

**JOINT POWERS AGREEMENT BETWEEN DAKOTA COUNTY AND THE CITY ROSEMOUNT  
FOR NATURAL RESOURCE RESTORATION ON THE  
MCMENOMY NATURAL AREA EASEMENT**

The parties to this Joint Powers Agreement (Agreement) are the County of Dakota, a political subdivision of the State of Minnesota (County) and the City of Rosemount (City), a governmental and political subdivision of the State of Minnesota. This Agreement is made pursuant to the authority conferred upon the Parties by Minn. Stat. § 471.59.

**WHEREAS**, the County has acquired a Natural Area Conservation Easement over property located within the City as described in the Easement document recorded as document number 873211 and generally depicted on Exhibit 1 (the “Conservation Easement”); and

**WHEREAS**, the County has also acquired a Greenway Easement over a portion of the same property for a future Greenway trail segment, as described in the Easement document recorded as document number 873210 (the “Greenway Easement”); and

**WHEREAS**, the City is the fee owner of the Conservation Easement property, which has no direct access to or from any public road; and

**WHEREAS**, the City is also the fee owner of a parcel directly west of the Conservation Easement property (parcel no. 34-01610-15-030), which abuts Bacardi Avenue; and

**WHEREAS**, a Natural Resource Management Plan was completed for the Conservation Easement property that includes habitat management strategies, a work plan, and cost estimates; and

**WHEREAS**, the County and the City desire to facilitate ecological restoration activities within the Conservation Easement; and

**WHEREAS**, the County has available funding from its Outdoor Heritage Fund (OH) grant and grant-match to contribute toward partial restoration of the Conservation Easement property in an amount not to exceed \$490,000, and staff time for project management; and

**WHEREAS**, the OH grant funds can only be used for restoration activities through May 12, 2028; and

**WHEREAS**, the City intends to consider contributing funds toward additional restoration activities within the Conservation Easement in future budget cycles; and

**WHEREAS**, the Parties desire to begin restoration activities now, to take advantage of the County’s available OH grant funding; and

**WHEREAS**, to facilitate the initial restoration activities, the City will provide the County with a temporary access easement over its property to the west of the Conservation Easement property, subject to approval of the Department of Natural Resources, which holds a separate conservation easement over the adjacent City property.

**NOW, THEREFORE**, in consideration of the mutual promises and benefits that the County and the City shall derive from this Agreement, the Parties hereby enter into this Agreement for the purposes stated herein.

## **ARTICLE 1**

### **Purpose**

The purpose of this Agreement is to provide cooperation and funding by the County, and to define the responsibilities and obligations of the County and City for cost contribution, project management, and access to the Conservation Easement property.

## **ARTICLE 2**

### **Term**

This Agreement shall be effective on the date of the signature of the last party to sign this Agreement (Effective Date) and expires on December 31, 2028, or upon completion by the Parties of their respective obligations under this Agreement, whichever occurs first, unless amended in writing or earlier terminated by law or according to the provisions of this Agreement.

## **ARTICLE 3**

### **Cooperation**

The Parties agree to cooperate and use their reasonable efforts to ensure prompt implementation of the various provisions of this Agreement and to, in good faith, undertake resolution of any disputes in an equitable and timely manner.

## **ARTICLE 4**

### **County's Obligation**

- 4.1 Project Management. The County or its agents or contractors shall provide restoration activities for the areas within the Conservation Easement designated as McM001, McM002 and McM003 shown on Exhibit 1 (the "Project Area"). Individual restoration activities will be selected according to the County's restoration priorities, but all such activities will be performed consistent with the Natural Resources Management Plan developed for the Conservation Easement property (the "NRMP"), a copy of which is on file with the County. The County will lead the restoration activities and shall be responsible for soliciting proposals and awarding contracts for the activities. The County will provide and be responsible for delivery, management, and inspection of the work, assuring it complies with the NRMP.

- 4.2 County Maximum Financial Contribution. The County's financial obligation for the costs of the restoration activities shall not exceed \$490,000.00 (the "County Maximum Contribution"). Nothing in this Agreement shall require the County to undertake or complete any restoration activities that may exceed the County's Maximum Contribution.

