

**PRELIMINARY COOPERATIVE AGREEMENT REGARDING
BCWMC BRYN MAWR MEADOWS WATER QUALITY
IMPROVEMENT PROJECT IMPLEMENTATION**

This Preliminary Cooperative Agreement (this “Agreement”) is made this ___ day of _____, 2021, by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (the “Commission”), the Minneapolis Park and Recreation Board, a body corporate and politic under the laws of Minnesota (the “Park Board”), and the City of Minneapolis, a Minnesota municipal corporation (the “City”). The Commission, the Park Board, and the City may be referred to herein collectively as the “Parties.”

RECITALS

- A. On September 17, 2015, the Commission adopted the Bassett Creek Watershed Management Commission Watershed Management Plan (the “Commission Plan”), a watershed management plan within the meaning of Minnesota Statutes, section 103B.231.
- B. The Commission Plan incorporates the Commission’s 10-year capital improvement program, which includes the Bryn Mawr Meadows Water Quality Improvement Project BC-5 (the “Water Quality Improvement Project”).
- C. The Water Quality Improvement Project will treat stormwater runoff from residential areas in the city that currently flow untreated into Bassett Creek. The Water Quality Improvement Project’s elements will include the construction of two new stormwater ponds, storm sewer pipes, and associated appurtenances to be located within Bryn Mawr Meadows Park (“Bryn Mawr Park”), along with the construction of flow diversions and storm sewer work within City right-of-way. Together, the Water Quality Improvement Project components are estimated to reduce phosphorus by 30 pounds per year.
- D. On September 19, 2019, following a duly noticed public hearing, the Water Quality Improvement Project was ordered by the Commission in accordance with all requirements contained in Minnesota Statutes, sections 103B.205-.255 (the “Act”) with an estimated cost of approximately \$904,900.00.
- E. On February 6, 2019, the Park Board adopted its comprehensive North Service Area Master Plan (the “NSAMP”). The NSAMP guides capital improvements and other improvements for Park Board facilities in North Minneapolis west of the Mississippi River and north of I-394. Included within the NSAMP is a significant reconstruction and revitalization project of Bryn Mawr Park, which the Park Board intends to design in 2021 and construct in 2022 (the “Park Project”). The Park Board took into account the opportunity to improve and protect downstream water resources, including Bassett Creek, designed the Park Project to incorporate a major stormwater facility within Bryn Mawr Park, and envisions said stormwater facility as a high-quality habitat area that will provide benefit to park users.
- F. On September 2, 2020, the Park Board adopted its Ecological System Plan, which is a vision for improving the environmental performance of its parks and, as an extension, of the city as

a whole. Goal A of that document (Improve Water Quality) includes specific strategies and recommendations that support the inclusion of this stormwater-management facility at Bryn Mawr Park. Most notable are Recommendation 2.1 (“Continue to work with community partners and agencies, including watershed districts and the City of Minneapolis...to better address and manage the collective impacts of polluted stormwater runoff”) and Recommendation 2.2 (“Implement regional stormwater facilities and BMPs in parks, in partnership with the City of Minneapolis and watershed districts, only where envisioned in park master plans”).

- G. The Parties determined it will be most efficient for the Water Quality Improvement Project to be designed simultaneously with the Park Project and, to the greatest extent practicable, integrated with the Park Project design so that a substantial portion can be competitively bid and constructed by the Park Board as part of the Park Project with the remaining components constructed concurrently by the City.
- H. The Parties understand the considerable long-term benefit that the Water Quality Improvement Project will produce for the community and its residents, and desire to work collaboratively throughout design and implementation so that the Water Quality Improvement Project can be delivered in an efficient, cost-effective manner that minimizes physical disturbance to the project area and maximizes value for taxpayers.
- I. The Parties desire to enter into this Agreement to formally outline the terms and conditions for implementation of the Water Quality Improvement Project, document their understanding as to the scope of the Water Quality Improvement Project, affirm their commitments as to responsibility for tasks to be undertaken, grant and assign the rights necessary, establish a roadmap and other procedures for performing these tasks and fulfilling these responsibilities, and facilitate communication and cooperation to ensure successful improvement of local water quality.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated into and made a part of this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Project Funding; Subsequent Agreements.
 - A. *Funding.* The Commission will be responsible for all costs for the Water Quality Improvement Project, not to exceed a not-to-exceed figure approved by the Commission and based on available capital improvement project funding and other available funding sources.
 - B. *Subsequent Agreements.* Traditionally, the Commission’s practice for implementing capital improvement projects is to enter into an agreement with another public body, e.g. one of its member cities, through which (i) the public body is responsible for letting a contract, administering project construction, and

