

**AGREEMENT REGARDING THE DOMINIUM DEVELOPMENT
CAPITAL IMPROVEMENT CONSTRUCTION PROJECT**

This Agreement (the “Agreement”) is made and entered into this ___ day of _____, 20___, by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (the “Commission”), and the City of Plymouth, a Minnesota municipal corporation (the “City”). The Commission and the City may hereinafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS

- A. The Commission has executed, or is in the process of executing, a Capital Improvement Construction Agreement (the “Project Agreement”) with Plymouth Leased Housing Associates IV, LLLP (the “Developer”) regarding a stormwater improvement project that is more specifically detailed on the attached Exhibit A (the “Project”);
- B. The Project is to be constructed on multiple parcels, including property being acquired and developed by the Developer, identified in the Project Agreement as the “Developer Property,” property to be acquired by other developers, identified in the Project Agreement as the “Other Property,” and property that is presently owned by the City, identified in the Project Agreement as the “City Property”;
- C. The City Property is legally described in the attached Exhibit B;
- D. The Project will include the construction of certain stormwater improvements as identified in the Project Agreement (the “Improvements”) on the Developer Property, on the Other Property, and on the City Property;
- E. The Developer is responsible, under the Project Agreement, for maintaining at its own cost the Improvements constructed on the Developer Property and the Other Property, and the City has agreed to maintain at its own cost the Improvements constructed on the City Property; and
- F. The City is not a party to the Project Agreement and will instead issue the Developer a construction easement or agreement to enable it to construct the Improvements on the City Property and is entering into this Agreement to ensure that the Project, which is being funded in part by the Commission, can be constructed on the City Property and to formalize the City’s commitment to maintain the Improvements on the City Property once constructed.

AGREEMENT

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

- 1. Project Funding. The Commission agrees to provide certain funding for the Project, including for the construction of Improvements on the City Property, in accordance with the terms and conditions of the Project Agreement.

2. Construction Authorization. The City agrees to provide the Developer a construction easement or agreement to enable it to construct the Improvements on the City Property in accordance with the Project Agreement.
3. Inspection Authorization. The City hereby grants the Commission and its agents, including its administrator and engineer, a license to enter the City Property to inspect the work related to the Improvements and to determine Project completion in accordance with the requirements of the Project Agreement. This license is in addition to any permissions that may be granted to the Commission in the construction easement or agreement the City issues to the Developer.
4. Maintenance of City Property Improvements. The City hereby agrees to, at its own cost, provide for the ongoing maintenance of the Improvements constructed on the City Property as part of the Project. Such ongoing maintenance obligation shall begin upon the Commission engineer determining that the Improvements on the City Property were constructed in accordance with the Project Agreement. The City's ongoing maintenance of the City Property shall be performed in accordance with the standards and requirements applicable to maintaining wetlands with the same or similar Improvements.
5. Maintenance of Improvements on Developer Property and Other Property. The City agrees to include, as part of the development agreement it will require of the Developer, a provision requiring the Developer to provide for the ongoing maintenance of the Improvements on the Developer Property and the Other Property in accordance with an operations and maintenance plan (O&M Plan") that the City will approve and have recorded against the Developer Property and the Other Property. The City will require the Developer to include a chloride management plan as part of the O&M Plan.
6. Term. This Agreement shall be ongoing until such time as the Commission approves work within the City Property that is substantially no longer consistent with the ongoing maintenance of the Improvements constructed as part of the Project. The maintenance requirements in Sections 4 and 5 shall survive any termination.
7. Legal Compliance. Each party shall be responsible for complying with all applicable federal, state, and local laws, rules, regulations, and ordinances in carrying out their respective duties under this Agreement.
8. Entire Agreement. This Agreement sets out the entire agreement between the parties regarding this matter and no alterations or modifications to this Agreement shall be effective unless reduced to writing and signed by both parties.
9. No Waiver. The Commission's failure to insist on the performance of any obligation under this Agreement does not waive its right in the future to insist on strict performance of that or any other obligation.
10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

11. No Third-Party Rights. This Agreement is solely for the benefit of the signatories hereto. This Agreement shall not create or establish any rights in, or be construed as being for the benefit of, any third party.
12. Severability. In the event that any provision of this Agreement shall be held invalid, illegal or unenforceable by any court of competent jurisdiction, such holding shall pertain only to such section and shall not invalidate or render unenforceable any other section or provision of this Agreement.
13. Governing Law. This Agreement shall be governed by the laws of the State of Minnesota.
14. Replaces Prior Agreements. Any cooperative agreements previously entered into between the parties related to the same project site is hereby terminated and replaced with this Agreement.

[signature page to follow]

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: _____
Its Secretary

Date: _____

CITY OF PLYMOUTH

By: _____
Its Mayor

And: _____
Its Manager

Date: _____

EXHIBIT A
Description of the Project

[to be inserted]

EXHIBIT B
Legal Description of the City Property

[to be inserted]