



## Bassett Creek Watershed Management Commission

### MEMO

To: BCWMC Commissioners and Alternate Commissioners  
From: Administrator Jester  
Date: July 11, 2024

#### **RE: Revised Joint Powers Agreement (JPA)**

At the June 20<sup>th</sup> Commission meeting [comments from member cities](#) on the JPA were reviewed and discussed. The larger policy questions of commissioner compensation and term of the JPA were discussed but no action was taken by the Commission to change the recommended language related to those items. (Therefore the 12-year term and the ability for the Commission to compensate commissioners remain in the JPA).

Commission Attorney Anderson has since made a few non-substantive updates to the document per some of the comments from member cities. Those changes do not alter the substance of the draft JPA and are shown in the redlined version attached here.

Staff recommends that the Commission direct staff to send this latest version of the JPA to member cities with a short cover letter. The cover letter will include a proposed timeline for approval of the JPA and a request for each city to discuss the draft again and, if there are any terms that a city is unwilling to approve, to provide a formal letter to the Commission detailing such terms(s) no later than August 31, 2024. Cities will be asked not to proceed with considering final approval of the JPA until after that August 31, 2024 deadline.

**JOINT POWERS AGREEMENT  
FOR THE ESTABLISHMENT AND CONTINUED OPERATION OF THE  
BASSETT CREEK WATERSHED MANAGEMENT COMMISSION**

THIS JOINT POWERS AGREEMENT (“**Agreement**”) is made and entered into by and among the cities of Crystal, Golden Valley, Medicine Lake, Minneapolis, Minnetonka, New Hope, Plymouth, Robbinsdale, and St. Louis Park, all Minnesota municipal corporations. The member cities may hereafter be referred to individually as a “**Member**” or collectively as the “**Members.**”

**RECITALS**

- A. In 1968, the Members, 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, elected to exercise their authority to adopt a joint powers agreement to establish the Bassett Creek Flood Control Commission to cooperatively manage and plan for the management of surface water within the Bassett Creek watershed (“**Watershed**”).
- B. In 1982, the Minnesota legislature passed the Metropolitan Area Surface Water Management Act requiring local government units in the metropolitan area to plan for and manage surface water through watershed management (Minnesota Statutes, section 103B.201 to 103B.255) (“**Act**”).
- C. Under the Act, one of the options available to local government units to satisfy the requirements of the Act is to enter into a joint powers agreement pursuant to Minnesota Statutes, section 471.59 to establish a watershed management organization to jointly plan for and manage surface water within a watershed.
- D. In compliance with the Act, the original Bassett Creek Flood Control Commission amended its joint powers agreement and became the Bassett Creek Watershed Management Commission (“**Commission**”). Over time, the joint powers agreement has been updated and amended, and the terms and conditions of the current joint powers agreement expire on January 1, 2025.
- E. The Members previously established the board of commissioners of the Commission (“**Board**”) and desire for said Board to be reaffirmed as the entity charged with the authority and responsibility to manage the Commission.
- F. The Board has previously acted to adopt a watershed management plan (“**Watershed Management Plan**”) for the watershed and has regularly updated and carried out said Watershed Management Plan in accordance with the Act.
- G. The Members desire to enter into this Agreement to reaffirm the Commission and the Board in furtherance of its efforts to continue working cooperatively to prepare and administer a surface water management plan to manage surface water within the Watershed, in accordance with the Act and Minnesota Rules, chapter 8410, and to carry out all additional functions and responsibilities described herein.

## AGREEMENT

In consideration of the mutual promises and agreements contained herein, the Members mutually agree as follows:

### SECTION I ESTABLISHMENT, GENERAL PURPOSE, AND DEFINITIONS

1.1 Reaffirming the Establishment. The Members hereby reaffirm and continue the establishment of the “Bassett Creek Watershed Management Commission” pursuant to their authority under the Act and Minnesota Statutes, section 471.59. The Commission will continue to operate as a duly formed joint powers watershed management organization in accordance with said laws, applicable rules, and this Agreement.