## **ARTICLE 5**

### **City's Obligations**

- 5.1 License for Restoration Activities. The City, by way of this Agreement, grants a license for the County and its employees, agents and contractors to conduct the restoration activities provided for in this Agreement within the areas designated as McM001, McM002 and McM003 on Exhibit 1. The City will assist the County by designating appropriate locations within the Conservation Easement property for staging activities and any necessary equipment or materials storage relating to the restoration activities.
- 5.2 Temporary Access Easement. The City will provide the County with a temporary easement over its adjacent property (parcel no. 34-01610-15-030) for the County and its employees, agents and contractors to access the Conservation Easement property for the restoration activities. The City's obligation to provide a temporary easement is subject to the approval of the Department of Natural Resources. If the City is unable to provide suitable access to the Conservation Easement property for the restoration activities, either Party may terminate this Agreement immediately in the same manner as provided under section 9.2.
- 5.3 City Funding for Additional Restoration. The City will consider, but is not obligated to provide funding for additional restoration activities for the remaining areas shown on Exhibit 1, commencing in 2027. If the City approves funding for such additional restoration activities, the Parties will amend this Agreement to identify a City financial contribution and for additional restoration activities to be completed by the County or its contractor. The County will thereafter administer the additional restoration activities pursuant to this Agreement, as amended.
- 5.4 Acknowledgment. The City shall appropriately acknowledge the assistance provided by the County and the Outdoor Heritage Fund in its promotional materials, signage, publications, notices, and presentations concerning the restoration activities on its property pursuant to this Agreement.

## **ARTICLE 6**

### **Maintenance**

- 6.1 County Responsibility for Maintenance of Native Vegetation. Following completion of the restoration activities, the County will be responsible for ongoing maintenance to retain the integrity of the native plantings within the Greenway Easement, generally depicted as areas McMenomy GRNWY 1, McMenomy GRNWY 2 and Wolfson GRNWY 1 on Exhibit 1. The County's maintenance

obligations shall generally conform to the maintenance tasks identified on Exhibit 2 and shall be performed according to a maintenance schedule to be determined by the County. Notwithstanding the foregoing, the County's maintenance obligations shall be contingent on the City providing suitable access to the Greenway Easement for maintenance activities, until such time as public access is available.

- 6.2 City Responsibility for Maintenance of Native Vegetation. Following completion of the restoration activities, the City will be responsible for ongoing maintenance to retain the integrity of the native plantings within the restored areas of the Conservation Easement outside of the Greenway Easement areas for which the County is responsible under section 6.1. The City's maintenance obligations shall generally conform to the maintenance tasks identified on Exhibit 2 and shall be performed according to a maintenance schedule to be determined by the City.
- 6.3 Supplemental Maintenance Agreement. Following expiration of this Agreement, the Parties anticipate entering into a separate maintenance agreement to further define the roles of the Parties relating to maintaining restored areas within the Conservation Easement property. For the convenience of the Parties, the agreement may but is not required to designate one of the Parties to perform all such maintenance on the property, with an annual cost contribution provided by the other Party. The ongoing maintenance activities shall generally be consistent with the activities listed in Exhibit 2.

## **ARTICLE 7**

### **Indemnification**

Each Party to this Agreement shall be liable for the acts of their own officers, agents, volunteers, or employees and results thereof to the extent authorized by law and shall not be responsible for the acts of the other Party, its officers, agents, volunteers, or employees. The Parties mutually agree to indemnify and hold harmless each other from any claims, losses, costs, expenses, or damages resulting from the acts or omissions of the respective offices, agents, or employees related to activities conducted by either Party under this Agreement. It is understood and agreed that the provisions of the Minn. Stat. § 471.59, the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws govern liability arising from the Parties' acts or omissions. Each Party warrants that they are able to comply with this section through an insurance or self-insurance program and that each has minimum coverage consistent with the liability limits contained in Minn. Stat. Ch. 466. Nothing in this Agreement shall be construed to allow a claimant to obtain separate judgments or separate liability caps from the individual Parties. The provisions of this Article 7 shall survive the expiration or termination of this Agreement.

## **ARTICLE 8**

### **AUTHORIZED REPRESENTATIVES AND LIAISONS**

- 8.1 Authorized Representatives. The following named persons are designated the Authorized Representatives of the Parties for purposes of this Agreement. The Authorized Representative, or their successor, has authority to bind the Party they represent to the extent such authority has been granted by the Party's governing

body. The Parties shall promptly provide Notice to each other when an Authorized Representative's successor is appointed.

