

Appendix G

Joint Powers Agreement

**AMENDED JOINT AND COOPERATIVE AGREEMENT FOR THE
ESTABLISHMENT OF A BASSETT CREEK WATERSHED MANAGEMENT
ORGANIZATION TO PLAN, CONTROL AND PROVIDE FOR THE DEVELOPMENT
OF BASSETT CREEK**
(Showing Changes Effective August 29, 2014)

PREFACE

In 1968, the nine cities with land in the Bassett Creek watershed entered into a joint powers agreement which established the Bassett Creek Flood Control Commission. For the past 25 years the Commission, consisting primarily of citizen volunteers and city staff members who have volunteered their time, have worked long and hard to achieve the goals set forth when the commission was established. An overall watershed management plan was prepared and approved after public hearings. The Commission has received technical advice from the United States Army Corps of Engineers in their planning and has obtained the support and aid of all United States Senators and Congressional Representatives representing the member cities. In 1976 the Commission and the Corps of Engineers were successful in having Bassett Creek included in the 1976 Water Resources Development Act (Section 173 Public Law 94-587). The Board of Engineers for Rivers and Harbors submitted a favorable report to the Secretary of the Army on March 30, 1977. The Secretary of the Army has by letter under date of June 19, 1978 notified the U. S. Congress of the approval of the Chief of Engineers.

The Bassett Creek Flood Control Commission has participated with the Minnesota Department of Transportation, the Federal Highway Administration, the City of Minneapolis and the Corps of Engineers in the planning and construction of a deep tunnel in Minneapolis which is designed to carry Bassett Creek under a portion of the City of Minneapolis. The Commission has held hearings and approved and ordered upstream construction in the cities of Golden Valley, Plymouth, Minneapolis, and Crystal. The local share of these costs is being paid by the nine member communities pursuant to an agreement consistent with the funding requirements set forth in Articles VII and VIII of the joint powers agreement which has been in effect from 1968 to 1993. The prior joint powers agreement contained the following "Statement of Intent":

**STATEMENT OF INTENT REGARDING
AGREEMENT**

"Bassett Creek leaves Medicine Lake and flows generally eastward through the Village of Medicine Lake, Plymouth, Golden Valley and into the City of Minneapolis. In Minneapolis, the creek is channeled into a conduit and runs underground to the Mississippi River to its eventual outfall. As the creek runs through the aforementioned communities it collects storm waters and in effect acts as the storm sewer for a large densely populated area and large unpopulated area. It also carries waters channeled to it or naturally flowing to it from the Villages of Minnetonka and New Hope and the Cities of Crystal, Robbinsdale, and St. Louis Park.

For a long time the improvement and development of this creek to carry the increased quantity of storm water has been needed to allow for the orderly planning and development of

the up-stream communities who must rely on the creek as the outfall for storm waters collected or naturally flowing from areas within these communities. As the communities contributing water to the creek have grown, and the lands naturally draining into the creek have been covered with buildings and hard surfaced areas, the ability of the creek and its appurtenant facilities to accommodate the water has diminished. Studies have been conducted by the municipalities both individually and collectively and a study has been made by the United States Army Corps of Engineers. The threat of flood damage increases each year with the increased use of land in the watershed area.

The nine member communities have been meeting over a number of years in an effort to solve the storm water problems in the watershed drained by Bassett Creek. Each year it becomes more apparent that solutions must be sought to allow for a more orderly and efficient planning of the area and to allow the individual communities to plan storm sewer facilities which must be constructed to serve lands within the individual communities. It is also apparent to all nine municipalities that planning and construction to control the Bassett Creek cannot be done on the basis of each community looking at its individual problems. The creek downstream must be improved to accommodate the waters which will eventually be channeled and diverted to the outfall. To determine the downstream improvements it is necessary to know how much water will be contributed by the individual communities upstream and how much storm water will be retained in ponding areas upstream and the area of lands within the watershed which will be controlled by the individual communities as "open lands" and which will not contribute as much storm water as lands which are developed residentially, commercially, or for industrial purposes.

All of the nine communities within the Bassett Creek watershed recognize the aforestated problems. In seeking solutions to the overall drainage problem it becomes apparent that the only way the problems can be solved is by joint planning, joint cooperation, joint financing and a sincere desire on the part of each community to solve the overall drainage problem within the watershed. This means that some agency, commission, district, corporation, political subdivision, or other vehicle must be found to plan and finance improvements to and to control the development of lands within the watershed. Chapter 112 of the Minnesota Statutes provides for the formation of a watershed district with the powers and duties of conserving and controlling water and watercourses within a watershed. The creation of such a district creates a new political subdivision with the power to sue or be sued, to incur debts, liabilities and obligations, to exercise the powers of eminent domain, to provide for assessments, to borrow money and issue bonds and to do all other acts necessary to carry out the powers vested in the district by said Chapter 112. The managers of the district would be appointed by the Minnesota Water Resources Board and subsequent appointments would be by the Board of County Commissioners of Hennepin County. It is the belief of the parties to this agreement that the creation of such a district would remove control one step further from the electorate and the residents of this watershed area who ultimately would pay the costs of the aforesaid improvements. It would also create another political subdivision which would have to plan and work with the individual parties to this agreement to solve the storm water and drainage problems within the watershed.

