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MEMORANDUM OF UNDERSTANDING
Wilkinson Lake Water Quality Improvements

This Memorandum of Understanding (“**Agreement**”) is made as of this ____ day of _____, 2021, by and between the Vadnais Lake Area Water Management Organization, a Minnesota joint powers watershed management organization (“**VLAWMO**”), and North Oaks Company, LLC, a Minnesota limited liability company (“**NOC**”). VLAWMO and NOC may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The parties have jointly prepared a concept plan for a series of projects, referred to as a stormwater spine, with an overall goal of improving water quality in the nutrient-impaired Wilkinson Lake (collectively, the “**Project**”). A concept plan for the Project is attached hereto as Exhibit A.
- B. The Project is conceptually designed to be implemented on and around Wilkinson Lake, on property that is located in the City of North Oaks and **owned by NOC**, including Ramsey County PIDs 053022410003 and 043022320002 (the “**Property**”).
- C. VLAWMO was recently selected by the Minnesota Pollution Control Agency (“**MPCA**”) as a prioritized small watershed for the Section 319 Small Watersheds Focus grant funding program (the “**Section 319 Program**”), beginning in federal fiscal year 2021, and therefore anticipates being provided with grant funding to support the Project under the Section 319 Program.
- D. The Section 319 Program is a long-term program, and the Project may include one or more phases depending on grant funding and other factors that are yet to be determined. The intent of this Agreement is to address the parties’ respective goals, duties, and expectations for the Project’s first phase (hereinafter, “**Phase I**”) and beyond.
- E. The parties understand the considerable long-term benefit that the Project will produce for the community and its residents, and desire to work collaboratively throughout design and implementation so that Phase I, along with subsequent phases of the Project, can be delivered in an efficient, cost-effective manner that minimizes physical disturbance to the project area and maximizes value for the local community.
- F. To that end, the parties desire to enter into this Agreement to formally outline a framework for design and implementation of Phase I, affirm their commitments as to responsibility for tasks to be undertaken for Phase I and beyond, establish a roadmap for performing these tasks and fulfilling these responsibilities, and facilitate communication and cooperation to ensure successful improvement and long term sustainability of the water quality in Wilkinson Lake.

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AGREEMENT

In consideration of the mutual promises and agreements hereinafter set forth, and intending to be legally bound, the parties do hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated into this Agreement as if fully set forth herein.
2. **Phase I Scope; Estimated Costs.** Phase I of the Project is more fully described in the attached Exhibit B. The estimated total cost of Phase I is \$540,757.00, which includes all components (i.e. design, construction and administrative costs and based on the concept plan previously prepared by the parties).
3. **Phase I Grant Funding; Cost-Share.** Of the total Phase I cost, it is anticipated that 60% (currently estimated at \$324,454.00) will be paid for with Section 319 Program grant funding via a separate agreement that will be entered into between MPCA and VLAWMO. The additional 40% of Phase I costs (currently estimated at \$216,303.00) will be shared equally by VLAWMO and NOC. Accordingly, both parties agree to pay one-half of the Phase I costs that are not paid for with Section 319 Program grant dollars and in an amount not which shall not exceed \$108,152.00 per party. The cost allocations provided for herein, including the grant amount and the parties' 50-50 cost-share arrangement for the remaining local match, apply only to Phase I. Final cost-sharing obligations for Phase I will be determined in a subsequent agreement to be entered into by the parties at a later date, as outlined in more detail in Section 6 below. Cost allocations and requirements for subsequent phases of the Project, if any, will be determined on a case-by-case basis and separately negotiated in good faith by the parties at the time of said future phases.

The parties recognize that actual cost-share obligations for Phase I will be determined following (i) an awarded Section 319 Program grant and (ii) final design of Phase I, which shall include an updated engineer's estimate of Phase I costs. Both parties acknowledge that the anticipated cost-share obligations outlined above are based on preliminary plans, preliminary estimates, and anticipated levels of grant funding for Phase I. However, if following a grant award and the subsequent Phase I design and final estimates, the cost-sharing projections above change in a manner that would otherwise require additional monetary contributions from the parties, the parties agree to work together in good faith to determine an updated cost-sharing framework that will support Phase I feasibility.