1.2 General Purpose. The general purpose of this Agreement is to continue the Commission and the Board, which the Members previously established, to jointly and cooperatively adopt, administer, and update, as necessary, the Watershed Management Plan, and to carry out the following express purposes:

- (a) serve as the watershed management organization for the Watershed and carry out all of the duties and responsibilities outlined in the Act;
- (b) investigate, study, plan and control the construction of facilities to drain or pond storm waters to alleviate damage by flood waters;
- (c) protect, preserve, and use natural surface water and groundwater storage and retention systems;
- (d) minimize public capital expenditures needed to correct flooding and water quality problems;
- (e) identify and plan for means to effectively protect and improve surface water and groundwater quality;
- (f) establish more uniform local policies and official controls for surface water and groundwater management;
- (g) prevent erosion of soil into surface water systems;
- (h) promote groundwater recharge;
- (i) improve the creek channel for drainage;
- (j) assist in planning for land use;

- (k) protect and enhance fish and wildlife habitat and water recreational facilities;
- (l) repair, improve, relocate, modify, consolidate or abandon, in whole or in part, drainage systems within the Watershed;
- (m) secure the other benefits associated with the proper management of surface water and groundwater;
- (n) assist in water conservation and the abatement of surface water and groundwater contamination and water pollution;
- (o) assist the Members in the preservation and use of natural water storage and retention systems;
- (p) promote and encourage cooperation among member cities in coordinating local surface water and groundwater plans and to be aware of their neighbors' problems and to protect the public health, safety, and general welfare; and
- (q) continue the work of the Bassett Creek Water Management Commission and to carry out the plans, policies and programs developed by the Commission over time. All existing policies will remain in effect and may be amended by the Commission, as it determines may be necessary to achieve its purposes and objectives.

The plan and programs will operate within the boundaries of the Watershed as identified in the official map filed with the Minnesota Board of Soil and Water Resources, as it may be amended from time to time. The boundaries of the Watershed are subject to change utilizing the procedures set out in the Act, which may be necessary to better reflect the hydrological boundaries of the Watershed.

1.3 **Definitions.** For the purposes of this Agreement, and in addition to any other terms expressly defined elsewhere throughout, the following terms have the meanings given them below.

- (a) *Board.* The board of commissioners of the Commission, consisting of one Commissioner or one Alternate Commissioner from each Member, and which is the governing body of the Commission.
- (b) *Commission.* The organization created by this Agreement, the full name of which is the "Bassett Creek Watershed Management Commission," a duly formed joint powers watershed management organization under Minnesota law.
- (c) *Member.* A Minnesota municipal corporation which enters into this Agreement, each of which are expressly listed in section 2.1.
- (d) *Voting Commissioner.* A Commissioner or Alternate Commissioner present during a Board meeting with voting rights. Pursuant to section 3.2(b) below, an Alternate

Commissioner only has voting rights in the event of absence or disability of their respective Commissioner. Each Voting Commissioner has one (1) vote on the Board.

- (e) *Watershed*. 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 Minnesota Board of Water and Soil Resources (“**BWSR**”) pursuant to the Act.

## **SECTION II MEMBERSHIP**

2.1 Members. The following nine municipal corporations and parties to this Agreement, each of which is either partially or entirely located within the Watershed, are Members of the Commission: Crystal, Golden Valley, Medicine Lake, Minneapolis, Minnetonka, New Hope, Plymouth, Robbinsdale, and St. Louis Park.

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

## **SECTION III BOARD OF COMMISSIONERS**

3.1 Establishment. The Members hereby reaffirm the establishment and continued operation of the Board in accordance with the Act. The Board will carry out the purposes and have the powers as provided herein.

3.2 Board Appointments. The Commission is governed by the Board, which consists of representatives appointed by the nine Members in accordance with this section. More specifically, each Member to this Agreement must appoint one Commissioner and one Alternate Commissioner to the Board. Each Member’s governing body will determine the eligibility and qualifications of its representatives on the Board.