ensuring long-term project maintenance; and (ii) the Commission is responsible for reimbursing the public body for actual project costs up to a certain not-to-exceed amount based on estimated costs and available funding. For the Water Quality Improvement Project, given that there are both Park Elements and City Elements, as those terms are defined in section 2 below, the Parties agree that following 90 percent design of the Water Quality Improvement Project and subsequent approval of the plans by the Parties in accordance herewith, the Commission will enter into two separate cooperative agreements, one with the Park Board that will address construction of the Park Elements by the Park Board and subsequent reimbursement by the Commission, and another with the City that will address construction of the City Elements by the City and subsequent reimbursement by the Commission. At the time of the 30 percent Plans (“Concept Design”), the Commission, Park Board, and the City agree to work in good faith to determine and delegate commitments for ongoing operations and maintenance of the Water Quality Improvement Project elements in accordance with standards recommended by the Commission engineer and section 4 of this Agreement. The subsequent agreements required herein shall be developed in accordance with said maintenance requirements, including easement rights, as needed, to ensure proper long-term functionality of the Water Quality Improvement Project elements. Said maintenance standards will need to be developed in conjunction with and after installation so that they are informed by what is ultimately constructed.

2. Project Design and Construction.

A. *Design.* Plans and specifications for the Water Quality Improvement Project (the “Plans”) will be designed by the Commission engineer in close collaboration with the Park Board and the team designing the Park Project on behalf of the Park Board, as well as with the City and its public works department. The Commission engineer will work collaboratively with designated representatives from both the Park Board and the City throughout the design phase to ensure that input from those parties is received and considered throughout the process. Design plans, status, and engineering cost estimates will be shared throughout the design phase whenever reasonably requested to allow for Park Board and City collaboration. The Park Board and the City understand and acknowledge that during the design phase, the Commission engineer may need to access property or right-of-way that is owned or maintained by the Park Board and the City. Accordingly, the Park Board and the City grant such access to the extent reasonably required by the Commission engineer to complete the Plans, and further agree to cooperate with the Commission engineer in such efforts. It is further understood that the Plans will also include an exhibit delineating the access, construction and maintenance areas in the project area for purposes of the Park Board’s and the City’s grant of property-use rights for the Water Quality Improvement Project, as detailed in section 3 of this Agreement.

The 30 percent Plans (“Concept Design”), showing general layout, features, landscape types, conceptual system functionality, and overall integration within

the Park Project, including all drawings and cost estimates, will be submitted by the Commission to the Park Board for its review and approval in conjunction with the Park Project's conceptual design approval.

The 90 percent Plans, including all specifications and engineering cost estimates, will be submitted by the Commission to the Park Board and City staff for review and written approval. Following said submission, the Park Board and City shall have 30 days from delivery to complete such review and either approve said Plans or request adjustments to any project components they will own or have responsibility to maintain in writing. All three Parties shall collaborate in good faith regarding any requested adjustments and, following a determination by the Commission engineer regarding such requested adjustments, revised Plans shall be resubmitted to Park Board and City staff for review and written approval, which shall not be unreasonably withheld. Following Park Board and City staff approval of the 90 percent Plans in accordance with the provisions above, said Plans shall be submitted to the Commission for finalization and approval. Any material changes made to the 90 percent Plans approved by Park Board and City staff shall be resubmitted for subsequent review and written approval or requested adjustments, again within 30 days of delivery, and such approvals shall not be unreasonably withheld. The Plans may then be finalized and approved by the Commission and thereafter shall become incorporated into this Agreement as if fully set forth herein and by operation of contract. Any failure to act within any of the timelines specified herein shall constitute approval.

- B. *Park Elements*. Upon approval of the 90 percent Plans by all Parties in accordance with section 2A, those elements of the Water Quality Improvement Project that are physically located on the Bryn Mawr Meadows Park property (the "Park Elements") shall be integrated into the Park Board's Park Project design so that they can be competitively bid and constructed by the Park Board as part of the Park Project. The Park Elements are expected to include, but not necessarily be limited to, two new stormwater ponds sized with a permanent volume of approximately 5.4 acre-feet, appropriate disposal of contaminated soils, an equalizer pipe between the two ponds, and an outlet structure and pipe installed at the downstream pond to convey flows to the existing storm sewer which outlets at the creek. The Park Board intends to finalize the plans and specifications for its Park Project on or before April 20, 2022, and such plans and specifications will incorporate the Park Elements. A subsequent cooperative agreement shall be entered into between the Commission and the Park Board, as outlined in section 1B of this Agreement, which will address, among other things, the construction of the Park Elements by the Park Board, including, but not necessarily limited to, adherence by the Park Board of all applicable legal requirements related to public contracting and permitting, the Park Board's administration and oversight of construction and beyond to ensure that the Park Elements are constructed in accordance with the Plans and maintained long term, and reimbursement of Water Quality Improvement Project costs by the Commission. If following the delegations of responsibility for long-term maintenance of the project, as required

in this Agreement, it is determined that the City will own or maintain any components of the Park Elements following completed construction, the City shall also be a party to said agreement for the limited purpose of allowing City staff to review and approve any change orders that relate to such components that it will own or maintain.