The purpose of this statement of intent regarding the agreement is to clarify and establish for any court of review or any arbitrator or for the elected successors to the representatives who have entered into this agreement, the reasons and purposes for this joint and cooperative agreement. The parties to this agreement realize that the success or failure of the Bassett Creek

Flood Control Commission created by this agreement is dependent upon the sincere desire of each member community to cooperate in the exercise of a joint power to solve a joint problem. Each party to this agreement pledges this cooperation."

It is the intent of this amended agreement to carry forward the same purposes as aforesigned and to revise the Joint Powers Agreement to meet the mandates of Minnesota Statutes, Sections 103B. 201 through 103B. 251 and Minnesota Rules (Chapter 8410 relating to "Metropolitan Area Local Water Management". This amended agreement shall continue the existence of a Watershed Management Organization in accordance with the provisions of the Metropolitan Surface Water Management Act as set forth in Minnesota Statutes 1992 Sections 103B. 201 to and including 103B. 251. The organization hereby created shall have all of the powers and responsibilities set forth in said statutes for the Bassett Creek Watershed. The purpose of the organization shall be to assist the 9 member communities to preserve and use natural water storage and retention systems to:

1. Protect, preserve, and use natural surface and groundwater storage and retention systems;
2. Minimize public capital expenditures needed to correct flooding and water quality problems;
3. Identify and plan for means to effectively protect and improve surface water and groundwater quality;
4. Establish more uniform local policies and official controls for surface water and groundwater quality;
5. Prevent erosion of soil into surface water systems;
6. Promote groundwater recharge;
7. Protect and enhance fish and wildlife habitat and water recreational facilities;
8. To secure other benefits associated with the proper management of surface water.
9. To promote and encourage cooperation among member cities in coordinating local surface water and groundwater plans and to be aware of their neighbor's problems and to protect the public health, safety, and general welfare.
10. To continue the work of the Bassett Creek Water Management Commission and to carry out the plans, policies and programs developed by said Commission from 1968 to 1993.

JOINT AND COOPERATIVE AGREEMENT

The parties to this Agreement are governmental units of the State of Minnesota, all of which have lands which drain surface water into Bassett Creek and all of which have power to construct, reconstruct, extend and maintain storm water management facilities. This agreement is made pursuant to the authority conferred upon the parties by Minnesota Statutes 1992, Sections 471.59 and 103B. 201 to and including Section 103B. 251.

NAME

I.

The parties hereto create and establish the Bassett Creek Watershed Management Commission.

GENERAL PURPOSE

II.

The general purpose of this agreement is to provide an organization which can investigate, study, plan and control the construction of facilities to drain or pond storm waters, to alleviate damage by flood waters; to improve the creek channel for drainage; to assist in planning for land use; to repair, improve, relocate, modify, consolidate or abandon, in whole or in part, drainage systems within the watershed area; and to do whatever is necessary to assist in water conservation and the abatement of surface water and groundwater contamination and water pollution. In addition to the aforestated purposes, the organization hereby created shall serve as the organization for the Bassett Creek watershed and shall carry out all of the duties and responsibilities outlined in Minnesota Statutes, Section 103B. 201 through 103B. 251, both inclusive.

DEFINITIONS

III.

For the purposes of this agreement, the terms used herein shall have the meanings as defined in this article.

Subdivision 1. "Commission" means the organization created by this agreement, the full name of which is "Bassett Creek Watershed Management Commission." It shall be a public agency of its members.

Subdivision 2. "Board" means the Board of commissioners of the Commission, consisting of one commissioner or one alternate commissioner from each of the governmental units which is a party to this agreement and which shall be the governing body of the Commission.

Subdivision 3. "Council" means the governing body of a governmental unit which is a member of this Commission.

Subdivision 4. "Governmental Unit" means any city, county, or town.

Subdivision 5. "Member" means a governmental unit which enters into this agreement.

Subdivision 6. "Bassett Creek Watershed" means the area contained within a line drawn around the extremities of all terrain whose surface drainage is tributary to Bassett Creek and within the mapped areas delineated on the map filed with the Board of Water and Soil Resources originally filed pursuant to Minnesota Statutes, 473.877, Subd. 2 and as now amended by Minnesota Statutes, Chapter 103B.

MEMBERSHIP

IV.

The membership of the Commission shall consist of all of the following governmental units as shall elect, through resolution or ordinance adopted by their respective Councils, to become members:

City of Crystal

City of Golden Valley

City of Medicine Lake

City of Minneapolis

City of Minnetonka

City of New Hope

City of Plymouth

City of Robbinsdale

City of St. Louis Park

(The foregoing list is intended to include all governmental units which are presently partially or entirely within the Bassett Creek Watershed.)

No change in governmental boundaries , structure or organizational status shall affect the eligibility of any governmental unit listed above to be represented on the Commission, so long as such governmental unit continues to exist as a separate political subdivision.

BOARD OF COMMISSIONERS

V.

Subdivision 1. The governing body of the Commission shall be its Board. Each member shall be entitled to appoint one representative on the Board, and one alternate who may sit when the representative is not in attendance and said representative or alternate representative shall be called a "Commissioner".

Subdivision 2. The council of each member shall determine the eligibility or qualification of its representative on the Commission but the terms of each Commissioner shall be as established by this agreement.

