) in which the City provides an LUP and that the undersigned is authorized to execute this Agreement.

23. 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 Edina | City Manager City of Edina 4801 W. 50 th Street Edina, MN 55424 |
|-------------|---|

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

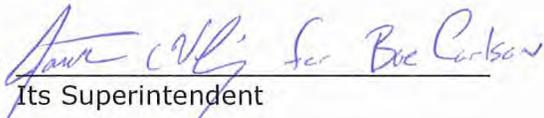
CITY OF EDINA

THREE RIVERS PARK DISTRICT

By: _____
Its Mayor

By:  _____
Its Chair - Board of Commissioners

By: _____
Its City Manager

By:  _____
Its Superintendent

**CITY OF EDINA
AND
THREE RIVERS PARK DISTRICT**

**NINE MILE CREEK REGIONAL TRAIL:
TRUNK HIGHWAY 169 TO XERXES AVENUE**

TRAILWAY COOPERATIVE AGREEMENT

LIST OF EXHIBITS

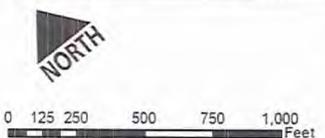
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|-----------|--|
| Exhibit A | Nine Mile Creek Regional Trail - City of Edina |
| Exhibit B | Permanent Irrevocable Limited Use Permit |
| | Exhibits B1 to BX Limited Use Permit Description and Depiction |
| Exhibit C | Typical Trail Sections |

