



Bassett Creek Watershed Management Commission

MEMO

To: BCWMC Commissioners/Alternates
From: Administrator Jester
Date: November 11, 2024

RE: Agreement with Golden Valley for Bassett Creek Restoration Project (2024CR-M)

At their meeting in September 2023, the Commission officially ordered the [Bassett Creek Main Stem Restoration Project Regent Ave. to Golden Valley Rd \(2024CR-M\)](#). This project will restore streambanks and reduce erosion along a 7,000-foot section of the creek as described in the feasibility study as "alternative 3" (stabilize streambanks in all high, medium, and low priority areas).

Typically, the BCWMC enters an agreement with the city where the project is located to both design and construct the project. In this case, the City of Golden Valley requests that the Commission design the project, and that the city construct the project. As such, in cooperation with the city, the Commission Engineers would perform the necessary engineering services including project design, preparation of bid documents, assisting with community engagement, preparation of exhibits for necessary property rights, permitting and environmental review, construction observation, environmental oversight, and inspections. (See Recital D in the attached agreement.)

The attached agreement was drafted by the Commission Attorney and has been reviewed and revised through several iterations between me, Commission Engineers, the Commission Attorney, the city attorney, and city staff. The agreement outlines expenses that would be eligible for reimbursement to the city after Commission expenses are paid (Section 4). Commission expenses include development of the feasibility study, project design and engineering as described above, and project administration. City expenses that are eligible for reimbursement include items listed in Table 5-1 of the 2015 Watershed Management Plan (both left and right columns) (see table on next page). While the city will not seek reimbursement for "city improvements," all other items in Table 5-1 could be a real project expense and eligible for reimbursement. Estimated construction expenses will be presented for Commission approval with 50% and 90% design plans.

Staff recommends approval of the attached agreement with the City of Golden Valley.

Table 5-1 Project Costs Eligible for BCWMC Reimbursement

Project costs eligible for reimbursement from BCWMC:	Other project costs that will be considered for whole or partial reimbursement on a project by project basis*:
Feasibility study costs	Easement acquisition
Pre-project planning, monitoring (e.g., fish surveys, feasibility study review/follow-up)	Property acquisition
Plan amendment costs	Utility relocation
Grant application & administration costs	City improvements associated with the project but not directly tied to the goals of the BCWMC (e.g. trails, pedestrian bridges, signage)
Permitting costs and fees	Contaminated soils/groundwater remediation
Engineering and design costs (plans & specs)	City staff time and expenses (if not requested prior to levy certification)
Construction costs	Wetland mitigation or replacement
Project bidding & advertising fees	Art/aesthetic improvements directly associated with the project
Construction administration & observation costs	
Warranty period monitoring costs – e.g., wetland monitoring, vegetation monitoring, post-construction inspection	
City staff time and expenses (if requested prior to levy certification)	
Other BCWMC administration and engineering time, including tracking CIP project budget, engineering plan review and reviewing reimbursement requests	
Transfer to BCWMC administrative fund for CIP administrative expenses, as designated by the Commission	

*The BCWMC will consider the cost effectiveness of the project including the cost per pound of pollutant removal relative to guidance to be established by the BCWMC (for water quality projects), along with partnerships, grant opportunities, and other factors in determining reimbursement of other project costs.

COOPERATIVE AGREEMENT
(Bassett Creek Main Stem Restoration Project 2024CR-M)

This Cooperative Agreement (“**Agreement**”) is made as of this ____ day of _____, 2024 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, as amended by the Commission from time to time, includes a capital improvement program (CIP) that lists several capital improvements including the Bassett Creek Main Stem Restoration Project Regent Ave. to Golden Valley Road 2024CR-M (“**Project**”).
- C. The 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 the commission engineer, Barr Engineering Co. (the “**Commission Engineer**”), entitled *Feasibility Report for Bassett Creek Main Stem Restoration, Regent Avenue to Golden Valley Road (2024 CR-M)*, dated June 2023 (“**Feasibility Report**”), which is attached hereto as Exhibit A. The Project, as more specifically described in section 1 below, generally consists of the work identified in the Feasibility Report as Option 3 – restoring all proposed restoration areas.
- D. On September 21, 2023, the Commission adopted a resolution ordering the Project and directing that it be constructed by the City. Although the City will directly contract for the Project’s construction, the parties desire for the Commission Engineer to perform all customary engineering services related to designing and administering the Project, including, but not necessarily limited to, Project design, preparation of bid documents, assisting with community engagement, preparation of exhibits for necessary property rights, permitting and environmental review, construction observation, environmental oversight, if needed, and inspections (collectively, the “**Engineering Services**”). Engineering Services will be defined for the Project, in cooperation with the City, and memorialized by the Commission Engineer in a scope of work that will be reviewed by the City and presented to the Commission for its approval.
- E. The estimated planning level opinion of cost of the Project, including the feasibility study, all additional Engineering Services, and actual construction, is \$2,241,000.
- F. To fund the Project, including all services provided by the Commission Engineer and reimbursement of all eligible costs incurred by the City, the Commission will utilize up to \$1,741,000 available to the Commission through a Hennepin County levy on watershed taxpayers