- (a) Commissioner. Each Member is responsible for appointing one person to serve as its primary representative (“**Commissioner**”) on the Board. Each Member is responsible for publishing a notice of a vacancy, whether resulting from expiration of its Commissioner position or otherwise, as required in Minnesota Statutes, section 103B.227, subdivision 2.
- (b) Alternate Commissioner. Each Member may also appoint one alternate representative (“**Alternate Commissioner**”) to the Board in the same manner required to appoint a Commissioner. A Member’s Alternate Commissioner may only vote on a matter before the Commission in the event of either absence or disability of the appointing Member’s Commissioner (in either event, the Alternate Commissioner is considered a Voting Commissioner). If the absent or disabled Commissioner is also an officer of the Board, the Alternate Commissioner will not be entitled to serve as such officer. If necessary,

- the Board may select a current Commissioner to temporarily undertake the duties of the absent officer.
- (c) Term. All Commissioners and Alternate Commissioners will serve until their successors are selected and otherwise qualify, unless they resign or are removed earlier as provided herein. All Commissioners and Alternate Commissioners will serve three-year terms, and said terms will be staggered with expiration dates for those presently appointed remaining as follows:
- (1) The terms of the existing representatives appointed by the cities of Minneapolis, Minnetonka, and New Hope will expire on February 1, 2025.
  - (2) The terms of the existing representatives appointed by the cities of Plymouth, Robbinsdale, and St. Louis Park will expire on February 1, 2026.
  - (3) The terms of the existing representatives appointed by the cities of Crystal, Golden Valley, and Medicine Lake will expire on February 1, 2027.
- (d) Notices. A Member will provide the Commission written notice of its appointments, including the resolution making the appointments or a copy of the minutes for the meeting at which the appointments were made. The Commission will notify BWSR of appointments and vacancies within 30 days after receiving notice from the Member. Members must fill all vacancies within 90 days after the vacancy occurs.
- (e) Vacancies. A Member will notify the Commission in writing within 10 days of the occurrence of a vacancy in its Commissioner or Alternate Commissioner positions. The Commission will notify BWSR of the vacancy within 30 days of receiving the notice of a vacancy as required by Minn. Stat. § 103B.227, subd. 1. The Member will publish notice of any vacancy, whether by expiration of term or for any other reason, in accordance with Minn. Stat. § 103B.227, subd. 2, as it may be amended. The notices must state that those interested in being appointed to serve on the Commission may submit their names to the Member for consideration. The notice must be published at least 15 days before the Member's governing body acts to fill the vacancy. The governing body must make the appointment within 90 days from the occurrence of the vacancy. The Member will promptly notify the Commission of the appointment in writing. The appointed person will serve the unexpired term of the position.
- (f) Removal. The governing body of any Member may remove its respective Commissioner for just cause as provided in Minn. Stat. § 103B.227, subd. 3 and in accordance with Minn. R., part 8410.0040. If a Commissioner is an elected official, said governing body may remove the Commissioner if the Commissioner is not reelected. The governing body of any Member may remove its Alternate Commissioner with or without cause. The Member will notify the Board of any such removal in writing within 10 days of acting to remove the Commissioner or Alternate Commissioner, as the case may be. The Commission will notify BWSR of the vacancy

within 30 days of receiving such notice. The Member must act to fill the vacancy created by the removal within 90 days, as provided in this Agreement.

- (g) Suspension of Authority. The authority of a Commissioner or Alternate Commissioner to vote will be suspended if the appointing Member is more than 60 days delinquent in making any payments due to the Commission as provided by this Agreement. The voting authority will be reinstated once the Member pays all past due amounts.

3.3 Compensation and Expenses. The Board may set compensation rates and pay per-diem compensation to Commissioners and Alternate Commissioners. In addition, Commission funds may be used to reimburse Commissioners and Alternate Commissioners for expenses incurred in performing Commission business if authorized by the Board. Nothing in this section 3.3 prevents a Member from providing compensation for its Commissioner or Alternate Commissioner for serving on the Board, if such compensation is authorized by such Member's governmental unit and by law.