C. *City Elements.* All Water Quality Improvement Project elements within City right-of-way will be constructed by the City. Such elements shall be referred to herein as the “City Elements.” The City Elements are expected to include, but not necessarily be limited to, a stormwater pipe and related infrastructure to divert stormwater from 15.9 acres in the residential neighborhood west of Bryn Mawr Park and low flows from Penn Pond into stormwater ponds within Bryn Mawr Park. Likely components include stormwater flow diversion near the intersection of Laurel Avenue West and Morgan Avenue South through redirection of flow within existing catch basins into a new storm sewer, additional catch basins to capture the first flush of stormwater runoff, and a new pipe to carry flow from City streets into stormwater ponds in Bryn Mawr Park. A subsequent cooperative agreement shall be entered into between the Commission and the City, as outlined in section 1B of this Agreement, which will address, among other things, the construction of the City Elements by the City, including, but not necessarily limited to, adherence by the City of all applicable legal requirements related to public contracting and permitting, the City’s administration and oversight of construction and beyond to ensure that the City Elements are constructed in accordance with the Plans and maintained long term, and reimbursement of Water Quality Improvement Project costs by the Commission.

3. Additional Commission Rights. The Parties understand and acknowledge that upon execution of this Agreement by all Parties, the Commission will incur an estimated \$183,000 in engineering expenses as it relates to the Water Quality Improvement Project design. Accordingly, and in an effort to reduce the potential waste of such public moneys, the Parties desire to establish the following contingencies in the event that the Water Quality Improvement Project is not constructed in accordance with the terms contained in section 2 above:

A. In the event that, following the Commission engineer’s submission of the 90 percent Plans to the Parties, said Plans are approved by each respective party in accordance with section 2A but the Water Quality Improvement Project is not constructed in accordance with section 2 for any reason within 24 months of such approvals, then the Commission shall have the right but not the obligation to contract on its own for the construction of the Water Quality Improvement Project, or any portion thereof which was not otherwise constructed.

B. The Park Board hereby grants to the Commission, its contractors, agents and assigns a nonexclusive easement to access and use all portions of Bryn Mawr Meadows Park reasonably necessary for access and construction of the Water Quality Improvement Project as delineated in the 90 percent Plans and otherwise

as necessary to construct the Water Quality Improvement Project in accordance with the Commission's rights contained in section 3A. The Commission, on reasonable notice to and with the assistance of the Park Board, may temporarily restrict or preclude public access to portions of Bryn Mawr Meadows Park to ensure safety while such construction activities are under way. Additionally, the Park Board agrees to fully cooperate with the Commission as it relates to the Commission's undertaking of the Water Quality Improvement Project, including, but not limited to, accessing the park property, securing any required permits, and ensuring that the Commission and its contractors are fully enabled to efficiently construct the Water Quality Improvement Project in accordance with this section 3. Nothing contained in this Agreement shall be interpreted to suggest or otherwise imply that any construction activities undertaken by the Commission will include any components of the Park Project.

C. Likewise, the City hereby grants to the Commission, its contractors, agents and assigns a nonexclusive easement to access and use all portions of City property, easement, and public right-of-way reasonably necessary for access, construction and maintenance of the Water Quality Improvement Project as delineated in the 90 percent Plans and otherwise as necessary to construct the Water Quality Improvement Project in accordance with the Commission's rights contained in section 3A. The Commission, on reasonable notice to and with the assistance and approval of the City, which approval may not be unreasonably withheld, may temporarily restrict or preclude public access to portions of such areas to ensure safety while such construction activities are under way. Additionally, the City agrees to fully cooperate with the Commission as it relates to the Commission's undertaking of the Water Quality Improvement Project, including, but certainly not limited to, accessing any City property and right-of-way, securing any required permits or other City approvals that may be necessary, and ensuring that the Commission and its contractors are fully enabled to efficiently construct the Water Quality Improvement Project in accordance with this section 3.

4. Ownership and Maintenance. Irrespective of whether the Water Quality Improvement Project is constructed in accordance with section 2 or section 3 of this Agreement, and unless the Parties subsequently agree otherwise in writing, ownership of all of its components and improvements installed will immediately, upon project completion, vest in the Park Board as it relates to the Park Elements and in the City as it relates to the City Elements. Notwithstanding ownership, the parties will enter into a separate agreement to the extent necessary which will assign maintenance responsibilities and include terms and conditions for such long term maintenance and repairs to ensure the Water Quality Improvement Project's long-term sustainability, including, but not necessarily limited to, any grant of easement rights that might be needed to perform such maintenance and repairs. It is expressly understood by the Parties that the Commission does not perform ongoing maintenance of capital improvement projects within the watershed and so the future agreement required herein shall delegate such responsibility to one of the other Parties hereto.