All notice shall be provided to the following named persons and addresses unless otherwise stated in this Agreement, or in a modification of this Agreement:

**To the County:**

Georg Fischer, Director  
Physical Development Division  
14955 Galaxie Avenue  
Apple Valley, MN 55124

**To the City:**

- 8.2 Liaisons. To assist the Parties in the day-to-day performance of this Agreement and to ensure compliance and provide ongoing consultation, a liaison shall be designated by the County and the City. The Parties shall promptly provide Notice to each other when a Liaison's successor is appointed. At the time of execution of this Agreement, the following persons are the designated liaisons:

**County Liaison:**

**City Liaison:**

**ARTICLE 9  
TERMINATION**

- 9.1 Termination for Cause. This Agreement may be terminated for cause following a material breach of the Agreement by a Party by providing thirty (30) days written notice of termination. Such notice of termination shall not be effective unless the non-breaching Party has provided the other Party with notice of material breach and a reasonable opportunity to cure.
- 9.2 Non-Appropriation of Funds. Notwithstanding any provision of this Agreement to the contrary, either Party may terminate this Agreement immediately in the event the terminating Party determines that sufficient funds from City, County, State, or Federal sources are not appropriated at a level sufficient to allow for the performance of this Agreement. Such notice of termination shall not affect the Parties' obligation for payment of or reimbursement for costs (if any) incurred pursuant to this Agreement prior to the notification.

**ARTICLE 10  
GENERAL PROVISIONS**

- 10.1 Cooperation. The Parties agree to cooperate in the use of resources to complete the restoration activities as identified in this Agreement, to the extent feasible and to the extent permitted by law. The Parties further agree to cooperate in the administration of contracts and completion of the restoration activities, including cooperating in resolving any disputes the Parties may have with the contractor(s) both during and following completion of the activities.

- 10.2 Amendments. No amendments or variations of the terms and conditions of this Agreement shall be valid unless in writing and signed by the Parties' authorized representatives. The Authorized Representatives may extend term of this Agreement in order to complete the restoration activities authorized in this Agreement and make other non-material alterations, amendments, variations, modifications, or waivers to this Agreement without first obtaining authorization from their respective governing bodies, provided that the Parties' Authorized Representatives determine that such modifications do not significantly impact their respective budget for that Party's obligations under this Agreement. Material changes shall require approval by the Parties' governing bodies and include but are not limited to the addition or removal of any areas designated for restoration activities and any other obligations that, in the view of an individual Party, significantly impact that Party's budget.
- 10.3 No Joint Venture. It is agreed that nothing in this Agreement is intended or should be construed as creating the relationship of agents, partners, joint ventures, or associates between the Parties or as constituting the County or the City as the employee of the other entity for any purpose or in any manner whatsoever.
- 10.4 Data Practices. The Parties agree that any information and data received from the other Party during the term of this Agreement shall be treated and maintained in accordance with all applicable federal, state, and local laws, rules and regulations governing same, including but not limited to the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
- 10.5 Notices. Any notices required or permitted to be given under this Agreement shall be delivered personally or sent by U.S. mail to the other Party's Authorized Representative. Mailed notice shall be deemed complete two business days after the date of mailing.
- 10.6 Audit. To the extent applicable as to any disbursement of public funds between the Parties for services provided under this Agreement, the Parties shall maintain complete and accurate records with respect to costs incurred and services performed under this Agreement for a period of at least six (6) years after the termination of this Agreement. Pursuant to Minn. Stat. § 16C.05, Subd. 5, each Party shall allow the other Party, the State Auditor, or their authorized representatives access to the books, records, documents, and accounting procedures and practices relevant to the subject matter of the Agreement, for purposes of audit.
- 10.7 Minnesota Law to Govern. The laws of Minnesota govern all matters related to this Agreement, without giving effect to the principles of conflict of law. Venue and jurisdiction for any litigation related to this Agreement must be in those courts located within the County of Dakota, State of Minnesota or U.S. District Court, District of Minnesota.
- 10.8 Survival. The provisions of this Agreement which, by their terms, impose

obligations that are continuing in nature and which must survive in order to give effect to their meaning will survive the expiration or termination of this Agreement, including but not limited to: Article 7 (Indemnification); Section 10.6 (Audit); and Section 10.7 (Minnesota Law to Govern).