4. **VLAWMO Responsibilities.** VLAWMO agrees to perform the following as it relates to Phase I of the Project:
 - a. Participate in the cost-sharing framework outlined above;
 - b. At least 30 days prior to the Section 319 Program grant application deadline, prepare and submit to NOC all documents necessary as part of the grant application, including,

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- but not necessarily limited to, the nine key element (NKE) document, a formal grant proposal, a workplan and budget, and any other required documents;
- c. Upon NOC review and input regarding the grant application materials pursuant to Section 5(b) of this Agreement, finalize and submit a completed Section 319 Program grant application for Phase I, which shall include all information required by the MPCA;
 - d. If a funding proposal is accepted, complete a workplan, enter into a contract, and prepare any other documents required by MPCA to ensure that grant funding is properly secured;
 - e. Serve as the fiscal agent for the grant application;
 - f. Enter into and administer a contract with a design engineering firm for the Phase I design, bidding, and construction inspection services;
 - g. Continue to participate in all project-related meetings and make its staff available to serve on the project team;
 - h. Reasonably seek and provide financial resources for the maintenance of Phase I of the Project in partnership with NOC, for the timeframe required by any grant documents unless and until this responsibility is formally transferred to a third party, i.e. a homeowners' association or other future property owner. Maintenance responsibilities are project-dependent and will be determined in detail at a later date. As part of the subsequent agreement contemplated pursuant to Section 6 of this Agreement, VLAWMO and NOC agree to work together to build a separate and detailed joint maintenance agreement for Phase I as additional design is made available. Notwithstanding the foregoing, the parties anticipate that maintenance may include, without limitation, annual evaluations, ongoing vegetation maintenance and enhancement, and planning ahead for possible, albeit unlikely, larger-scale maintenance tasks (e.g., pond dredging or infrastructure replacement in the event of failure); and
 - i. Adhere to the provisions contained in Section 6 of this Agreement regarding negotiation of a subsequent cooperative agreement with NOC regarding Phase I.
5. NOC Responsibilities. NOC agrees to perform the following as it relates to Phase I of the Project:
- a. Participate in the cost-sharing framework outlined above;
 - b. At least two weeks prior to the grant application deadline, review and provide any desired written input to VLAMO regarding the Section 319 Program grant application for Phase I, assuming timely receipt of draft materials from VLAWMO in accordance with Section 4(b) above;

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- c. Provide VLAWMO with either an easement or non-exclusive license to access those portions of the Property reasonably necessary for the design, construction and implementation of Phase I of the Project;
 - d. Provide VLAWMO, or another entity identified by VLAWMO, with a perpetual easement so that those portions of the Property reasonably necessary for long-term monitoring of Phase I may be accessed for the lifetime of the improvements. Said easement shall include the right to access all portions of the Property and perform all functions that are otherwise deemed necessary by VLAWMO, in its sole discretion, to ensure adequate maintenance;
 - e. Provide to VLAWMO any and all previous reports, surveys, data, and/or models for the project area, if and when requested by VLAWMO;
 - f. Continue to facilitate and secure easement access with the Minnesota Land Trust (MLT) to ensure feasibility of Phase I;
 - g. Continue to participate in all Project meetings and make its staff available to serve on the project team;
 - h. Collaborate with VLAWMO regarding the shared maintenance responsibilities of Phase I for the timeframe required by any grant documents unless and until this responsibility is formally transferred to a separate entity, i.e. a homeowners' association or other future property owner. Maintenance responsibilities are project-dependent and will be determined in detail at a later date. As part of the subsequent agreement contemplated pursuant to Section 6 of this Agreement, VLAWMO and NOC agree to work together to build a separate and detailed joint maintenance agreement for Phase I as additional design is made available. Notwithstanding the foregoing, the parties anticipate that maintenance may include, without limitation, annual evaluations, ongoing vegetation maintenance and enhancement, and planning ahead for possible, albeit unlikely, larger-scale maintenance tasks (e.g., pond dredging or infrastructure replacement in the event of failure); and
 - i. Adhere to the provisions contained in Section 6 of this Agreement regarding negotiation of a subsequent cooperative agreement with NOC regarding Phase I.
6. Subsequent Agreement. The parties agree that following a grant award and additional design work of Phase I by VLAWMO, a separate cooperative agreement is necessary that will address construction and contract administration of Phase I, ongoing construction inspection, payment of each parties' final cost-share obligation, and any long-term rights and maintenance responsibilities between the parties. The parties will negotiate said agreement in good faith and will seek to finalize such an agreement prior to any final

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contract award for Phase I construction and pursuant to any and all requirements of the Section 319 Program or otherwise.