Subdivision 3. The term of each Commissioner and Alternate Commissioner appointed by each member shall be three years and until their successors are selected and qualify and shall

commence on February 1, except that the terms of the Commissioners first appointed shall commence from the date of their appointment and shall terminate as follows:

- a. The Commissioners appointed by the Cities of Crystal, Golden Valley, and Medicine Lake shall terminate on February 1, 1994.
- b. The Commissioners appointed by the Cities of Minneapolis, Minnetonka, and New Hope shall terminate on February 1, 1995.
- c. The Commissioners appointed by the Cities of Plymouth, Robbinsdale, and St. Louis Park shall terminate on February 1, 1996.

Any vacancy shall be filled for the unexpired term of any Commissioner by the council of the governmental unit of the member who appointed said Commissioner. The Commission shall notify the Board of Water and Soil Resources of member appointments and vacancies within 30 days after the Commission is notified by a member. Each member agrees to publish a notice of vacancies resulting from the expiration of a Commissioner's or Alternate Commissioner's term or where a vacancy exists for any reason. Publication and notice shall be in accordance with Minnesota Statutes, Section 103B.227, Subds. 1 and 2, as they now exist or as subsequently amended.

Subdivision 4. The council of each member agrees that its representative commissioner will not be removed from the Board prior to the expiration of the Commissioner's term, unless said Commissioner consents in writing or unless said council has presented the Commissioner with charges in writing and has held a public hearing after reasonable notice to the Commissioner. A member may remove a Commissioner or an Alternate Commissioner for just cause or for violation of a Code of Ethics established by the Commission or by the Member City or for malfeasance, nonfeasance, or misfeasance. Said hearing shall be held by the Member City Council who appointed the Commissioner. A Commissioner or Alternate Commissioner who is an elected officer of a Member City who is not reelected may be removed by the appointing Member City at the appointing Member's discretion. Any decision by a Member to remove a Commissioner or Alternate Commissioner may be appealed to the Board of Water and Soil Resources. A certified copy of the Council's Resolution removing said Commissioner shall be filed with the Secretary of the Board of Commissioners and shall show compliance with the terms of this section.

Subdivision 5. Each member shall within 30 days of appointment file with the Secretary of the Board of Commissioners a record of the appointment of its Commissioner and Alternate Commissioner. The Commission shall notify the Board of Water and Soil Resources of Member appointments and vacancies within 30 days after receiving notice from the Member. Members shall fill all vacancies within 90 days after the vacancy occurs.

Subdivision 6. Commissioners shall serve without compensation from the Commission, but this shall not prevent a governmental unit from providing compensation for its Commissioner for serving on the Board, if such compensation is authorized by such governmental unit and by law. Commission funds may be used to reimburse a Commissioner or Alternate Commissioner for expenses incurred in performing Commission business and if authorized by the Board.

Subdivision 7. At the first meeting of the Board and in February of each year thereafter, the Board shall elect from its Commissioners a Chair, a Vice Chair, a Secretary, a Treasurer , and such other officers as it deems necessary to conduct its meetings and affairs. At the organizational meeting or as soon thereafter as it may be reasonably done, the Commission shall adopt rules and regulations governing its meetings. Such rules and regulations may be amended from time to time at either a regular or a special meeting of the Commission provided that a ten day prior notice of the proposed amendment has been furnished to each person to whom notice of the Board meetings is required to be sent; a majority vote of all eligible votes of the then existing members of the Commission shall be sufficient to adopt any proposed amendment to such rules and regulations.

The Board shall notify each Member City of the location and time of regular and special meetings called by the Board. A meeting shall be held at least annually, and all meetings shall be called and open to the public pursuant to Minnesota Statutes, Section 471.705, or as amended.

POWERS AND DUTIES OF THE BOARD

VI.

Subdivision 1. The Commission, acting by its duly appointed Board of Commissioners, shall as it relates to flood control, water quality, ground water recharge and water conservation or in its construction of facilities and other duties as set forth in Minnesota Laws have the powers and duties set out in this article.

Subdivision2. It may employ such persons as it deems necessary to accomplish its duties and powers. Any employee may be on a full time, part time or consulting basis as the Board determines.

Subdivision 3. It may contract for space and for material and supplies to carry on its activities either with a member or elsewhere.

Subdivision 4. It may acquire necessary personal property to carry out its powers and its duties.

Subdivision 5. It shall develop an overall plan containing a capital improvement program within a reasonable time after qualifying, and said plan shall meet all of the requirements as established in Minnesota Statutes, Chapter103B. Said overall plan shall establish a comprehensive goal for the development of Bassett Creek and shall establish a proposed procedure for accomplishing the purposes of the organization as set forth in Article II.

In preparing the overall plan, the Board may consult with the engineering and planning staff of each member governmental unit. It may consult with the Metropolitan Council and other public and private bodies to obtain and consider projections of land use, population growth, and other factors which are relevant to the improvement and development of the Bassett Creek watershed.

Said overall plan shall include the location and adequacy of the outlet or outfall of said Bassett Creek. The plan shall include the quantity of storage facilities and the sizing of an adequate outlet for all branch lateral storm sewers within the Bassett Creek watershed. The plan shall comply with state statutes and regulations promulgated and adopted by the Board of Water and Soil Resources.

Upon completion of the overall plan, or amendments thereto, the Board shall supply each member with a copy of the proposed plan and shall submit the plan for review and comment to Hennepin County, all soil and water conservation districts in Hennepin County and to all statutory and home rule charter cities having territory within the watershed. All governmental units which expect that substantial amendment of its local comprehensive plan will be necessary in order to bring their local water management into conformance with the Commission's watershed plan shall describe as specifically as possible, the amendments to the local plan which it expects will be necessary. The Commission shall hold a public hearing after 60 days mailed notice to the clerk of each member governmental unit. The mailed notice of the hearing shall be sent at the same time the plan is submitted to the members and to other governmental agencies. After such public hearing, the Board shall prescribe the overall plan which shall be the outline for future action by the Commission.