and up to \$200,000 from its Closed Project Account. The additional \$300,000 of estimated total Project costs will be funded using \$200,000 from the City’s portion of BCWMC channel maintenance funding and up to \$100,000 from the City’s own capital improvement program.

- G. In accordance with the Plan, the first portion of Project costs were certified to Hennepin County, which levied taxes throughout the watershed for Project costs in 2023 for collection and settlement in 2024, and the Commission intends to certify the remaining portion of Project costs to Hennepin County in 2024 and 2025 for collection and settlement in 2025 and 2026, respectively, all pursuant to Minnesota Statutes, section 103B.251.
- H. Accordingly, and pursuant to the authority provided in Minnesota Statutes, section 471.59, the parties desire to cooperate 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 Project will consist of the work identified in the Feasibility Report as Option 3 – stabilizing all proposed restoration areas, as provided in Sections 6, 7, and 8 of the Feasibility Report, plus appendices, which includes restoring the streambanks in all high, medium, and low priority areas, to the extent that property rights and Project funding will accommodate, along a 7,000 foot section of Bassett Creek (known as Ĥahá Wakpádaŋ in the Dakota language) between Regent Avenue and Golden Valley Road. The Project is expected to annually reduce pollution in Ĥahá Wakpádaŋ/Bassett Creek and downstream in the Mississippi River by an estimated 82 pounds of total phosphorus and 136,000 pounds of total suspended solids.
2. Design and Plans; Property Rights. The Commission Engineer, in cooperation with 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. Throughout development of the plans, the City will use its best efforts to obtain all property rights necessary for implementation of the Project in the form of right-of-entry agreements, easements, or other instruments, as it deems appropriate, which will be based upon the Commission Engineer’s design and exhibits provided as part of the Engineering Services. Said instruments will run in favor of the City and, accordingly, the drafting and recording of such instruments will be the sole responsibility of the City. At the time of the Commission’s review of the 90% plans, the City will provide a comprehensive update regarding its efforts to obtain such property rights and any impacts such efforts have on the scope of the Project, if any, which will be reviewed by the Commission when determining whether to proceed with its approval of the 90% plans.

Any changes to the Commission-approved 90% plans and specifications must be submitted to the Commission for subsequent approval. Minor changes, however, may be approved by the City, at the recommendation of the Commission Engineer, without requiring additional approval by the Commission. For purposes of this paragraph, “minor changes” 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. For the avoidance of doubt, any changes to the Commission-approved 90% plans and specifications that are not considered minor changes require Commission review and approval.

3. Contract Administration and Requirements. The Commission Engineer, in cooperation with the City and as part of the Engineering Services, will prepare bidding documents. The City will advertise for bids and award contracts for all Project work in accordance with the requirements of applicable law. The City will award such contracts and, with the assistance of the Commission Engineer, will administer the construction of the Project to be 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 pay its contractor(s) along with all other expenses related to the Project, and the City will keep and maintain complete records of all costs incurred. During construction, any project change orders that are not considered minor changes, as defined in section 2 above, must be submitted to the Commission for review and approval.

The City will further require the contractor to name the Commission and Commission Engineer as additional insureds 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 contractor to defend, indemnify, protect and hold harmless the Commission, the Commission Engineer, and the City, including all of said parties' agents, officers, and employees, from all claims or actions arising from negligent acts, errors or omissions of the contractor. The City will display a sign at the construction site stating, "Paid for by the Taxpayers of the Bassett Creek Watershed."