- 10.9 Waiver. If either of the Parties fails to enforce any provision of this Agreement, that failure shall not result in a waiver of the right to enforce the same or another provision of this Agreement.
- 10.10 Severability. In the event that any portion of this Agreement shall be held to be invalid, such invalidity shall not affect the validity of the remainder of this Agreement.
- 10.11 Authority. The person or persons executing this Joint Powers Agreement on behalf of the City and the County represent that they are duly authorized to execute this Joint Powers Agreement on behalf of the respective Parties and represent and warrant that this Joint Powers Agreement is a legal, valid and binding obligation and is enforceable in accordance with its terms.
- 10.12 Electronic Signatures. Each Party agrees the electronic signatures of the Parties included in this Contract are intended to authenticate this writing and to have the same force and effect as wet ink signatures.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the date(s) indicated below.

**DAKOTA COUNTY**

By: \_\_\_\_\_  
Georg T. Fischer, Director  
Physical Development Division

Date of signature: \_\_\_\_\_

County Board Res. No. \_\_\_\_\_

**CITY OF ROSEMOUNT**

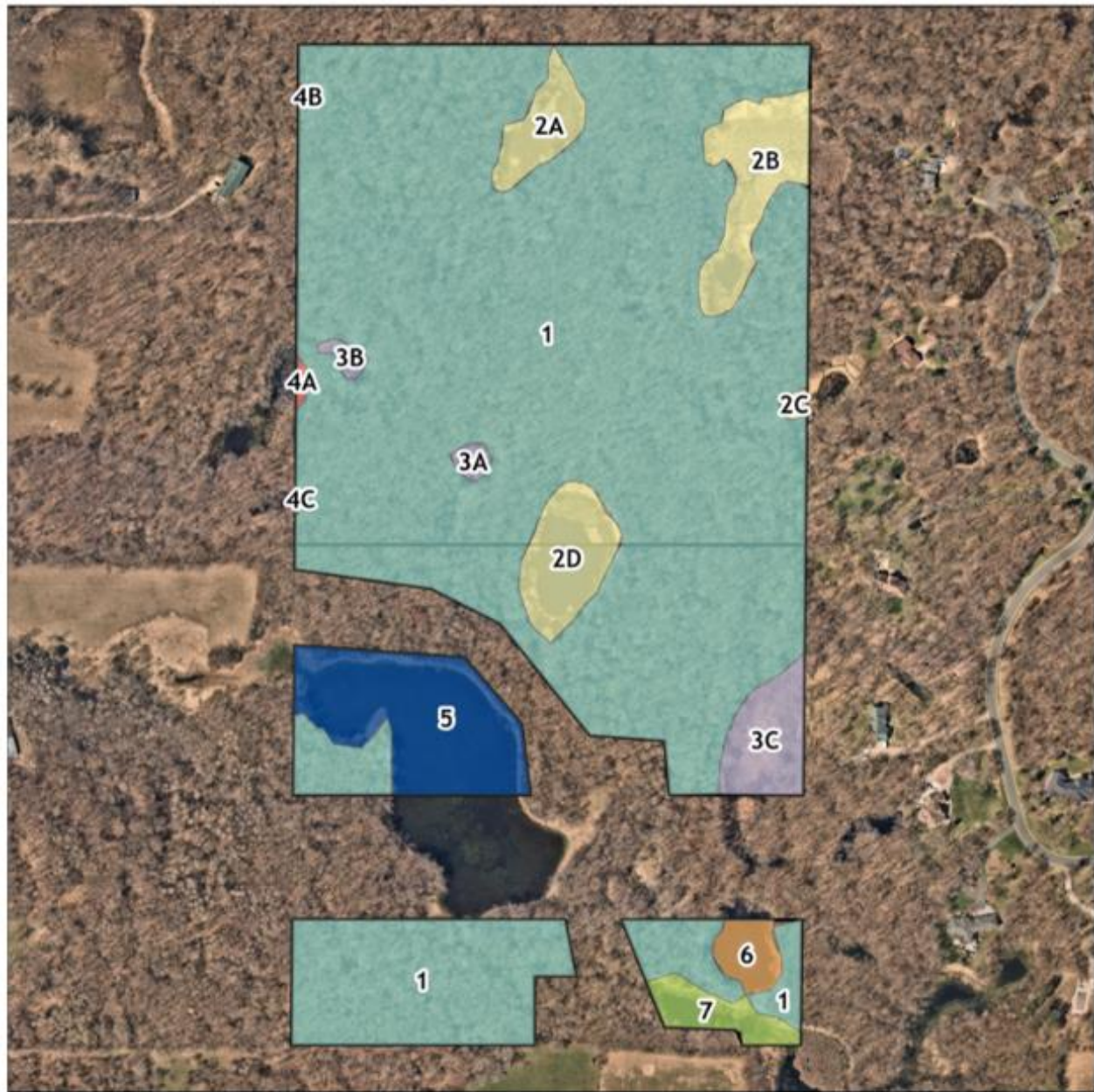
By: \_\_\_\_\_  
Jeff Weisensel, Mayor

Date of signature: \_\_\_\_\_

By: \_\_\_\_\_  
Erin Fasbender, City Clerk

## Exhibit 1

### McMenomy Natural Area Management Units and Recommended Plant Communities Map

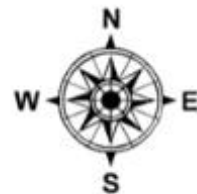


#### Legend

Management Unit Number

1	5
2	6
3	7
4	

0 200 400 600 800 1,000 Feet  
Scale: 1:4,000





# McMenomy and Wolfson Restoration Units



## **EXHIBIT 2**

### **MAINTENANCE**

Following completion of the Project specified in the Agreement, parties agree that maintenance responsibilities for areas specified in the map of the Exhibit 1 will be divided as follows:

- Dakota County will maintain at the County's expense the native vegetation within the Greenway Easement, which is generally a 200 ft-wide Corridor shown as areas McMenemy GRNWX 1, McMenemy GRNWX 2 and Wolfson GRNWX 1 on Exhibit 1
- The City of Rosemount will maintain at the City's expense the native vegetation established as part of the restoration project outside the County's Greenway Easement.