The Commission shall then submit the plan, any comments received and any appropriate amendments to the plan to the Board of Commissioners of Hennepin County. The County shall approve or disapprove projects in the capital improvement program which may require the provision of county funds pursuant to Minnesota Statutes Sections 103B. 251 or 103D. 901. The County shall have 60 days to complete its review. If the County fails to complete its review within 60 days the plan and capital improvement programs shall be deemed approved.

After completion of the review by Hennepin County, the plan and capital improvement program shall be submitted to the Metropolitan Council for its review. After completion of the review by the Metropolitan Council pursuant to Minnesota Statutes, Section 103B. 231, Subd. 8, the Commission shall submit the plan to the Minnesota Commissioner of Natural Resources and the Minnesota Pollution Control Agency for review and comment on the consistency of the plan with state laws and rules relating to water and related land resources and to the Board of Water and Soil Resources for review as provided in Minnesota Statutes, Section 103B. 231, Subd. 9.

After return of the plan, the Commission shall submit to each of its members a copy of the plan and all comments of the reviewing authorities. The Commission shall wait for at least 30 days for comments from the members. The Commission shall adopt the overall plan within 120 days after approval of the plan by the Board of Water and Soil Resources. The Commission shall then implement the approved plan and approved capital improvement program by resolution of the Commission as hereinafter set forth. The adoption of said overall plan shall be only upon a favorable vote of a majority of all eligible votes of the then existing members of the Commission. A copy of the adopted plan shall be filed with the clerk of each member governmental unit. Upon notice and hearing as provided for in adopting the overall plan, said plan may be amended by the Board on its own initiative or on the petition of any member governmental unit.

The review provisions set forth in this section are those required by Minnesota Statutes, Section 103B. 231. If the law is amended, approvals shall be as required by law and the provisions contained in this section shall be amended accordingly.

Subdivision 6. It shall make necessary surveys or utilize other reliable surveys and data and develop projects to accomplish the purposes for which the Commission is organized.

Subdivision 7. It may 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.

Subdivision 8. It may order any member governmental unit or units to construct, clean, repair, alter, abandon, consolidate, reclaim or change the course or terminus of any ditch, drain, storm sewer, or water course, natural or artificial, within the Bassett Creek watershed.

Subdivision 9. It may order any member governmental unit or units to acquire, operate, construct or maintain dams, dikes, reservoirs and appurtenant works or other improvements necessary to implement the overall plan.

Subdivision 10. It shall regulate, conserve and control the use of storm and surface water and groundwater within the Bassett Creek watershed.

Subdivision 11. It may contract for or purchase such insurance as the Board deems necessary for the protection of the Commission.

Subdivision 12. It may establish and maintain devices for acquiring and recording hydrological and water quality data within the Bassett Creek watershed.

Subdivision 13. It may enter upon lands within or without the watershed to make surveys and investigations to accomplish the purposes of the Commission. The Commission shall be liable for actual damages resulting therefrom but every person who claims damages shall serve the Chairman or Secretary of the Board of Commissioners with a Notice of Claim as required by Chapter 466.05 of the Minnesota Statutes.

Subdivision 14. It shall provide any member governmental unit with technical data or any other information of which the Commission has knowledge which will assist the governmental unit in preparing land use classifications or local water management plans within the watershed.

Subdivision 15. It may provide legal and technical assistance in connection with litigation or other proceedings between one or more of its members and any other political subdivision, commission, Board or agency relating to the planning or construction of facilities to drain or pond storm waters or relating to water quality within the Bassett Creek watershed. The use of commission funds for litigation shall be only upon a favorable vote of a majority of the eligible votes of the then existing members of the Commission.

Subdivision 16. It may accumulate reserve funds for the purposes herein mentioned and may invest funds of the Commission not currently needed for its operations, in the manner and subject to the laws of Minnesota applicable to statutory cities.

Subdivision 17. It may collect monies, subject to the provisions of this agreement, from its members, Hennepin County and from any other source approved by a majority of its Board.

Subdivision 18. It may 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.

Subdivision 19. It shall cause to be made an annual audit by a certified public accountant or the state auditor of the books and accounts of the Commission and shall make and file a report to its members at least once each year including the following information:

- a. the approved budget;
- b. a reporting of revenues;
- c. a reporting of expenditures;
- d. a financial audit report or section that includes a balance sheet, a classification of revenues and expenditures, an analysis of changes in final balances, and any additional statements considered necessary for full financial disclosure;
- e. the status of all Commission projects and work within the watershed; and
- f. the business transacted by the commission and other matters which affect the interests of the commission.

Copies of said report shall be transmitted to the clerk of each member governmental unit.

Subdivision 20. Its books, reports and records shall be available for and open to inspection by its members at all reasonable times.

Subdivision 21. It may recommend changes in this agreement to its members.

Subdivision 22. It may exercise all other powers necessary and incidental to the implementation of the purposes and powers set forth herein and as outlined and authorized by Minnesota Statutes, Sections 103B. 201 through 103B. 251.