3.4 Board Officers; Duties. At its first regular meeting on or after February 1 of each year, the Board will elect from its Commissioners a Chair, Vice Chair, Secretary, and Treasurer. All such officers will hold office for a term of one (1) year and until their successors have been qualified and duly elected by the Board. An officer may serve only while a member of the Board. A vacancy in an officer position will be filled from the Commissioner membership by Board selection for the remainder of the unexpired term of such office. The officers will have the duties provided in the Commission bylaws.

3.5 Quorum. A majority of Voting Commissioners from the nine Member cities, i.e. representation of five Members, constitutes a quorum. Less than a quorum may adjourn a scheduled meeting. A simple majority of the quorum is required for the Board to act unless a higher number of votes is required by this Agreement or by law. If more than one Member has either a Board vacancy (both Commission and Alternate Commissioner) or its voting rights suspended, as provided herein, the number of Voting Commissioners required for a quorum will be reduced until the vacancy is filled or suspension lifted, as the case may be.

3.6 Meetings. The Board will conduct meetings in accordance with the Minnesota Open Meeting Law (Minn. Stat., chap. 13D) and this section.

- (a) Regular Meetings. The Board will develop a schedule of its regular meetings. The Board will post the schedule on the Commission's website and provide a copy to each Member. The Secretary will maintain a copy of the schedule of regular meetings. The Chair and Vice Chair may cancel a meeting due to a lack of business items. The Secretary will make a good faith effort to notify Commissioners and Alternate Commissioners of a meeting cancellation.
- (b) Special Meetings. The Board may hold such special meetings as it may determine are necessary to conduct the business of the Commission. A special meeting may be called by the Chair or by any two Commissioners. In addition to the notice requirements

- provided in the Minnesota Open Meeting Law, the Secretary will provide notice of special meetings to the Commissioners and Alternate Commissioners.
- (c) Annual Organizational Meeting. The first regular meeting on or after February 1 of each year will constitute the annual organizational meeting of the Commission.
  - (d) Rules of Procedure. The Board will conduct its meetings generally in accordance with the procedures set out in the most current version of Robert's Rules of Order without requiring strict conformance to its requirements. The Board may modify such rules as it determines is appropriate to facilitate the conducting of its business or adopt a different set of rules for its meetings. The Board may amend its rules from time to time as it determines is appropriate upon a majority vote of all Voting Commissioners. The Board may also waive one or more specific rules as it determines are necessary to facilitate the conducting of its business, except that statutory requirements may not be waived and voting authority provided hereunder may not be abrogated.

#### **SECTION IV POWERS AND DUTIES OF THE BOARD**

4.1 Powers. The Board is authorized to exercise the powers in this section to carry out the purposes of the Commission.

- (a) Powers Granted.
  - (1) It may contract with or employ such persons or entities 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.
  - (2) It may contract for facilities, materials, supplies, and services to carry on its activities.
  - (3) It may acquire necessary personal property to carry out its powers and its duties.
  - (4) It will prepare, adopt, and implement a watershed management plan and capital improvement program that fulfills the requirements of Minn. Stat. § 103B.231 and all other applicable laws and rules. In preparing said plan, the Board may consult with the engineering and planning staff of each Member and 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 protection and improvement of waters in the Watershed and mitigation of flood risk.
  - (5) It will make necessary surveys or utilize other reliable surveys and data and develop projects to accomplish the purposes for which it is organized.



- (6) It may cooperate or contract with the State of Minnesota, or any subdivision thereof, any federal agency, or ~~and~~[any](#) public or private organization to accomplish the purposes for which it is organized.
- (7) It may order any Member or Members 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 Watershed.
- (8) It may order any Member or Members to acquire, operate, construct, or maintain dams, dikes, reservoirs and appurtenant works or other improvements necessary to implement the overall plan.
- (9) It will regulate, conserve, and control the use and management of storm and surface water and groundwater within the Watershed.
- (10) It may contract for or purchase such insurance as the Board deems necessary for the protection of the Commission.
- (11) It may establish and maintain devices acquiring and recording hydrological and water quality data within the Watershed.
- (12) It may enter upon lands 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 chair or secretary of the Board with a notice of claim as required by Minn. Stat. § 466.05.
- (13) It will provide any Member 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.
- (14) 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 Watershed. The use of Commission funds for litigation will be only upon a favorable vote of a majority of Voting Commissioners.
- (15) 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.
- (16) 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.

