

COOPERATIVE AGREEMENT

(Parkers Lake Drainage Improvement and Chloride Reduction Project, PL-7)

This Cooperative Agreement (“**Agreement**”) is made as of this ____ day of _____, 2020 by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (“**Commission**”), and the City of Plymouth, a Minnesota municipal corporation (“**City**”). The Commission and the City may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The Commission adopted the Bassett Creek Watershed Management Commission Watershed Management Plan on September 17, 2015 (“**Plan**”), a watershed management plan within the meaning of Minnesota Statutes, section 103B.231.
- B. The Plan includes a capital improvement program (CIP) that lists a number of capital improvements including the Parkers Lake Drainage Improvement Project PL-7 (“**Project**”).
- C. The Project is in the City of Plymouth and will be designed and constructed as described in the feasibility report for the Project prepared by Barr Engineering Co., entitled Feasibility Report for the Mount Olivet Stream Stabilization and Parkers Lake Drainage Improvement Projects, dated June 2020 (“**Feasibility Report**”), which is attached hereto as Exhibit A.
- D. There are two components to this Project. First, the Project will consist of the work identified as Alternative 3 – Parkers Lake Stream Stabilization (“**Alternative 3**”) in the Feasibility Report, which generally consists of stream stabilization utilizing bio-engineering techniques. The second project component will consist of the work identified as Alternative 6 – Water Quality Management (Chloride Management) (“**Alternative 6**”) in the Feasibility Report, which will consist of certain chloride demonstration projects in the northern watershed tributary to Parkers Lake to reduce salt usage and chloride loads to the lake.
- E. The total estimated Project cost is \$485,000. The estimated total cost of Alternative 3, including the Feasibility Study, administration, design, and construction is \$185,000. The estimated total cost of Alternative 6 is \$300,000.
- F. On September 17, 2020, the Commission adopted a resolution ordering the Project and directing that it be constructed and implemented by the City.
- G. In accordance with the Plan, the Project costs were certified to Hennepin County, which will levy taxes throughout the watershed for Project costs in 2020 for collection and settlement in 2021 pursuant to Minnesota Statutes, section 103B.251.
- H. The City is willing to construct and implement the Project in accordance with the terms and conditions hereinafter set forth.

AGREEMENT

In consideration of the mutual covenants and agreements hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

1. Project. The two-component Project will consist of the work identified as Alternative 3 – Parkers Lake Stream Stabilization in the Feasibility Report, plus appendices, which includes installing cross vanes to limit erosion of the channel bed and create flow diversity, grading and placing coir blankets with live stakes to improve stream bank stability and decrease erosion, installing riprap revetment in certain locations where needed, installing a rock riffle at the downstream outlet, removing and replanting trees, as needed. The Project will also consist of the work identified as Alternative 6 – Water Quality Management (Chloride Management) in the Feasibility Report, plus appendices, which includes the implementation of various chloride-reduction demonstration project(s) within the Parkers Lake northern tributary watershed that will include working with willing property owners to reduce their chloride usage through activities such as equipment upgrades or purchases, installation of anti-icing systems or snowmelt systems, conversion of hard surfaces to permeable surfaces, and/or education of residents, employees, and property managers/owners.

2. Design and Plans for Alternative 3. The City will design the Project and prepare plans and specifications for construction of the Project. The 50% and 90% plans and specifications shall be submitted to the Commission for approval in accordance with the Commission’s CIP project review process. Any changes to the Commission-approved 90% plans and specifications must be submitted to the Commission and shall require written approval of the Commission’s engineer following a reasonable review period, which shall be no less than 10 business days. Minor change orders may be approved by the City without requiring additional approvals by the Commission. For purposes of this paragraph, “minor change orders” shall mean those changes to the approved plans that do not materially change either the effectiveness of the Project to meet its intended purposes, the aesthetics, form, or function of the Project, or the environmental impacts of the Project.

3. Implementation of Alternative 6. The chloride reduction initiatives that make up Alternative 6 have not yet been finalized because there are Project variables that are indeterminable until outreach begins with property owners within the Parkers Lake northern tributary watershed. The components to be contained within Alternative 6 will depend on certain factors, including site characteristics and landowner interest, and those components are expected to include a variation of the numerous efforts specified in the Feasibility Report. Following the execution of this Agreement by the parties, City staff will coordinate with the Commission Administrator to develop priorities and assign responsibilities among Project partners for landowner outreach and Project implementation in order to determine a list of viable, impactful chloride reduction measures that will collectively make up Alternative 6. Once that list is finalized collectively by both parties, the chloride reduction measures contained therein will be implemented by the City. City staff shall keep the Commission Administrator regularly informed regarding all progress in implementing Alternative 6, including, but not necessarily limited to, scheduling, planning, and

results. Any modifications or revisions regarding the components and priorities of Alternative 6 once those components are finalized collectively by the parties will require subsequent review and approval by the Commission's engineer following a reasonable review period, which shall be no less than 10 business days.