Subdivision 23. It shall cooperate with the State of Minnesota, the Commissioner of Natural Resources and the Director of the Division of Waters, Soils and Minerals of the Department of Natural Resources in obtaining permits and complying with the requirements of Chapter 103G of the Minnesota Statutes.

Subdivision 24. Each member reserves the right to conduct separate or concurrent studies on any matter under study by the Commission.

Subdivision 25. It shall establish a procedure for establishing citizen or technical advisory committees and to provide other means for public participation.

METHOD OF PROCEEDING

VII.

Subdivision 1. The procedures to be followed by the Board in carrying out the powers and duties set forth in Article VI, Subdivisions 5, 6, 7, 8, 9, and 10, shall be as set forth in this article.

Subdivision 2. The Commissioners shall be the same as those serving as Commissioners and Alternate Commissioners for the predecessor Bassett Creek Water Management Commission. The Board shall immediately proceed to revise the overall plan as set forth in Article VI, Subdivision 5 or as required by state statute. Upon adoption of said overall plan, the Board shall proceed to implement said plan, and this implementation may be ordered by stages.

Subdivision 3. The Bassett Creek Watershed Management Commission shall be the successor to the Bassett Creek Water Management Commission as constituted under the prior Joint Powers Agreement. All personal property, money, bank accounts, records or any other thing of value and on hand with the Bassett Creek Water Management Commission shall be transferred to the Bassett Creek Watershed Management Commission.

Subdivision 4. The location and adequacy of the outlet for Bassett Creek shall be determined and the Commission shall then prepare plans which will provide capacity to outlet the surface waters which will be collected within the Bassett Creek watershed. In determining the necessary capacity for said outlet, the Commission shall take into consideration the quantity of land within the watershed which each member governmental unit has to pond or act as a reservoir for surface waters. It shall consider only lands which are under public ownership or under public control and that will be perpetually dedicated to acting as a reservoir for surface waters. The Commission may require from each member governmental unit a commitment in writing of the lands which shall be so dedicated, including a legal description of the gross area and the capacity in acre feet of water storage. No project which will channel or divert additional waters to Bassett Creek shall be commenced by any member governmental unit prior to approval of the Board of the design of an adequate outlet or of adequate storage facilities. The adequacy of said outlet shall be determined by the Board after consultations with its professional engineers.

Subdivision 5. All construction, reconstruction, extension or maintenance of Bassett Creek including outlets, lift stations, dams, reservoirs, or other appurtenances of a surface water or storm sewer system which involve construction by or assessment against any member governmental unit or against privately or publicly owned land within the watershed shall follow the statutory procedures outlined in Chapter 429 of the Minnesota Statutes except as herein modified. The Board shall secure from its engineers or some other competent persona report advising it in a preliminary way as to whether the proposed improvement is feasible and as to whether it shall best be made as proposed or in connection with some other improvement and the estimated cost of the improvement as recommended and the proposed allocation of costs between members.

The Board shall then hold a public hearing on the proposed improvement after mailed notice to the clerk of each member governmental unit within the watershed. The Commission

shall not be required to mail or publish notice except by said notice to the clerk. Said notice shall be mailed not less than 45 days before the hearing , shall state the time and place of the hearing, the general nature of the improvement, the estimated total cost and the estimated cost to each member governmental unit. The Board may adjourn said hearing to obtain further information, may continue said hearing pending action of the member governmental units or may take such other action as it deems necessary to carry out the purposes of this Commission.

To order the improvement, in accordance with the powers and duties established in Article VI, Subdivisions 7, 8 and 9, a resolution setting forth the order for a capital improvement project shall require a favorable vote by two-thirds of all eligible votes of then existing Board of the Commission. In all cases other than for capital improvement projects, a majority vote of all eligible members of the Board shall be sufficient to order the work. The order shall describe the improvement, shall allocate in percentages the cost allocation between the member governmental units, shall designate the engineers to prepare plans and specifications, and shall designate the member who will contract for the improvement in accordance with Subdivision 7 of this Article.

After the Board has ordered an improvement or if the hearing is continued while the member governmental units act on said proposal, it shall forward said preliminary report to all member governmental units with an estimated time schedule for the construction of said improvement. The Board shall allow an adequate amount of time , and in no event less than 45 days, for each member governmental unit to conduct hearings, in accordance with the provisions of the aforestated Chapter 429 or the charter requirements of any city, or to ascertain the method of financing which said member governmental unit will utilize to pay its proportionate share of the costs of the improvement. Each member governmental unit shall ascertain within a period of 90 days the method it shall use to pay its proportionate share of the costs.

If the Commission proposes to utilize Hennepin County's bonding authority as set forth in Minnesota Statutes, Section 103B. 251, or if the Commission proposes to certify all or any part of a capital improvement to Hennepin County for payment, then and in that event all proceedings shall be carried out in accordance with the provisions set forth in said Section 1038.251.

The Board shall not order and no engineer shall prepare plans and specifications before the Board has adopted a resolution ordering the improvement. The Board may order the advertising for bids upon receipt of notice from each member governmental unit who will be assessed that it has completed its hearing or determined its method of payment or upon expiration of 90 days after the mailing of the preliminary report to the members.