7. **Right of Entry.** NOC grants to VLAWMO, its engineers, and its agents an irrevocable license to enter the Property at all reasonable times to conduct such inspections as VLAWMO determines are needed to ensure that all Phase I components contemplated or otherwise required under this Agreement are duly satisfied.
8. **Indemnification.** The parties are each responsible for their own acts under this Agreement and neither party agrees to accept liability on behalf of the other party. NOC agrees to indemnify, defend, and hold VLAWMO and its officials, employees, and agents harmless for all costs, damages, or expenses which VLAWMO may pay or incur, including attorneys' fees, in consequence of any claims arising out of or related the acts or omissions of NOC in performing its obligations under this Agreement. This duty to indemnify does not extend to any claims arising from VLAWMO's own negligence.

Likewise, VLAWMO agrees to indemnify, defend, and hold NOC and its officials, employees, and agents harmless for all costs, damages, or expenses which NOC may pay or incur, including attorneys' fees, in consequence of any claims arising out of or related the acts or omissions of VLAWMO in performing its obligations under this Agreement. This duty to indemnify does not extend to any claims arising from NOC's own negligence. Nothing in this Agreement shall be construed as a waiver of, or limitation on, any immunity from or limitation on liability available to any party under law.

9. **Term and Termination.** This Agreement shall be in effect as of the date first written above and shall terminate upon execution of a subsequent agreement as provided in the above Section 6, unless the parties otherwise agree in writing to mutually terminate this Agreement, in which case the Agreement shall immediately terminate.
10. **Future Project Phases.** The parties desire for this Agreement and the framework established for Phase I contained herein to serve as a roadmap to be followed for future Project phases and collaboration with respect to said phases. To that end, it is expressly acknowledged and understood that the parties will seek to cooperate in good faith beyond the termination of this Agreement, and will together negotiate future agreements, as may be necessary, so that future phases of the Project can be carried out in a manner consistent with the anticipated implementation of Phase I outlined herein.
11. **Miscellaneous.**
 - a. **Liaison; Notice.** The parties designate the following authorized representatives to serve as the liaison to the other party for purposes of coordination of all work involved in or related to the Project as provided in this Agreement. Any written communications

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required under this Agreement will be addressed to the other party as follows, except that any party may change its address for notice by so notifying the other party in writing:

To VLAWMO: Vadnais Lake Area Water Management Organization
Attention: _____

To NOC: North Oaks Company, LLC
Attention: _____

- b. Complete Agreement. This Agreement contains the complete agreement between the parties and supersedes any previous oral agreements, representations and negotiations between the parties regarding the subject matters of this Agreement. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument. No party shall assign an interest in this Agreement, nor shall transfer any interest in the same, without the other party's written consent. No modifications or amendments may be made to this Agreement unless in writing and signed by both parties hereto.
- c. Compliance. The parties shall abide by all applicable laws, statutes, ordinances, rules, and regulations in performing this Agreement.
- d. Headings. The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit, or affect the scope and intent of this Agreement.
- e. Waiver. Any waiver by any of the parties of a breach of any provision of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
- f. No Third-Party Rights. This Agreement is solely for the benefit of the signatories hereto. This Agreement shall not create or establish any rights in, or be construed as being for the benefit of, any third party.
- g. Applicable Law. The execution, interpretation, and performance of this Agreement will, in all respects, be controlled and governed by the laws of Minnesota. The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.

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- h. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- i. Authority to Execute. The person or persons executing this Agreement on behalf of the parties represent that he, she, or they are duly authorized to execute this Agreement on behalf of their respective entities and represent and warrant that this Agreement is a legal, valid, and binding obligation enforceable according to its terms.

[Signature page follows]

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on behalf of the parties as of the day and date first above written.

VLAWMO:

By: _____
Its Chair

And by: _____
Its Secretary

Date: _____

NOC:

By: _____

Its: _____

Date: _____

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EXHIBIT A
Concept Plan

[to be inserted]

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EXHIBIT B
Description of Phase I

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