Recommended effective methods for the management of naturalized native planting areas include the following:

- Prescribed burning of prairies, oak savannas, oak woodlands and oak forests
- Cutting/mechanical removal of woody vegetation listed in Table 1, with herbicide stump application of exotic woody species
- Mowing of exotic herbaceous vegetation to prevent seed production listed in Table 2
- Cutting or pulling of biennial or annual herbaceous vegetation listed in Table 2, and
- Herbicide application for exotic perennial herbaceous vegetation listed in Table 2.

**Table 1 - List of Woody Species Designated for Removal**

<b>SCIENTIFIC NAME</b>	<b>COMMON NAME</b>	<b>DISPOSITION</b>
<i>Acer ginnala</i>	Amur maple	Remove all
<i>Acer platanoides</i>	Norway maple	Remove all
<i>Acer negundo</i>	Boxelder	Reduce in control areas*
<i>Acer saccharinum</i>	Silver maple	Reduce in control areas*
<i>Ailanthus altissima</i>	Tree-of-heaven	Remove all
<i>Berberis thunbergii</i>	Japanese barberry	Remove all
<i>Caragana arborescens</i>	Siberian peashrub	Remove all
<i>Celastrus orbiculatus</i>	Oriental bittersweet	Remove all
<i>Eleagnus angustifolia</i>	Russian olive	Remove all
<i>Eleagnus umbellata</i>	Autumn olive	Remove all
<i>Euonymus alatus</i>	Winged euonymus	Remove all
<i>Frangula alnus</i>	Glossy buckthorn	Remove all
<i>Fraxinus pennsylvanica</i>	Green ash	Reduce in control areas*
<i>Juglans nigra</i>	Black walnut	Reduce in control areas*
<i>Lonicera x bella</i>	Showy fly honeysuckle	Remove all
<i>Lonicera morrowii</i>	Morrow's honeysuckle	Remove all
<i>Lonicera tatarica</i>	Tartarian honeysuckle	Remove all

<i>Lonicera xylosteum</i>	European fly honeysuckle	Remove all
<i>Morus alba</i>	White mulberry	Remove all
<i>Populus alba</i>	White poplar, European poplar	Remove all
<i>Populus deltoides</i>	Cottonwood	Reduce in control areas*
<i>Rhamnus cathartica</i>	Common buckthorn	Remove all
<i>Rhus</i> spp.	Sumac	Reduce in control areas*
<i>Ribes</i> spp.	Gooseberry/currant	Reduce in control areas*
<i>Rubus</i> spp.	Raspberry/blackberry	Reduce in control areas*
<i>Robinia pseudoacacia</i>	Black locust	Remove all
<i>Rosa multiflora</i>	Multiflora rose	Remove all
<i>Sorbus aucuparia</i>	European mountain-ash	Remove all
<i>Ulmus americana</i>	American elm	Reduce in control areas*
<i>Ulmus pumila</i>	Siberian elm	Remove all
<i>Zanthoxylum americanum</i>	Prickly ash	Reduce in control areas*