Subdivision 6. Any member governmental unit being aggrieved by the determination of the Board as to the allocation of the costs of said improvement shall have 30 days after the commission resolution ordering the improvement to appeal said determination. Said appeal shall be in writing and shall be addressed to the Board asking for arbitration. The determination of the member's appeal shall be referred to a Board of Arbitration. The Board of Arbitration shall consist of three persons; one to be appointed by the Board of Commissioners, one to be appointed by the appealing member governmental unit, and the third to be appointed by the two so selected. In the event the two persons so selected do not appoint the third person within 15 days after their appointment, then the Chief Judge of the District Court of Hennepin County shall

have jurisdiction to appoint, upon application of either or both of the two earlier selected, the third person to the Board of Arbitration. The third person selected shall not be a resident of any member governmental unit and if appointed by the Chief Judge said person shall be a registered professional engineer. The arbitrators' expenses and fees, together with the other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be divided equally between the Commission and the appealing member.

Arbitration shall be conducted in accordance with the Uniform Arbitration Act, Chapter 572 of the Minnesota Statutes.

Subdivision 7. Contracts for Improvements. All contracts which are to be let as a result of the Board's order to construct, repair, alter, reclaim or change the course or terminus of any ditch, drain, storm sewer, or watercourse, or to acquire, operate, construct or maintain dams, dikes, reservoirs or their appurtenances or to carry out any of the other provisions of the plan as authorized by Minnesota Statutes, and for which two or more member governmental units shall be responsible for the costs, shall be let in accordance with the provisions of Section 429.041 of the Minnesota Statutes. The bidding and contracting of said work shall be let by any one of the member governmental units, as ordered by the Board of Commissioners, after compliance with the statutes. All contracts and bidding procedures shall comply with all the requirements of law applicable to contracts let by a statutory city in the State of Minnesota.

The Commission shall not have the authority to contract in its own name for any improvement work for which a special assessment will be levied against any private or public property under the provisions of Chapter 429 or under the provisions of any City charter. These contracts shall be awarded by action of the council of a member and shall be in the name of a member governmental unit. This section shall not preclude the Commission from proceeding under Minnesota Statutes, Section 103B. 251.

Subdivision 8. Contracts with Other Governmental Bodies. The Commission may exercise the powers set forth in Article VI, Subdivision 7, but said contracts for a capital improvement shall require a favorable vote of two-thirds majority of the eligible votes of the then existing members of the Commission.

Subdivision 9. Supervision. All improvement contracts awarded under the provisions of Subdivision 7 of this Article shall be supervised by the member governmental unit awarding said contract or said member governmental unit may contract or appoint any qualified staff member or members of the Commission to carry out said supervision, but each member agrees that the staff of this Commission shall be authorized to observe and review the work in progress and the members agree to cooperate with the Commission staff in accomplishing the purposes of this Commission.

Representatives of the Commission shall have the right to enter upon the place or places where the improvement work is in progress for the purpose of making reasonable tests and inspections. The staff of this Commission shall report and advise and recommend to the Board on the progress of said work.

Subdivision 10. Land Acquisition. The Commission shall not have the power of eminent domain. The member governmental units agree that any and all easements or interest in land which are necessary will be negotiated or condemned in accordance with Chapter 117 of the Minnesota Statutes by the unit wherein said lands are located, and each member agrees to acquire the necessary easements or right of way or partial or complete interest in land upon order of the Board of Commissioners to accomplish the purposes of this agreement. All reasonable costs of said acquisition shall be considered as a cost of the improvement. If a member governmental unit determines it is in the best interests of that member to acquire additional lands, in conjunction with the taking of lands for storm and surface drainage or storage, for some other purposes, the costs of said acquisition will not be included in the improvement costs of the ordered project. The Board in determining the amount of the improvement costs to be assessed to each member governmental unit may take into consideration the land use for which said additional lands are being acquired and may credit the acquiring municipality for said land acquisition to the extent that it benefits the other members of this agreement. Any credits may be applied to the cost allocation of the improvement project under construction or the Board if feasible and necessary may defer said credits to a future project.

If any member unit refuses to negotiate or condemn lands as ordered by the Board, any other member may negotiate or condemn outside its corporate limits in accordance with the aforesaid Chapter 117. All members agree that they will not condemn or negotiate for land acquisition to pond or drain storm and surface waters within the corporate boundaries of another member within the Bassett Creek watershed except upon order of the Board of this Commission.

The Commission shall have authority to establish land acquisition policies as a part of the overall plan. The policies shall be designed to equalize costs of land throughout the watershed. Said policy is contained in the existing watershed management plan and may be continued in any revised overall plan required by Minnesota Statutes.

Subdivision 11. Pollution Control and Water Quality. The Commission shall have the authority and responsibility to protect and improve water quality in the watershed as this is one of the main purposes set forth in the Surface Water Management Act. All member governmental units agree that they will refuse to allow the drainage of sanitary sewage or industrial wastes onto any land or into any watercourse or storm sewer draining into Bassett Creek. The Board may investigate on its own initiative and shall investigate upon petition of any member all complaints relating to pollution of surface water or groundwater draining into or affecting Bassett Creek or its tributaries. Upon a finding that the creek or surface waters or groundwater are being polluted, the Board shall order the member governmental unit to abate this nuisance and each member agrees that it will take all reasonable action available to it under the law to alleviate the pollution and to assist in protecting and improving the water quality of surface water and groundwater in the watershed.