- (17) 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.
  - (18) It will cause to be made an annual audit of the books and accounts of the Commission by a certified public accountant or the State Auditor, and will transmit a copy of the annual audit to BWSR and, on request, a Member. Its books, reports, and records will be available for and open to inspection by the Members at all reasonable times.
  - (19) It will make and file a report to its Members at least once annually containing, at minimum, the following information: (i) the approved budget; (ii) a reporting of revenues; (iii) a reporting of expenditures; (iv) a financial audit report that includes a balance sheet, a classifications of revenues and expenditures, an analysis of changes in the final balances, and any additional statements considered necessary for full financial disclosure; (v) the status of all Commission projects and work within the Watershed; and (vi) the business transacted by the Commission and other matters which affect the interests of the Commission.
  - (20) It may recommend changes in this Agreement to the Members.
  - (21) 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 Minn. Stat. §§ 103B.201 through 103B.251.
  - (22) It will 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 complying with the requirements of Minn. Stat., chap. 103G.
  - (23) It will establish a procedure for establishing citizen or technical advisory committees and to provide other means for public participation.
- (b) Powers Reserved. The Board does not have any of the powers identified in this subsection (b). Expressly identifying specific powers reserved is not intended to expand, by negative implication, the powers granted above to the Board.
- (1) Eminent Domain. The Commission does not have the power of eminent domain. Any easements or other interests in land necessary for any Board-ordered project will be acquired as provided below.
  - (2) Real Property. The Commission may not own any interest in real property. All such interests, if necessary for any Board-ordered project, will be held in the name of a Member wherein said lands are located or another public or private entity, as the case may be.

- (3) Bonding. The Commission does not have the power to issue certificates, warrants or bonds.
  - (4) Special Assessments. The Commission does not have the power to levy a special assessment upon any privately or publicly owned land. All such assessments, if deemed necessary as part of a Board-ordered project, will be levied by the Member wherein said lands are located and in accordance with Minnesota Statutes, chapter 429. The Commission does, however, have the power to require any Member to contribute the costs allocated or assessed according to other provisions of this Agreement.
- (c) Members. For the avoidance of doubt, each Member reserves the right to conduct separate or concurrent studies on any matter under study by the Commission.

4.2 Collection or Diversion of Waters. Each Member agrees that it will not directly or indirectly allow the collection or diversion of any additional surface water to the Mississippi River or its tributaries without adherence to all Commission rules and requirements.

#### 4.3 Projects.

- (a) The Board may undertake projects, including those provided in its capital improvement program, in accordance with the Watershed Management Plan. Prior to ordering any project or otherwise holding a public hearing as may be required under section 103B.251, the Commission will secure from its engineers or some other competent person a report advising as to whether the proposed improvement is feasible, whether it will best be made as proposed or in connection with some other improvement, the estimated cost of the improvement, and the proposed allocation of costs, including whether one or more Members will incur any such costs. A resolution setting forth the order for any capital improvement project requires a favorable vote by two-thirds of Voting Commissioners. When ordering any project, the Commission resolution will further include an allocation of costs for the project and a designation of which Member(s) or entity will contract for and fund the project. Such resolution may also designate the engineers to prepare plans and specifications.