5. Penn Pond Maintenance. It has been determined that the Water Quality Improvement Project will provide an opportunity for certain maintenance to Penn Pond, which is located to the southwest of the I-94 and Penn Avenue interchange on property owned by the State of Minnesota through its Department of Transportation (“MnDOT”). Penn Pond is maintained by MnDOT, and discussions with MnDOT have revealed that little is known about the pond’s overall size and capacity. The Commission intends to take on the responsibility of coordinating with MnDOT before and throughout construction of the Water Quality Improvement Project so that MnDOT can obtain access to Penn Pond in order to conduct a survey of the pond, dredge any accumulated sediment, and maximize the pond’s water quality treatment benefits for the surrounding areas. The Parties understand the benefits of such maintenance work and, while the Commission intends to be the liaison as it relates to MnDOT, the Parties all agree to cooperate with one another in good faith so that, to the extent necessary, Penn Pond can be accessed by MnDOT in an efficient manner throughout Water Quality Improvement Project design and construction and improved to any extent deemed reasonably necessary.

6. Ongoing Cooperation; Existing Rights and Obligations. The Parties understand and acknowledge the substantial benefits of the Water Quality Improvement Project and intend to cooperate with one another in good faith to ensure that the Water Quality Improvement Project is delivered in a timely manner and pursuant to the goals and understandings outlined herein. Except as expressly outlined herein, this Agreement shall not in any way be interpreted to affect or otherwise alter the rights, obligations, and responsibilities of the Parties or any other persons or entities under any laws, regulations, or agreements that are in effect or existence as of the date of this Agreement.

7. Dispute Resolution Process. The Parties will use a dispute resolution process for any unresolved dispute between the Parties before exercising any legal remedies. The dispute resolution process is a three-level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. At each level of the dispute resolution process, the Parties’ representatives will meet and explore resolution until one party determines that effective resolution is not possible at the current level and notifies the others that the process is elevated to the next level. The Parties designate the following dispute resolution representatives:

	The Commission	Park Board	The City
Level 1	Project Engineer	Project Manager	Project Engineer
Level 2	Commission Engineer	Assistant Superintendent for Planning	Division Director
Level 3	Administrator	Superintendent	City Engineer

The Parties will complete the dispute resolution process in good faith before resorting to any other legal process or remedy.

8. Miscellaneous.

A. This Agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes, section 471.59. Each party agrees that it will be responsible only for its own acts and the results thereof to the extent authorized by the law and will not be responsible for the acts or omissions of the other Parties hereto and the results thereof. This Agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party. As between the Parties, only contract remedies are available for a breach of this Agreement.

B. The Parties designate the following authorized representatives to serve as the liaison to the other Parties for purposes of coordination of all work involved in or related to the Water Quality Improvement Project as provided in this Agreement. Any written communications required under this Agreement will be addressed to the other Parties as follows, except that any party may change its address for notice by so notifying the other Parties in writing:

To the Commission: Bassett Creek Watershed Management Commission
 Attention: Administrator
 16145 Hillcrest Lane
 Eden Prairie, MN 55346

To the Park Board: Minneapolis Park and Recreation Board
 Attention: Michael Schroeder, Assistant
 Superintendent for Planning
 2117 West River Road North
 Minneapolis, MN 55411

To the City: City of Minneapolis
 Attention: Stephanie Johnson, Director, Surface Water
 and Sewers
 250 South 4th St, Room 300
 Minneapolis, MN 55415

C. 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 Parties' written consent. No

modifications or amendments may be made to this Agreement unless in writing and signed by all Parties hereto.

- D. The Parties shall abide by all applicable laws, statutes, ordinances, rules, and regulations in performing this Agreement.
- E. 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.
- F. 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.
- G. 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.
- H. This Agreement may be executed with electronically authenticated signatures or in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

[signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first written above.

**BASSETT CREEK WATERSHED
MANAGEMENT COMMISSION**

By: _____
Its Chair

And by: _____
Its Secretary

MINNEAPOLIS PARK AND RECREATION BOARD

By: _____
Its President

And by: _____
Its Secretary

FOR THE CITY:

Approved as to Form by:

Signature: _____

Assistant City Attorney

Signature: _____

**Department Head (or Designee) Authorized to Sign this Contract and/or Responsible for
Administering and Monitoring Contract**

Signature: _____

Finance Officer or Designee/Purchasing Agent