Subdivision 12. Local Water Management Plans. The Commission shall have power and authority to review the members' local water management plans, capital improvement programs and official controls required by Minnesota Statutes Section 103B. 235 and/or by rules promulgated and adopted by the Board of Water and Soil Resources. The members also understand that the overall plan and capital improvement program required for the entire watershed must consist of the local parts in the plan and therefore every effort shall be made by

the Commission to coordinate the local plans with the watershed's overall plan. The members further understand and agree that upon completion and approval of the overall plan required by Minnesota Statutes 103B. 231, each member will be required to present their local management plan to the Commission as required by Minnesota Statutes, Section 103B. 235. It is therefore important that each member provide the Commission with their best effort to coordinate and plan for the individual member's local plan at the same time the watershed overall plan is being assembled.

FINANCES

VIII.

Subdivision 1. The Commission funds may be expended by the Board in accordance with this agreement and in accordance with the procedures as established by law and in the manner as may be determined by the Board. The Board shall designate one or more national or state bank or trust companies, authorized by Chapters 118 and 427 of the Minnesota Statutes to receive deposits of public moneys and to act as depositories for the Commission funds. In no event shall there be a disbursement of Commission funds without the signature of at least two Board members, one of whom shall be the Treasurer or his Authorized Deputy Treasurer. The Treasurer shall be required to file with the Secretary of the Board a bond in the sum of at least \$10,000 or such higher amount as shall be determined by the Board. The Commission shall pay the premium on said bond.

Subdivision 2. The members agree to contribute all cash, bank deposits, and other assets held by the Bassett Creek Water Management Commission to the new Bassett Creek Watershed Management Commission to carry out the purposes of the Commission. Each member governmental unit has contributed its proportionate share of said funds based on the net tax capacity and area of all taxable property within the Bassett Creek watershed.

Subdivision 3. Each member agrees to contribute each year to a general fund, said fund to be used for general administration purposes including, but not limited to: salaries, rent, supplies, development of an overall plan, insurance, and bonds, and to purchase and maintain devices to measure hydrological and water quality data. Said funds may also be used for normal maintenance of the facilities, but any extraordinary maintenance or repair expense shall be treated as an improvement cost and processed in accordance with Subdivision 4 of this Article. The annual contribution by each member shall be based fifty percent (50%) on the net tax capacity of all property within the watershed and fifty percent (50%) on the basis of the total area of each member within the boundaries of the Watershed each year to the total area in the Bassett Creek watershed. In no event shall any assessment require a contribution to exceed one-half of one percent of the net tax capacity within the watershed.

Subdivision 4.

(a) An improvement fund shall be established for each improvement project instituted under Article VII, Subdivision 3. Each member agrees to contribute to said fund its proportionate share of the engineering, legal and administrative costs as determined by the amount to be assessed against each member as a cost of the improvement. The Board shall submit in writing a

statement to each member, setting forth in detail the expenses incurred by the Commission for each project.

Each member further agrees to pay to or contract with the member governmental unit awarding said contract for the improvement, its proportionate share of the cost of the improvement in accordance with the determination of the Board under Article VII, Subdivision 5. The member awarding the contract shall submit in writing copies of the engineer's certificate authorizing payment during construction and the member being billed agrees to pay its proportionate share of said improvement costs within 30 days after receipt of the statement. The member awarding the contract shall advise other contributing members of the tentative time schedule of the work and the estimated times when the contributions shall be necessary.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the Commission may by a vote of 2/3rds of all eligible votes of the then existing members of the Commission decide to proceed to fund all or any part of the cost of a capital improvement contained in the capital improvement program of the plan pursuant to the authority and subject to the provisions set forth in Minnesota Statutes, Section 103B. 251. The Commission and Hennepin County may establish a maintenance fund to be used for normal and routine maintenance of an improvement constructed in whole or in part with money provided by Hennepin County pursuant to Minnesota Statutes, Section103B. 251. The levy and collection of an ad valorem tax levy for maintenance shall be by Hennepin County based upon a tax levy resolution adopted by a majority vote of all eligible members of the Commission and remitted to the County on or before the date prescribed by law each year. If it is determined to levy for maintenance, the Commission shall be required to follow the hearing process established by Minnesota Statutes, Section103D. 915 and103D. 921and acts amendatory thereof and in addition thereto. Mailed notice shall be sent to the Clerk of each member municipality at least 30 days prior to the hearing.

Subdivision 5. On or before July1 of each year, the Board shall adopt a detailed budget for the ensuing year and decide upon the total amount necessary for the general fund. Budget approval shall require a favorable vote by a majority of all eligible votes of the then existing members of the Board.

The Secretary of the Board shall certify the budget on or before July 1 to the clerk of each member governmental unit together with a statement of the proportion of the budget to be provided by each member. The Council of each member agrees to review the budget, and the Board shall upon notice from any member received prior to August 1, hear objections to the budget, and may, upon notice to all members and after a hearing, modify or amend the budget, and then give notice to the members of any and all modifications or amendments.

Each member agrees to provide the funds required by the budget and said determination shall be conclusive if no member enters objections in writing on or before August 1. If no objections are submitted to the Board, each member agrees to provide the funds approved by the Board, after the Board has conducted the aforementioned hearing. Modifications or amendments to the original budget require a favorable vote by a majority of all eligible voters of then existing members of the Board.

The budget shall not in any event require any member to contribute in excess of one-half of one percent of the net tax capacity of all taxable property within the watershed and within said members corporate boundaries.

The schedule of payments by the members shall be determined by the Board in such a manner as to provide for an orderly collection of the funds needed.