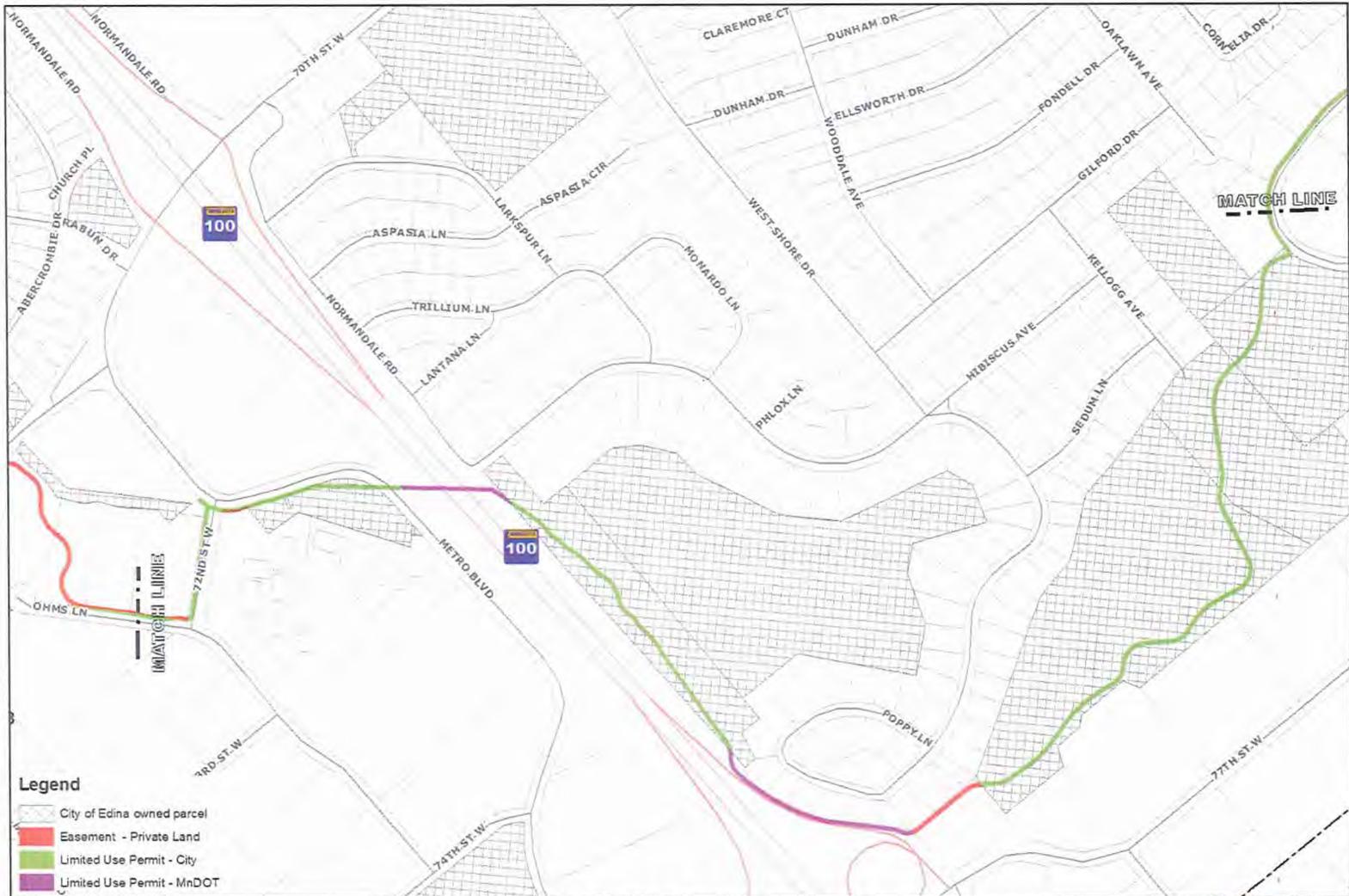


Nine Mile Creek Regional Trail
 Trunk Highway 169 to Xerxes Avenue • Trailway Cooperative Agreement
 Exhibit A-3

Department of: Design
 Created By: N Straka
 Map Created: 11/4/2014


Three Rivers
 PARK DISTRICT
This map is a compilation of data from various sources and is provided "as is" without warranty of any representation of accuracy, timeliness, or completeness. The user acknowledges and accepts the limitations of the Data, including the fact that the Data is dynamic and in a constant state of maintenance, correction, and update.





Nine Mile Creek Regional Trail

**Trunk Highway 169 to Xerxes Avenue • Trailway Cooperative Agreement
 Exhibit A-4**

Department of: Design
 Created By: N Straka
 Map Created: 11/4/2014



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Nine Mile Creek Regional Trail
 Trunk Highway 169 to Xerxes Avenue • Trailway Cooperative Agreement
 Exhibit A-5

Department of: Design
 Created By: N Straka
 Map Created: 11/4/2014

Three Rivers
 PARK DISTRICT
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**EXHIBIT B
PERMANENT IRREVOCABLE LIMITED USE PERMIT**

**NINE MILE CREEK REGIONAL TRAIL
TRUNK HIGHWAY 169 TO XERXES AVENUE**

This Permanent Irrevocable Limited Use Permit, made this _____ day of _____, 20____, by and between the City of Edina, a public corporation, ("Grantor"); and Three Rivers Park District, a political subdivision of the State of Minnesota, Hennepin County, Minnesota ("Grantee").

RECITALS

WHEREAS, Grantor and Grantee entered into the Nine Mile Creek Regional Trail: Trunk Highway 169 to Xerxes Avenue Trailway Cooperative Agreement for Nine Mile Creek Regional Trail ("trail") dated as of _____, 2015, (the "Trailway Agreement"); and

WHEREAS, pursuant to the Trailway Agreement, Grantor agreed to convey to Grantee a Permanent Irrevocable Limited Use Permit as further described herein and Grantee agreed to accept Permanent Irrevocable Limited Use Permit according to the terms and conditions contained herein; and

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

TERMS OF PERMANENT IRREVOCABLE PERMIT

- 1.) Grant of Permanent Irrevocable Permit. Grantor grants and conveys to the Grantee the Permanent Irrevocable Limited Use Permit depicted on the attached Exhibits B1 through **BX**.
- 2.) Scope of Permanent Irrevocable Permit. The Permanent Irrevocable Permit granted herein includes the right of the Grantee, its contractor, agents, and employees to locate, install, construct, reconstruct, operate, maintain, inspect, alter and repair within the described easement area any of the following facilities and amenities: public sidewalk or trail, trail signage, informational kiosks, benches, bike racks, trail bridges/tunnels, and any other trail related structure.

This Permanent Irrevocable Limited Use Permit shall be limited in width to a 20-foot wide strip of land, unless otherwise noted on Exhibits B1 through **BX**. The area included within the Permanent Irrevocable Limited Use Permit shall be centered on the trail centerline, unless otherwise noted on Exhibits B1 through **BX**. Any alteration to the current horizontal or vertical location of the trail which affects the trail center line and location of the Permanent Irrevocable Limited Use Permit must be approved by the Grantor.