4. Commission Reimbursement. In addition to up to \$200,000 of Closed Project Account funding and up to \$200,000 of the City's portion of BCWMC channel maintenance funding, the Commission used or will use its best efforts to secure payment from Hennepin County in accordance with Minnesota Statutes, section 103B.251 in the amount of \$434,000 by tax levy in 2023 for collection in 2024 and an additional \$1,307,000 by tax levy in 2024 and 2025 for collection in 2025 and 2026, respectively. Accordingly, the total reimbursement paid by the Commission to the City for the Project will not exceed \$400,000 plus the total amount levied, which is anticipated to be \$1,741,000, for a total of up to \$2,141,000, less the Commission's out-of-pocket Project expenses. The Commission's out-of-pocket Project expenses include, but are not necessarily limited to, all Engineering Services as defined in Recital D above, feasibility studies, publication of Commission notices, legal expenses, grant administration, and up to a 2.5% administrative charge from funds received in the aforementioned tax settlements from Hennepin County. All available funds in excess of such expenses are available for reimbursement to the City for eligible costs incurred by the City for construction of the Project, which shall include costs associated with all items in Table 5-1 of the Plan including, but not limited to, costs associated with acquisition of property rights and City staff time and expenses. 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.

5. Limits on Reimbursement. Reimbursement to the City will not exceed the amount specified above (up to \$2,141,000), depending on the total amount received from the County for the Project, less any amounts used or retained by the Commission for its out-of-pocket expenses, as detailed in section 4. The above amounts will not be increased by grants or other 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.
6. Audit. All books, records, documents, and accounting procedures related to the Project will remain subject to examination by both parties and either the State Auditor or the Legislative Auditor for at least six years after completion of the Project.
7. Environmental Review. As part of the Engineering Services, the Commission Engineer, with the City's cooperation, will discuss the potential need for environmental investigation and planning and, if requested, will perform all necessary investigations of site contamination and assist the City in securing all necessary local, state, or federal permits required for the construction of the Project. The City 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.
8. Ongoing Maintenance. Upon completion of the Project, the City shall be responsible for any ongoing maintenance in areas owned by the City or subject to City easement allowing for such maintenance. In said areas, 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. In areas not owned by the City or not subject to City easement, the City agrees to provide property owners with a letter outlining recommended best practices and guidance for maintaining any improvements on their property (i.e. native vegetation buffers, trees, and streambank stabilization measures).
9. Data Practices. Both parties will retain and make available data related to the letting of contracts and construction of the Project or any other such data determined to be public in accordance with the Minnesota Government Data Practices Act.
10. Term. This Agreement shall be in effect as of the date first written above and shall terminate once the Project is completed and the parties have performed all obligations provided herein, except for ongoing maintenance required of the City which will survive termination.
11. Liability; Indemnification. This Agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes, section 471.59. Additionally, each party agrees that it will be responsible only for its own acts and the results thereof to the extent authorized by the

law and will not be responsible for the acts or omissions of the other and the results thereof. Furthermore, each party shall indemnify, defend and hold harmless the other against all claims, losses, damage, liability, suits, judgments, costs and expenses, including reasonable attorneys' fees, resulting from the actions or inactions of the indemnifying party, its officers, employees, or agents. Any party seeking to be indemnified, defended, and held harmless as required herein shall provide timely notice to the indemnifying party when a claim is brought. The party undertaking the defense shall retain all rights and defenses available to the party or parties indemnified and no immunities are hereby waived that are otherwise available to the parties under law. Nothing in this Agreement shall constitute or be construed as a waiver of any exemptions or limitations on liability available to the parties under Minnesota Statutes, chapter 466 or any other law. For purposes of this Agreement and the cooperative activities contemplated herein, the parties hereto are considered a single governmental unit for purposes of total liability for damages pursuant to Minnesota Statutes, section 471.59, subd. 1a(b). This Agreement creates no right in and waives no immunity, defense or liability limitation with respect to any third party. As between the parties, only contract remedies are available for a breach of this Agreement. This section 11 will survive termination of this Agreement.

12. 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.
13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

[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 by: _____
Its Secretary

Date: _____

CITY OF GOLDEN VALLEY

By: _____
Its Mayor

And by: _____
Its City Manager

Date: _____

EXHIBIT A
Feasibility Report

[attached hereto]