MEMORANDUM of UNDERSTANDING
Local Water Planning and Regulation

Minnehaha Creek Watershed District and the City of Wayzata

This Memorandum of Understanding (MOU) is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (MCWD), and the City of Wayzata, a body corporate and politic and a home charter city in the State of Minnesota.

Recitals and Statement of Purpose

WHEREAS in 2007 the MCWD revised its watershed management plan (WMP) under Minnesota Statutes §103B.231, which details the existing physical environment, land use and development in the watershed and establishes a plan to regulate water resource use and management to protect water resources, improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D;

WHEREAS the WMP incorporates the Rules adopted by the MCWD to protect water resources, improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D;

WHEREAS Wayzata has developed a local water management plan under Minnesota Statutes §103B.235 that describes the existing and proposed physical environment and land use within Wayzata and sets forth a regional subwatershed based capital improvement implementation plan for bringing local water management into conformance with the WMP;

WHEREAS on June 18, 2009, the MCWD Board of Managers approved Wayzata’s local water management plan by adoption of Resolution 09-060, attached and incorporated herein and that requires, as a precondition of approval, that Wayzata and the MCWD enter into this MOU to memorialize their respective roles as to water resource protection and management within city boundaries;

WHEREAS Wayzata currently exercises sole regulatory authority within city boundaries with respect to matters now subject to regulation under MCWD Rules B
(erosion control), D (wetland protection), and N (stormwater management) and wishes to continue to exercise sole authority;

WHEREAS MCWD approval of a local plan requires a finding that municipal ordinances are at least as protective of water resources as the MCWD Rules;

WHEREAS the finding by the MCWD Board of Managers that Wayzata’s municipal ordinances meet this criterion rests on Wayzata’s commitment to adopt ordinances that are materially equivalent to MCWD Rules B (erosion control), D (wetland protection), and N (stormwater management);

NOW THEREFORE it is mutually agreed by and between the parties that they enter into this MOU in order to document the understanding of the parties as to the roles and responsibilities of each.

1.0 Responsibilities of Wayzata

1.1 Wayzata retains and may exercise all municipal authority to issue permits for and regulate activities within its boundaries that affect water resources.

1.2 Within 180 days of June 18, 2009, Wayzata will adopt an ordinance or ordinances meeting the terms of this MOU, with the written determination of MCWD staff that the ordinance(s) is or are materially equivalent to MCWD Rule B, D, or N. If this requirement is not met, the MCWD will reassert its regulatory authority under Rules B, D, and N for activities that have not received all required approvals under Wayzata’s water resource ordinances as of that date.

1.3 In accordance with Minnesota Statutes §103B.211, subdivision 1(a)(3)(ii), the MCWD must approve the granting of any variance under a Wayzata ordinance for which the MCWD has ceased to exercise regulatory authority.

1.4 Within 180 days of written MCWD notice that it has revised a rule for which Wayzata exercises sole authority pursuant to paragraph 1.2, Wayzata must revise its ordinance(s) to maintain material equivalence and obtain MCWD concurrence in the revision. MCWD will provide the City of Wayzata with Rule language as part of this notification. Alternatively, Wayzata may ask the MCWD to reassert its own regulatory authority as to that rule.
1.5 Wayzata will designate a staff member as the official point of contact for regulatory matters under this MOU. Wayzata will:

a. Maintain a log of permits issued or considered under its water resource ordinance(s), and include in the log the permit site location, the date the application was received and/or issued, and a brief description of the project. This log will be forwarded to the District annually and made available upon request.

b. Notify the MCWD of work by Wayzata subject to the ordinances governed by this MOU prior to initiation of work.

c. Include the MCWD as a recipient of any public notices as provided in the ordinances governed by this MOU for MCWD staff to review and forward comments on the project.

d. Provide available project plans and specifications to the MCWD on request.

Wayzata and the MCWD will meet by March 1st annually to review Wayzata’s regulatory activity under this MOU.

1.6 Annually, by the date specified for Wayzata’s submittal of its annual report under its NPDES municipal stormwater permit, Wayzata will submit to the MCWD a concise but specific report describing:

a. Progress on the local water management plan implementation program.

b. Progress on meeting phosphorus load reduction requirements of the WMP.

c. Any adjustments to the implementation and/or capital improvement program in the local water management plan.

d. The permit log described in paragraph 1.5, above.

e. A listing, with further specific available information as the MCWD may request, of grading and structural alterations approved or occurring within city boundaries since the last annual report (both private and public alterations) that could measurably affect hydraulic and hydrologic model outcomes.
Wayzata may incorporate its annual report into its NPDES MS4 annual report, provided it addresses the above items with specificity.