4. Contract Administration. For the implementation of Alternative 3 and any applicable components of Alternative 6, the City will advertise for bids and award contracts in accordance with the requirements of applicable law. The City will award such contracts and supervise and administer the construction of the Project to ensure that it is completed in accordance with the approved plans and specifications. The contracts may only be let to a responsible contractor in accordance with Minnesota Statutes, section 16C.285 and the City will require the contractors to provide all payment and performance bonds required by law. The City will further require the contractors to name the Commission as additional insured on all liability policies required by the City and the Commission shall be given the same notification of cancellation or non-renewal as is given to the City. The City will require the contractors to defend, indemnify, protect and hold harmless the Commission and the City, their agents, officers, and employees, from all claims or actions arising from negligent acts, errors or omissions of the contractor. The City will supervise the work of the contractors. However, the Commission may observe and review the work of the Project until it is completed. The City will display a sign at Project construction sites stating "Paid for by the Taxpayers of the Bassett Creek Watershed."
5. Contract Payments. The City will pay all contractors and all other expenses related to the construction and implementation of the Project and keep and maintain complete records of such costs incurred.
6. Commission Reimbursement. The Commission will use its best efforts to secure payment from the County in accordance with Minnesota Statutes, section 103B.251 for the Project in the amount of Four Hundred Eighty-Five Thousand Dollars (\$485,000) by tax levy in 2020 for collection in 2021. The total reimbursement paid by the Commission to the City for the Project will not exceed Four Hundred Eighty-Five Thousand Dollars (\$485,000), less any Commission expenses related to the Project. Approximately \$185,000 of the total Project costs is expected to be spent on the construction of Alternative 3, and approximately \$300,000 is expected to be spent on the implementation of Alternative 6. Out-of-pocket costs incurred and paid for by the Commission related to the Project including, but not limited to, feasibility studies, publication of notices, securing County tax levy, preparation of contracts, review of engineering designs, review of proposed contract documents, grant application development, grant administration, administration of this contract, and up to a 2.5% administrative charge, not to exceed actual expenses, shall be repaid from the amount specified above from funds received in the tax settlement from Hennepin County. It is also expressly acknowledged and understood by the parties that certain elements of Alternative 6 beyond what might otherwise be considered out-of-pocket costs, as defined above, may be paid for directly by the Commission, and any such costs incurred directly by the Commission shall reduce the total reimbursement available to the City for the Project. The preceding sentence shall in no way be interpreted to require the Commission to directly implement or contract for any components of Alternative 6, but rather is intended to indicate that possibility, if determined convenient for Project implementation in the Commission's sole discretion.

All funds levied for the Project in excess of the Commission's Project expenses, to the extent such funds are actually received, shall be available for reimbursement to the City for costs incurred by the City in the design, construction, and implementation of the Project. Reimbursement to the City will be made as soon as funds are available, provided a request for payment has been received from the City that contains such detailed information as may be requested by the Commission to substantiate costs and expenses. The City shall complete and submit with its final reimbursement request to the Commission a final report on the Project using the Commission's final reporting form and providing such other information as may be requested by the Commission.

The parties anticipate that both components of the Project will be completed on or before December 31, 2023 and, therefore, all reimbursement requests from the City shall be made on or before that date, unless the parties otherwise agree to a written extension.

7. Limits on Reimbursement. Reimbursement to the City will not exceed the amount specified in section 6 above from the amount received from the County for the Project, less any amounts retained by the Commission for Commission incurred Project expenses. Reimbursement will not be increased by other grants or revenues received by the Commission for the Project. Reimbursement will not exceed the costs and expenses incurred by the City for the Project, less any amounts the City receives for the Project as grants from other sources. All costs of the Project incurred by the City in excess of such reimbursement, shall be borne by the City or secured by the City from other sources.
8. Audit. All City books, records, documents, and accounting procedures related to the Project are subject to examination by the Commission and either the State Auditor or the Legislative Auditor for at least six years after completion of the Project.
9. Environmental Review. The City will perform all necessary investigations of site contamination and secure all necessary local, state, or federal permits required for the construction of the Project and will not proceed with the Project until any required environmental review and remediation of site contamination is completed or a plan for remediation is approved by appropriate regulatory agencies.
10. Ongoing Maintenance. Upon completion Alternative 3 of the Project, the City shall be responsible for its ongoing maintenance. The City agrees to perform, at its cost, such maintenance as may be required to sustain the proper functioning of the improvements constructed as part of the Project for their useful life. Any ongoing maintenance that is necessary for any structural components or equipment installed to implement Alternative 6 shall be planned and documented through agreements or contracts with private landowners, as appropriate, and to the satisfaction of the Commission.
11. Data Practices. The City shall retain and make available data related to the letting of contracts and construction of the Project in accordance with the Minnesota Government Data Practices Act.
12. Term. This Agreement shall be in effect as of the date first written above and shall terminate once the Project is completed and the Commission has completed its reimbursement payments to the

City as provided herein. The ongoing maintenance obligations contained in section 10 shall survive termination.

13. Entire Agreement. The above recitals and the exhibits attached hereto are incorporated in and made part of this Agreement. This Agreement contains the entire understanding between the parties regarding this matter and no amendments or other modifications of its terms are valid unless reduced to writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on behalf of the parties as of the day and date first above written.

BASSETT CREEK WATERSHED
MANAGEMENT COMMISSION

By: _____
Its Chair

And by: _____
Its Secretary

Date: _____

CITY OF PLYMOUTH

By: _____
Its Mayor

And by: _____
Its City Manager

Date: _____

EXHIBIT A
Feasibility Report

[attached hereto]