Any Member aggrieved by the determination of the Board as to the allocation of the costs of a project has 30 days after the Commission resolution ordering the same to appeal said determination. Said appeal must be in writing and directed to the Board asking for arbitration. The determination of the Member's appeal will be referred to a Board of Arbitration. The Board of Arbitration will consist of three persons; one to be appointed by the Commission's Board, one to be appointed by the appealing Member, and the third to be appointed by the two persons 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 will 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 must not be a resident of any Member city and if appointed by the Chief Judge said person must 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 will be divided equally between the Commission and the appealing Member. Arbitration will be conducted in accordance with the Uniform Arbitration Act, Chapter 572B of Minnesota Statutes.

- (b) Projects Implemented by Members and Others. For any project that will be constructed by one or more Members on behalf of the Commission and reimbursed in whole or part by the Commission, to the extent authorized by the Commission, the Member(s) responsible for implementing the project and the Commission will enter into a cooperative agreement providing for all Commission-required terms and conditions related to the project and any such reimbursement. The Commission may also implement a project with a non-Member public or private entity in the same manner, if construction by such entities is deemed appropriate by the Commission.
- (c) Commission Projects. The Board may also undertake and contract for projects in the Commission's name, in accordance with the Watershed Management Plan and all applicable laws and regulations related to public procurement. Approval of Commission contracts for a capital improvement requires a favorable vote by two-thirds of Voting Commissioners.
- (d) County Funding. If the Commission proposes to certify all or any part of the cost of a capital improvement project for payment by Hennepin ~~County's~~County via its levy or bonding authority, as set forth in Minn. Stat. § 103B.251, all proceedings will be carried out in accordance with the provisions set forth in said section 103B.251, as amended.
- (e) Contracts for Improvements. All contracts which are to be let as a result of the Commission's ordering of a project must comply with the requirements of laws applicable to contracts let by the respective party making such contract. The Commission does not have the authority to contract in its own name for any work for which a special assessment will be levied against any private or public property under the provisions of Minnesota Statutes, chapter 429 or any city charter, and such contracts must be awarded by action of the governing body of a Member and must be in the name of said Member. This subsection does not preclude the Commission from proceeding under Minnesota Statutes, Section 103B.251 or from otherwise proceeding under subsection 4.3(c) for projects that will not be specially assessed under chapter 429.

All improvement contracts will be duly supervised by the party awarding said contract, provided, however, that the Commission is 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 also have the right to enter upon the place or places where any improvement work is in progress for the purpose of making reasonable tests and inspections. Commission staff will report, advise and recommend to the Board on the progress of said work.

- (f) Land Acquisition. Because the Commission does not have the power to acquire real property, the Members agree that any and all easements or interests in land which are necessary for any project will be negotiated or condemned in accordance with all applicable laws by the Member wherein said lands are located, and each Member agrees to acquire the necessary easements or interests in such land upon order of the Commission to accomplish the purposes of this Agreement. All reasonable costs of said acquisition will be considered as a cost of the respective improvement. If a Member determines it is in the best interests of that Member to acquire additional lands in conjunction with the acquisition of lands for the Commission-ordered improvement, for some other purpose, the costs of said acquisition will not be included in the improvement costs of the ordered project and the Commission will not reimburse such costs. The Board in determining the allocation of the improvement costs may take into consideration the land use for which said additional lands are being acquired and may credit the acquiring Member 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 refuses to negotiate or condemn lands as ordered by the Board, any other Member may negotiate or condemn outside of its corporate limits in accordance with applicable laws. 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 except upon order of the Board. The Commission has authority to establish land acquisition policies as a part of the overall Watershed Management Plan. The policies must be designed to equalize costs of land throughout the Watershed.

4.4 Emergency Projects. The Commission may perform emergency projects in accordance with Minn. Stat. § 103B.252.

4.5 Local Water Management Plans.

- (a) Development. Each Member agrees to develop and maintain a local water management plan, capital improvement program, and official controls as necessary to bring local water management into conformance with the Watershed Management Plan. The development and implementation of local water management plans will conform with all requirements of the Act, including Minn. Stat. § 103B.235 and Minn. R., part 8410.0160, as amended. In accordance with the Act, the Board will approve or disapprove each local plan or any parts of each plan. Every effort will be made by the Commission and all Members to coordinate local plans with the Watershed's overall plan, including planning for local plans at the same time the Watershed's overall plan is being developed.
- (b) Review. Each Member will submit its proposed local water management plan to the Metropolitan Council and the Board for review as required by Minn. Stat. § 103B.235.