2.0 Responsibilities of the MCWD

2.1 The MCWD will continue to apply and enforce its Rules, as they may be amended from time to time, to activity within Wayzata, except as provided under paragraph 1.2, above. Specifically, but not exclusively, the MCWD will continue to apply its rules: (a) other than those regarding erosion control, wetland protection, and stormwater management; and (b) to actions by parties to whom Wayzata’s ordinances do not apply. The MCWD will continue to perform NPDES compliance monitoring pursuant to its joint powers agreement with the Minnesota Pollution Control Agency and may perform similar regulatory activities by agreement with other public bodies.

2.2 Wayzata and the MCWD will meet at least annually to review Wayzata’s regulatory activity under this MOU.

2.3 The MCWD retains all authority that it may possess under Minnesota Statutes Chapters 103B and 103D and any other provision of law, except as explicitly withdrawn under this MOU, including but not limited to authority set forth at Minnesota Statutes §§103B.211, subdivision 1(a); 103D.335 and 103D.341. The MCWD may use its authority under Minnesota Statutes §103D.335, subdivision 14, to inspect work subject to Wayzata permits whether or not the work is subject to an MCWD permit.

3.0 General

3.1 If the MCWD has reason to believe that Wayzata is not adequately implementing its regulatory program as approved, it may engage Wayzata in a review of its concerns. If the MCWD Board of Managers, after engagement with Wayzata and a public hearing, finds that Wayzata is not adequately implementing its regulatory program, it may by resolution reassert MCWD regulatory authority as to all actions that have not yet received all required approvals under Wayzata water resource ordinances. The Board may consider whether: (a) ordinances have been adopted and conform to standards approved by the MCWD; (b) ordinances have been applied as written and MCWD approval of variances has been sought per §103B.211; (c) technical expertise and
program resources as described in the local plan have been maintained; and (d) compliance has been reasonably monitored and enforced.

3.2 The MOU is effective on the date that it has been executed by both parties, will remain in effect for five years, and will be extended automatically for five-year terms unless terminated by agreement of the parties. Notwithstanding, Wayzata will continue to be subject to applicable statutes and rules requiring that it revise its local water management plan in response to MCWD revisions of the WMP.

3.3 This MOU may be amended only by a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding.

CITY OF Wayzata
By __________________________
Mayor
Date: 7/21/2009

By __________________________
City Manager
Date: 7/22/2009

MINNEHAHA CREEK WATERSHED DISTRICT
By __________________________
President, Board of Managers
Date: 8-6-09

APPROVED AS TO FORM AND EXECUTION
By __________________________
Its Attorney
RESOLUTION

RESOLUTION NUMBER: 09-060

TITLE: City of Wayzata Local Water Resources Management Plan - Approval

WHEREAS, on July 5, 2007, the MCWD adopted amendments to its comprehensive watershed management plan under Minnesota Statutes § 103B.231, which, as amended, details the existing physical environment, land use and development in the watershed and established a plan to manage water resources and regulate water resource use to improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D; and

WHEREAS, the MCWD Comprehensive Water Resources Management Plan, as amended incorporates the Rules adopted by the MCWD to protect water resources, improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D; and

WHEREAS, the City of Wayzata completed a draft Local Water Management Plan and submitted it to the MCWD for review and approval in 2009; and

WHEREAS, MCWD reviewed the draft Plan and provided detailed review comments to the City for consideration and incorporation into the Plan; and

WHEREAS, the City of Wayzata subsequently prepared and submitted final revisions for the Local Water Management Plan to MCWD which incorporated MCWD review comments; and

WHEREAS, the MCWD has determined that the final revised Plan, on occurrence of the conditions stated below, will be consistent with the MCWD Water Resources Management Plan; and

WHEREAS, the Metropolitan Council has received the Local Water Management Plan and has provided its written comments to the MCWD in a letter on January 5, 2009 and the District has fully considered the comments; and

WHEREAS the MCWD has determined that the Plan generally meets the requirements for local plan approval set forth in the MCWD’s watershed management plan; and

WHEREAS the City wishes to continue to exercise authority as the Local Government Unit for the Minnesota Wetland Conservation Act; and

WHEREAS the City presently exercises, and wishes to continue to exercise, sole regulatory authority for activities subject to MCWD Rules B, D, and N; and

WHEREAS the MCWD’s ability to approve the Plan rests on the City’s agreement to continue to enforce ordinances that implement all of the requirements in MCWD Rules B, D, and N within those parts of the City where the MCWD has jurisdiction, as well as the City’s agreement to update said ordinances within 180 days of the revision and adoption of Rules B, D, or N by MCWD;
NOW, THEREFORE, BE IT RESOLVED, that the MCWD hereby approves the City of Wayzata Local Water Management Plan, effective on the fulfillment of the following conditions:

a. MCWD and the City of Wayzata execute the Memorandum of Understanding included as Resolution 09-061 in this Packet or a substantially equivalent Memorandum within 60 days of the passage of this resolution, establishing implementation and annual reporting responsibilities between the MCWD and the City.

Resolution Number 09-060 was moved by Manager seconded by Manager.
Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: ________________.

Lee Keeley, Secretary