

## COOPERATIVE AGREEMENT

(Medicine Lake Rd and Winnetka Ave Long Term Flood Mitigation Plan Project, DeCola Ponds B & C Improvement Project, BC-2, 3, 8)

This Cooperative Agreement (“**Agreement**”) is made as of this 16<sup>th</sup> day of August, 2018 by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (“**Commission**”), and the City of Golden Valley, 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 Medicine Lake Rd and Winnetka Ave Long Term Flood Mitigation Plan (“**MLRWA Plan**”), which includes the DeCola Ponds B & C Improvement Project (“**Project**”).
- C. The proposed Project is in the City of Golden Valley and will be designed and constructed as described in the feasibility report for the Project prepared by Barr Engineering Co. entitled DeCola Ponds B and C Improvement Project Feasibility Study dated May 2018 (“**Feasibility Report**”), which is attached hereto as Exhibit A. The Project will consist of the work identified as Concept 3 in the Feasibility Report, in addition to direction from the Commission that, within available funds, creation of additional flood storage should be explored as part of final design.
- D. The estimated planning level point opinion of cost of the Project, including design and construction, is \$3.8 million. The planning level cost estimate for the Project in the MLRWA Plan is \$4.6 million.
- E. The Plan specifies that the Project will be partially funded, up to \$1.6 million, by the Commission.
- F. On August 16, 2018, the Commission adopted a resolution ordering the Project and directing that it be constructed by the City.
- G. The first portion of Project costs were certified to Hennepin County, which will levy taxes throughout the watershed for the Project costs in 2018 for collection and settlement in 2019, and the Commission intends to certify the remaining portion of Project costs to Hennepin County in 2019 for collection and settlement in 2020.
- H. The City is willing to construct 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 Project will consist of the work identified as Concept 3 in Section 5.1.3 of the Feasibility Report, plus appendices, which includes installing a box culvert that will connect the Liberty Crossing flood storage features to the expanded storage in the Dover Hills and DeCola Ponds B and C areas; constructing a sediment forebay in the existing Dover Hills area; lowering the normal water level (NWL) of DeCola Ponds A, B, and C to provide additional flood mitigation volume without requiring excavation; modifying the DeCola Pond C outlet structure and overflow; and restoring 1.0 acres of upland and 1.7 acres of wetland habitat.
2. Condition of Commission Funding. A condition precedent of the Commission's obligations under this Agreement is that the City receives funding from other sources as needed to fully fund the portion of the Project costs not being reimbursed by the Commission under this Agreement. The City shall provide such documentation to the Commission as may reasonably be needed to demonstrate that the additional funding has been secured before the Commission will take any actions in furtherance of this Agreement or make any reimbursement payments.
3. Design and Plans. The City will design the Project and prepare plans and specifications for construction of the Project. The 50% and 90% plans and specifications, and any changes to such plans and specifications, shall be submitted to the Commission for approval. Minor change orders that do not materially change either the effectiveness of the Project to meet its intended purposes or the environmental impacts of the Project may be approved by the City without requiring approvals by the Commission.
4. Contract Administration. The City will advertise for bids and award contracts in accordance with the requirements of applicable law. The City will award the contract and supervise and administer the construction of the Project to ensure that it is completed in accordance with the approved plans and specifications. The contract may only be let to a responsible contractor in accordance with Minnesota Statutes, section 16C.285 and the City will require the contractor to provide all payment and performance bonds required by law. The City will require the Contractor to name the Commission as additional insured on all liability policies required by the City of the contractor 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 contractor 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 contractor. However, the Commission may observe and review the work of the Project until it is completed. The City will display a sign at the construction site stating "Paid for by the Taxpayers of the Bassett Creek Watershed."
5. Contract Payments. The City will pay the contractor and all other expenses related to the construction 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 in the amount of One Million Thirty One Thousand Five Hundred Dollars (\$1,031,500) by tax levy in 2018 for collection in 2019 and Five Hundred Thousand (\$500,000) by tax levy in 2019 for collection in 2020. An additional Sixty Eight Thousand Five Hundred Dollars (\$68,500) is anticipated to come from a state grant to the Commission. The total reimbursement paid by the Commission to the City for the Project will not exceed One Million Six Hundred Thousand Dollars (\$1,600,000), less Commission expenses. Out-of-pocket costs incurred and paid 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. All such levied funds in excess of such expenses plus the full \$68,500 in grant funds, 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 and construction 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.
7. Limits on Reimbursement. Reimbursement to the City will not exceed the amount specified above from the amount received from the County and State grant for the Project, less any amounts retained by the Commission for Commission 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 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.

- 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.
- 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 GOLDEN VALLEY

By: \_\_\_\_\_  
Its Mayor

And by: \_\_\_\_\_  
Its City Manager

Date: \_\_\_\_\_

**EXHIBIT A**  
Feasibility Report

[attached hereto]