Upon notice and hearing, the Board by a favorable vote of a majority of all eligible votes of then existing members may adopt a supplemental budget requiring additional payments by the members within 60 days of its adoption but in no event shall the budget require any member to contribute in excess of one-half of one percent of the net tax capacity of all taxable property within the watershed or within any member's corporate boundaries in any one calendar year.

Members' attention is drawn to Minnesota Statutes, Section 103B. 245, which authorizes a Watershed Management Tax District to be created within each member City to pay the costs of planning and for the purpose of paying capital costs and/or normal and routine maintenance of facilities.

Subdivision 5. Cost Allocation. All capital costs incurred by the Commission shall be apportioned to the respective members on either (1), (2), or (3) of the following bases:

- (1) A negotiated amount to be arrived at by the members who have lands in the subdistrict responsible for the capital improvement.
- (2)
 - (a) Fifty percent of all capital costs or the financing thereof shall be apportioned to each member on the basis of the real property valuation net tax capacity of each member within the boundaries of the watershed each year to the total real property valuation net tax capacity in the Bassett Creek watershed area governed by this Agreement.
 - (b) Fifty percent of all capital costs or the financing thereof shall be apportioned to each member on the basis of the total area of each member within the boundaries of the watershed each year to the total area in the Bassett Creek watershed area governed by this Agreement.
 - (c) Capital costs allocated under the 50% area/50% net tax capacity formula herein set forth may be varied by the Commission by a 2/3rds vote if:
 - (1) any member community receives a direct benefit from the capital improvement which benefit can be defined as a lateral as well as a trunk benefit, or
 - (2) the capital improvement provides a direct benefit to one or more members which benefit is so disproportionate as to require in a sense of fairness a modification in the 50/50 formula.
 - (d) Credits to any member for lands acquired by said member to pond or store storm and surface water shall be allowed against costs set forth in Subsections (a), (b), and (c) of this Section.
- (3) If the project is constructed and financed pursuant to Minnesota Statutes, Section 103B. 251, the members understand and agree that said costs will be levied on all taxable property in the watershed as set forth in the statute.

MISCELLANEOUS PROVISIONS

IX.

Subdivision 1. The Commission shall not have the power to issue certificates, warrants or bonds.

Subdivision 2. The Commission shall not have the power of eminent domain and shall not own any interest in real property. All interests in lands shall be held in the name of the corporate member wherein said lands are located.

Subdivision 3. The Commission shall not have the power to levy a special assessment upon any privately or publicly owned land. All such assessments shall be levied by the member wherein said lands are located. It shall have the power to require any member to contribute the costs allocated or assessed according to the other provisions of this agreement.

Subdivision 4. Each member agrees that it will not directly or indirectly collect or divert any additional surface water to the Mississippi River or its tributaries from any subdistrict or subtrunk without a permit from the Board of Commissioners. Permits may be granted by the Board for a member to proceed with the construction or reconstruction of improvements within the individual corporate members' boundaries and at its sole cost upon a finding:

- (a) that there is an adequate outlet; and
- (b) that said construction is in conformance with the overall plan; and
- (c) that the construction will not adversely affect other members of this agreement.

Subdivision 5. Any member who is more than 60 days in default in contributing its share to the general fund shall have the vote of its Board member suspended pending the payment of its proportionate share.

Any member who is more than 60 days in default in contributing its proportionate share of the cost of any improvement to the contracting member shall upon application of the contracting member have the vote of its Board member suspended, pending the payment of its proportionate share.

Any Board member whose vote is under suspension shall not be considered as an eligible member as such membership affects the number of votes required to proceed on any matter under consideration by the Board.

DURATION

X.

Subdivision 1. Each member agrees to be bound by the terms of this agreement until January 1, 2025, and it may be continued thereafter at the option of the parties.

Subdivision 2. This agreement may be terminated prior to January 1, 2025, by the unanimous consent of the parties. If the agreement is to be terminated, a notice of the intent to

dissolve the Commission shall be sent to the Board of Water and Soil Resources and to Hennepin County at least 90 days prior to the date of dissolution.

Subdivision 3. In addition to the manner provided in Subdivision 2 for termination, any member may petition the Board to dissolve the agreement. Upon 90 days notice in writing to the clerk of each member governmental unit and to the Board of Water and Soil Resources and to Hennepin County, the Board shall hold a hearing and upon a favorable vote by a majority of all eligible votes of then existing Board members, the Board may by Resolution recommend that the Commission be dissolved. Said Resolution shall be submitted to each member governmental unit and if ratified by three-fourths of the councils of all eligible members within 60 days, said Board shall dissolve the Commission allowing a reasonable time to complete work in progress and to dispose of personal property owned by the Commission.

DISSOLUTION

XI.

Upon dissolution of the Commission , all property of the Commission shall be sold and the proceeds thereof, together with monies on hand, shall be distributed to the eligible members of the Commission. Such distribution of Commission assets shall be made in proportion to the total contribution to the Commission as required by the last annual budget.

EFFECTIVE DATE

XII.

This agreement shall be in full force and effect upon the filing of a certified copy of the resolution approving said agreement by all nine members. Said resolution shall be filed with the Chair of the existing Bassett Creek Watershed Management Commission (presently W. Peter Enck of the City of New Hope), who shall notify all members in writing of its effective date and shall set the date for the next meeting to be conducted under this amended Joint Powers Agreement.

IN WITNESS WHEREOF, the undersigned governmental units, by action of their governing bodies, have caused this agreement to be executed in accordance with the authority of Minnesota Statutes Sections 103B. 211 and 471.59.