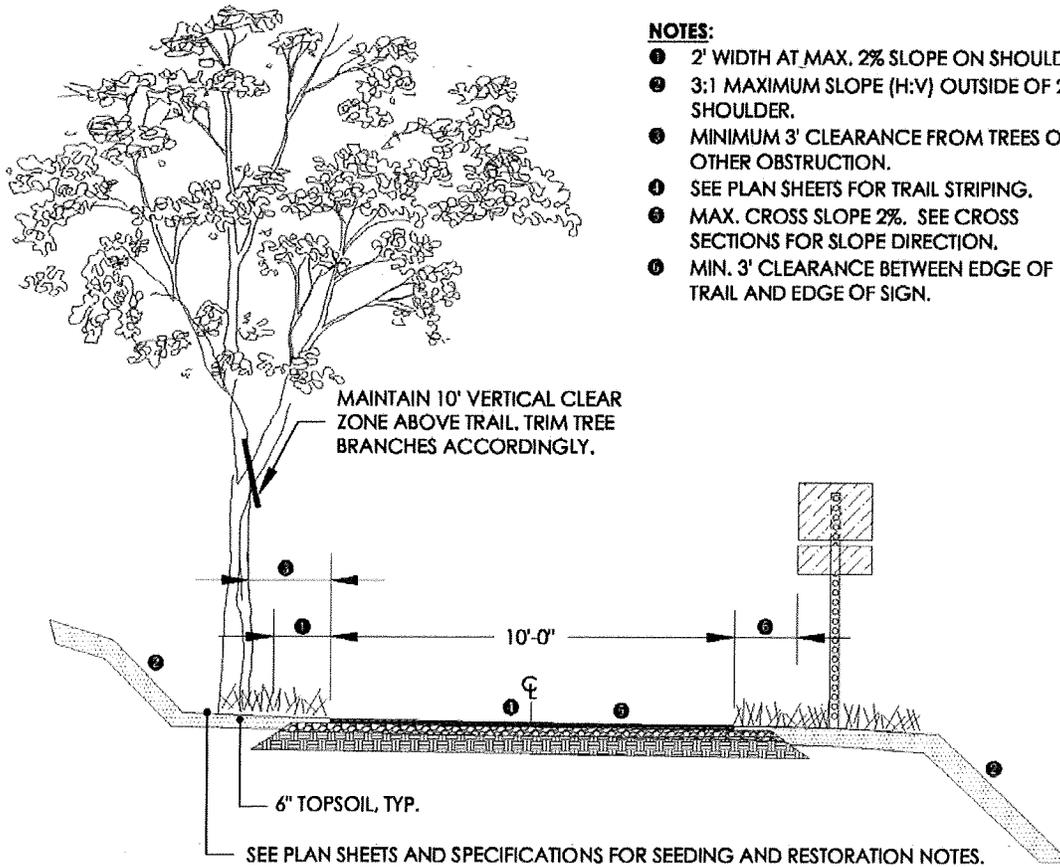
- 3.) Trail Use and Purposes. This Permanent Irrevocable Limited Use Permit is for public trailway purposes only. Trails shall be open to the general public, and be used exclusively for outdoor recreation and commuting including but not limited to walking, jogging, skating, biking, and uses allowed under State and Federal law including, but not limited

to, other personal driven mobility devices (OPDMDs) and electric personal assistive devices. In addition, motor vehicles used for maintenance, law enforcement or other public uses will be permitted within the Permanent Irrevocable Limited Use Permit area.

- 4.) Warranty of Title. The Grantor warrants it has the right to convey to the Grantee the permit herein.
- 5.) Environmental Matters. Grantor shall provide Grantee written documentation of any and all previously and/or currently present hazardous materials, pollutants, or other containments within the Permanent Irrevocable Limited Use Permit area. Grantee shall not be responsible for any costs, expenses, damages, obligations, including penalties and reasonable attorney's fees, or losses resulting from any claims, actions, suits or proceedings based upon the release or threat of release of any hazardous substances, pollutants, or contaminants which may have existed on, or which relate to, the Permanent Irrevocable Limited Use Permit area prior to the date of this instrument.
- 6.) Binding Effect. The terms and conditions of this instrument shall run with the land and be binding on the Grantor, its successors and assigns.