The Board will consider any comments on local water management plans received from the Metropolitan Council and thereafter act on said plans in accordance with the Act.

4.6 Pollution Control and Water Quality. The Commission has 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 Act. All Members 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 will 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 may order the Member 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.

4.7 Boundary Changes. Any changes to the boundaries of the watershed must be undertaken in accordance with Minn. Stat. § 103B.215, as it may be amended.

## SECTION V FINANCES

5.1 Generally.

- (a) Authority. 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. In no event will there be a disbursement of Commission funds without the signature of at least two Board members, one of whom must be the Treasurer or the Treasurer's Authorized Deputy Treasurer, except to the extent the Commission delegates general or specific authority to the Commission administrator to disburse Commission funds. The Treasurer is required to file with the Secretary of the Board a bond in the sum of at least \$10,000 or such higher amount as determined by the Board. The Commission will pay the premium on said bond.
- (b) Depository. The Board will designate one or more national or state bank or trust companies, as authorized under Minnesota law, to receive deposits of public moneys and to act as depositories for the Commission funds.

5.2 Member Contributions. Each Member agrees to contribute each year to a fund to be used for general administration purposes including, but not limited to: salaries, rent, supplies, development of the Watershed Management Plan, engineering and legal expenses, insurance, and bonds, and to purchase and maintain any personal property deemed necessary by the Commission in furtherance of its purposes and powers as articulated in this Agreement. Said funds may also be used for normal maintenance of any facilities, but any extraordinary maintenance or repair expense will be treated as an improvement cost and processed in accordance with section 5.3 of this Agreement. ~~The annual contribution by each Member will be based fifty percent (50%) on Fifty percent (50%) of the annual budget for this general administration fund shall be allocated among~~

the Members based upon the net tax capacity of all property within each Member's respective boundaries compared to the net tax capacity of all property within the Watershed, and the remaining fifty percent (50%) shall be allocated among the Members based on the ~~basis of the~~ total area ~~of~~within each ~~Member~~Member's jurisdictional boundary that lies within the ~~boundaries~~boundary of the Watershed ~~each year~~compared to the total area ~~in~~of all property within the Watershed. In no event will any assessment hereunder require a contribution to exceed one-half of one percent of the net tax capacity within the Watershed.

### 5.3 Capital Project Funding.

- (a) Project Funding; Commission Contributions. In addition to any amount to be contributed by any Member or other private or public entity, as the case may be and as specified in the Board's resolution ordering the project, the Commission may, by a two-thirds vote of Voting Commissioners, proceed to fund all or any part of the cost of a capital improvement contained in the Watershed Management Plan pursuant to the authority and subject to the provisions set forth in Minn. Stat. § 103B.251.
- (b) Maintenance Levy. The Commission may establish a maintenance fund to be used for normal and routine maintenance of a work of improvement constructed in whole or part with money provided by Hennepin County. As provided in Minn. Stat. § 103B.251, subd. 9, the Board may impose, with the county's consent, an ad valorem levy on all property located within the territory of the Watershed or a subwatershed unit. The levy will be certified, levied, collected, and distributed as provided in sections 103D.915 and 103D.921, as amended, and will be in addition to any other money levied and distributed by the county to the Commission. Mailed notice of any hearing required under the aforementioned statutes will be sent to the clerk of each Member municipality at least 30 days prior to the hearing. The proceeds of said maintenance levy will be deposited in a separate maintenance and repair account to be used only for the purpose for which the levy was made.