\* Control areas include but are not limited to prairies, native plant demonstration areas, storm-water best management practices, and areas where woody succession should be minimized and/or managed for target plant communities as specified in the River to River Greenway Natural Resource Management Plan. These species should be controlled, but not eradicated.

**Table 2 - Herbaceous Exotic Species List**

SCIENTIFIC NAME	COMMON NAME	GROWTH HABIT	DISPOSITION
<i>Alliaria petiolata</i>	Garlic mustard	biennial	Control aggressively
<i>Arctium minus</i>	Common burdock	biennial	Control aggressively
<i>Bromus inermis</i>	Smooth brome grass	perennial	Control aggressively
<i>Cardamine impatiens</i>	Narrowleaf bittercress	biennial	Control aggressively
<i>Carduus acanthoides</i>	Plumeless thistle	biennial	Control aggressively
<i>Carduus nutans</i>	Musk thistle	biennial	Control
<i>Centaurea stoebe</i> ssp. <i>micranthos</i>	Spotted knapweed	biennial	Control aggressively
<i>Cirsium arvense</i>	Canada thistle	perennial	Control aggressively
<i>Cirsium vulgare</i>	Bull thistle	biennial	Control
<i>Dactylis glomerata</i>	Orchard grass	perennial	Monitor. Control if necessary.
<i>Daucus carota</i>	Queen Anne's lace	biennial	Control
<i>Echinochloa muricata</i>	Barnyard grass	annual	Control
<i>Elytrigia repens</i>	Quack grass	perennial	Monitor. Control if necessary.
<i>Euphorbia esula</i>	Leafy spurge	perennial	Control aggressively
<i>Fallopia japonica</i>	Japanese knotweed	perennial	Control aggressively
<i>Hesperis matronalis</i>	Dame's rocket	biennial	Control aggressively
<i>Linaria vulgaris</i>	Common toadflax (Butter & eggs)	perennial	Control aggressively

<i>Lotus corniculatus</i>	Birds foot trefoil	perennial	Control
<i>Lythrum salicaria</i>	Purple loosestrife	perennial	Control aggressively
<i>Medicago sativa</i>	Alfalfa	perennial	Control
<i>Melilotus alba</i>	White sweet clover	annual/biennial	Control
<i>Melilotus officinalis</i>	Yellow sweet clover	annual/biennial	Control
<i>Pastinaca sativa</i>	Wild parsnip	biennial	Eradicate
<i>Phalaris arundinacea</i>	Reed canary grass	perennial	Control aggressively
<i>Phleum pratense</i>	Timothy	perennial	Monitor. Control if necessary.
<i>Phragmites australis</i> ssp. <i>australis</i>	Common Reed Grass, non-native subspecies	perennial	Eradicate
<i>Poa pratensis</i>	Kentucky bluegrass	perennial	Control
<i>Rumex crispus</i>	Curly dock	perennial	Control
<i>Saponaria officinalis</i>	Soapwort (Bouncing Bet)	perennial	Control aggressively
<i>Securigera varia</i>	Crown vetch	perennial	Control aggressively
<i>Setaria</i> spp.	Foxtail grasses	annual	Monitor. Control if necessary.
<i>Solanum dulcamara</i>	Bittersweet nightshade	perennial	Control aggressively
<i>Tanacetum vulgare</i>	Common tansy	perennial	Eradicate
<i>Torilis japonica</i>	Japanese hedge parsley	biennial	Eradicate
<i>Trifolium pratense</i>	Red clover	perennial	Control
<i>Trifolium repens</i>	White clover	perennial	Monitor. Control if necessary.
<i>Verbascum thapsus</i>	Mullein	biennial	Control

This list may not be comprehensive. If more exotic invasive species are found on the site, effort will be made to control them. Some of these species should be controlled more aggressively than others, as indicated in each plant's disposition.