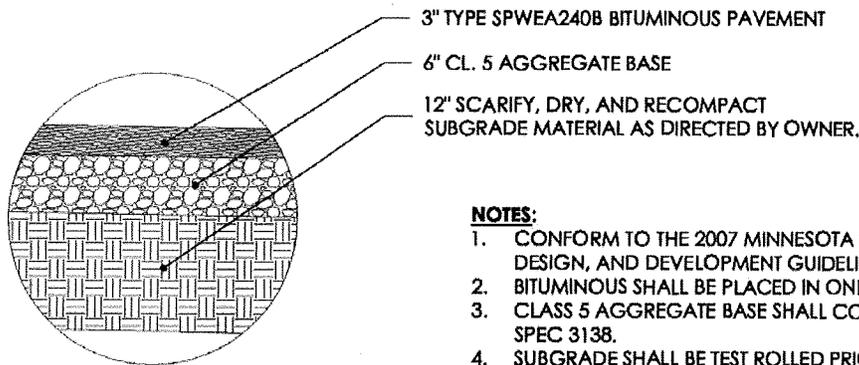
EXHIBIT B1
LIMITED USE PERMIT DESCRIPTION AND DEPICTION

PLACE HOLDER : to be inserted upon completion/creation



NOTES:

- ① 2' WIDTH AT MAX. 2% SLOPE ON SHOULDER.
- ② 3:1 MAXIMUM SLOPE (H:V) OUTSIDE OF 2' SHOULDER.
- ③ MINIMUM 3' CLEARANCE FROM TREES OR OTHER OBSTRUCTION.
- ④ SEE PLAN SHEETS FOR TRAIL STRIPING.
- ⑤ MAX. CROSS SLOPE 2%. SEE CROSS SECTIONS FOR SLOPE DIRECTION.
- ⑥ MIN. 3' CLEARANCE BETWEEN EDGE OF TRAIL AND EDGE OF SIGN.

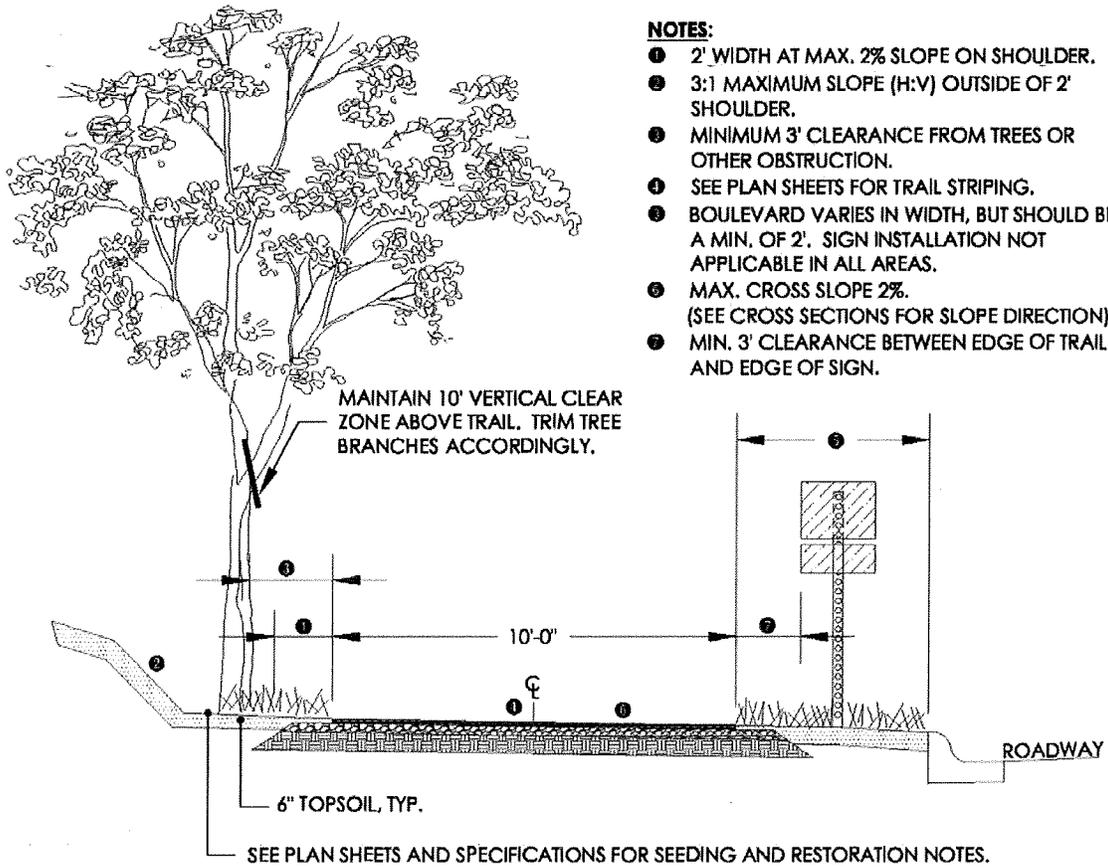


NOTES:

- 1. CONFORM TO THE 2007 MINNESOTA DNR TRAIL PLANNING, DESIGN, AND DEVELOPMENT GUIDELINES.
- 2. BITUMINOUS SHALL BE PLACED IN ONE LIFT.
- 3. CLASS 5 AGGREGATE BASE SHALL CONFORM TO MnDOT SPEC 3138.
- 4. SUBGRADE SHALL BE TEST ROLLED PRIOR TO AGGREGATE BASE INSTALLATION AND CONFORM TO MnDOT SPEC 2111.

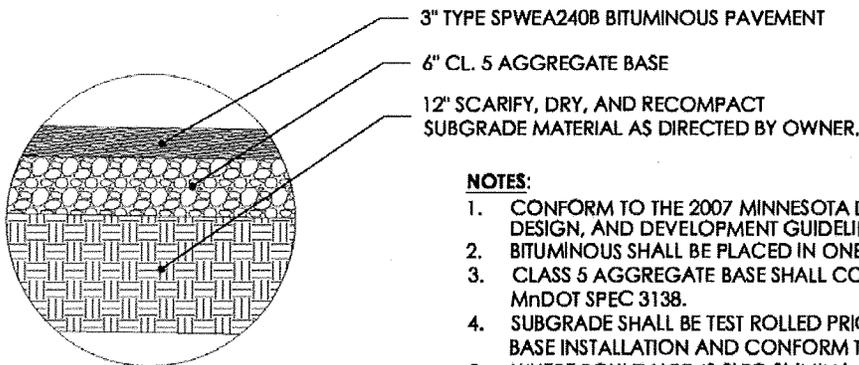
TR-1 TYPICAL TRAIL SECTION - NINE MILE CREEK REGIONAL TRAIL

NTS



NOTES:

- ❶ 2' WIDTH AT MAX. 2% SLOPE ON SHOULDER.
- ❷ 3:1 MAXIMUM SLOPE (H:V) OUTSIDE OF 2' SHOULDER.
- ❸ MINIMUM 3' CLEARANCE FROM TREES OR OTHER OBSTRUCTION.
- ❹ SEE PLAN SHEETS FOR TRAIL STRIPING.
- ❺ BOULEVARD VARIES IN WIDTH, BUT SHOULD BE A MIN. OF 2'. SIGN INSTALLATION NOT APPLICABLE IN ALL AREAS.
- ❻ MAX. CROSS SLOPE 2%. (SEE CROSS SECTIONS FOR SLOPE DIRECTION).
- ❼ MIN. 3' CLEARANCE BETWEEN EDGE OF TRAIL AND EDGE OF SIGN.



NOTES:

- 1. CONFORM TO THE 2007 MINNESOTA DNR TRAIL PLANNING, DESIGN, AND DEVELOPMENT GUIDELINES.
- 2. BITUMINOUS SHALL BE PLACED IN ONE LIFT.
- 3. CLASS 5 AGGREGATE BASE SHALL CONFORM TO MnDOT SPEC 3138.
- 4. SUBGRADE SHALL BE TEST ROLLED PRIOR TO AGGREGATE BASE INSTALLATION AND CONFORM TO MnDOT SPEC 2111.
- 5. WHERE BOULEVARD IS 2' TO 3' (MIN.), BOULEVARD SHALL BE CONSTRUCTED FROM IMPERVIOUS MATERIAL (I.G., BITUMINOUS, CONCRETE, PAVERS, ETC). SPECIAL STRIPING LAYOUT MAY APPLY, (SEE PLAN SHEETS).

TR-2 TYPICAL TRAIL SECTION - NINE MILE CREEK REGIONAL TRAIL
 ADJACENT TO CITY STREET

NTS