### 5.4 Budget; Member Assessments.

- (a) Adoption. On or before July 1 of each year, the Board will adopt a detailed budget for the ensuing year and decide upon the total amount necessary for the general fund. Budget approval requires a favorable vote by a majority of Voting Commissioners. The budget must not in any event require any Member to contribute annually in excess of one-half of one percent of the net tax capacity of all taxable property within the Watershed and within said Member's corporate boundaries.
- (b) Certification to Members. The secretary of the Board will certify the budget on or before July 1 to the clerk of each Member together with a statement of the proportion of the budget to be provided by each Member.
- (c) Member Review. The governing body of each Member agrees to review the budget, and the Board will upon written 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. Modifications or amendments to the original budget require a favorable vote by a majority of Voting Commissioners.

- (d) Member Assessments. Each Member agrees to provide the funds required by the approved budget and contemplated under section 5.2. 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 process required in this Agreement. The schedule of payments by the Members will be determined by the Board in such a manner as to provide for an orderly collection of the funds needed.
- (e) Supplemental Budget. Upon notice and hearing, the Board by a favorable vote of a majority of Voting Commissioners may adopt a supplemental budget requiring additional payments by the Members within 60 days of its adoption but in no event will 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 the Member's corporate boundaries in any one calendar year.

5.5 Cost Allocation for Capital Projects. All capital costs incurred by the Commission will be apportioned to the respective Members on any of the following bases:

- (a) County Levy. If the project is constructed and financed pursuant to Minn. Stat. § 103B.251, the Members understand and agree that said costs will be levied on all taxable property in the Watershed as set forth in said statute.
- (b) Negotiated Amount. ~~A negotiated amount to be arrived at by the~~ Members who have lands in the subdistrict that is responsible for the capital improvement may negotiate an amount to be contributed by each Member thereof.
- (c) Tax Capacity and/or Total Area.
  - (1) Fifty percent of all capital costs or the financing thereof will be apportioned to each Member on the basis of the net tax capacity of each Member within the boundaries of the Watershed each year to the total net tax capacity in the Watershed.
  - (2) Fifty percent of all capital costs or the financing thereof will 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 Watershed.
  - (3) Capital costs allocated under the 50% area/50% net tax capacity formula set forth above may be varied by a two-thirds vote of Voting Commissioners if:
    - (i) 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



- (ii) 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.
- (4) Credits to any Member for lands acquired by said Member to pond or store storm and surface water will be allowed against costs set forth in subsections (c)(1), (c)(2) and (c)(3) of this section.

## SECTION VI MISCELLANEOUS PROVISIONS

6.1 Term. This Agreement is effective as of January 1, 2025 and will remain in effect until January 1, 2037 unless terminated earlier as provided herein. The Members may agree to continue this Agreement as the preferred method for addressing their obligation to address surface water issues under law.

6.2 Liability. For the avoidance of doubt, the Commission is considered a single governmental unit for purposes of total liability for damages pursuant to Minn. Stat. § 471.59, subd. 1a(b).

6.3 Termination. This Agreement may be terminated prior to January 1, 2037, by the unanimous consent of the Members. If the Agreement is to be so terminated, a notice of the intent to dissolve the Commission must be sent to BWSR and Hennepin County at least 90 days prior to the date of dissolution.

6.4 Dissolution. In addition to the manner provided in section 6.3 for terminating this Agreement, any Member may petition the Board to dissolve the Agreement. Following such petition, and upon 90 days' notice in writing to the clerk of each Member and to BWSR and Hennepin County, the Board will hold a public hearing and upon a favorable vote by a majority of Voting Commissioners, the Board may by resolution recommend that the Commission be dissolved. Said resolution will then be submitted to each Member and if ratified by three-fourths of the governing bodies of all Members within 60 days, said Board must dissolve the Commission, allowing a reasonable time to complete work in progress and to dispose of personal property owned by the Commission.

6.5 Distribution of Assets. If this Agreement is terminated and not replaced with a new agreement providing for the continued operation of the Commission, or if the Commission is dissolved, all property of the Commission will be sold and the proceeds thereof, together with monies on hand, will be distributed to the Members of the Commission. Such distribution of Commission assets will be made in proportion to the total contribution to the Commission as required by the last annual budget.

[signature pages to follow]