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MEMORANDUM

Date: November 11, 2019

To: BCWMC Commissioners

From: David T. Anderson

Re: Dominionium Redevelopment/Four Seasons Mall CIP Project

I. Background and Dominionium Proposal

In 2012, the Commission accepted and approved the feasibility report for the “Four Seasons Mall Project,” a capital improvement project designed in the area southwest of Highway 169 and Rockford Road (the former Four Seasons Mall area). The primary purpose of the water quality improvement project was to help meet the phosphorous reduction goals for Northwood Lake. The original project was designed in 2013, but due to residents’ concerns about tree removal and other components, the original plans were never implemented. In 2017, the project was nearly resurrected when a private developer, Rock Hill Management, proposed to implement similar water quality improvements in conjunction with the Agora redevelopment of the former Four Seasons Mall site. At the time, the Commission executed an agreement directly with Rock Hill Management to implement what were considered “above and beyond” water quality improvements through capital improvement fund reimbursement. Unfortunately, that redevelopment project also fell through and with it, so did the proposed water quality improvements.

Recently, Dominionium Management Services, Inc. (“Dominium”) initiated yet another redevelopment proposal at the former Four Seasons Mall site. As part of said proposal, Dominionium has indicated a willingness to construct water quality improvement elements that both exceed the Commission’s stormwater treatment requirements for the proposed redevelopment and provide at least the level of treatment that was expected to be realized by the original Four Seasons Mall Project.

Dominium’s redevelopment proposal is in the process of obtaining the required approvals from the City of Plymouth, and ultimately, if approved, Dominionium will be required to enter

into a development agreement with Plymouth before it can construct the project. Because the proposed project can be designed to include water quality components that either meet or exceed the benefits that were originally expected from the 2017 Four Seasons Mall Project, the Commission is being asked to consider whether it wishes to contract directly with Dominion for the implementation of those “above and beyond” components, including Commission reimbursement to Dominion. If implemented, ongoing maintenance of the constructed improvements would ultimately be shared by both Dominion and the City of Plymouth, as the City intends to be responsible for all maintenance related to certain wetland restoration components.

II. Project Implementation; Contracting

Historically, the Commission has implemented capital improvement projects by entering into cooperative agreements with its member cities. Through those agreements, the respective member city is made responsible for contracting for the construction of a project, and the Commission commits to providing the member city with reimbursement up to the amount previously determined by the Commission in its authorizing resolution.

The Commission’s ability to contract with private entities for the implementation of capital projects recently came into question due to some convoluted language in the Commission’s Joint Powers Agreement (“JPA”). However, upon careful review of applicable state law and the provisions in the JPA, and despite the Commission’s standard practice of having its member cities construct capital improvement projects, there is authority for the Commission to contract directly with a private developer, such as Dominion, for the implementation of capital improvements. Generally, Minnesota Statutes, section 103B.251 contains language regarding the use of levy dollars for capital improvements and provides that “[a] watershed management organization which has adopted a watershed plan... may certify for payment by the county as provided in this section all or any part of the cost of a capital improvement contained in the capital improvement program of the plan.” Additionally, Article VI of the JPA provides authority for the Commission to “cooperate or contract with the State of Minnesota or any subdivision thereof or federal agency or private or public organization to accomplish the purposes for which it is organized,” and “make contracts, incur expenses and make expenditures necessary and incidental to the effectuation of these purposes and powers and may disburse therefor in the manner hereinafter provided.” The language is certainly broad enough to authorize a cooperative agreement for capital improvements with a private developer.

III. Commission Direction; Next Steps

Based on the foregoing, the Commission should consider whether it wishes to enter into a capital improvement construction agreement with Dominion to install those elements necessary to meet the certain water quality benefits that were originally identified in the Four Seasons Mall Project. The agreement would include all of the usual components provided in its typical cooperative agreements, including, for example, formal Commission review and approval of the construction plans, inspection of the improvements by

Commission engineers, and reimbursement by the Commission with levy dollars for actual costs, up to the amount expressly approved by the Commission.

Should the Commission desire to contract with Dominion for these improvements, next steps would be to prepare and approve formal agreements with not only Dominion for construction and reimbursement of the project in conjunction with its overall redevelopment, but also with the City of Plymouth to specify ongoing maintenance. For the sake of efficiency, it likely makes sense for the maintenance agreement between the Commission and the City to not only address the City's long-term obligations with respect to the wetland restoration, but also to require that the City incorporate various maintenance components into its development agreement with Dominion, including a requirement that Dominion record an operations and maintenance plan or declaration against the Dominion property.