

COOPERATIVE AGREEMENT
(Main Stem Channel Restoration Project)

This Cooperative Agreement (“Agreement”) is made as of this 15th day of September, 2016, by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (hereinafter the “Commission”), and the City of Minneapolis, a Minnesota municipal corporation (hereinafter the “City”).

WITNESSETH:

WHEREAS, the Commission adopted the Bassett Creek Watershed Management Commission Watershed Management Plan on September 17, 2015 (the “Plan”), a watershed management plan within the meaning of Minn. Stat. § 103B.231; and

WHEREAS, the Plan includes a capital improvement program (“CIP”) that lists a number of water quality project capital improvements; and

WHEREAS, one of the water quality projects identified in the CIP is a channel restoration project described as the Main Stem Channel Restoration Project, Cedar Lake Road to Irving Ave (2017CR-M) in the City of Minneapolis (the “Project”), as more fully described in the feasibility report for the Project prepared by Barr Engineering, entitled Feasibility Report for Bassett Creek Main Stem Erosion Repair Project dated May 2016, which is attached and made a part hereof (the “Feasibility Report”); and

WHEREAS, the Project includes the Fruen Mill Area which was part of an earlier Main Stem Restoration CIP Project that was included in the 2004 Watershed Management Plan, as amended. The previous restoration project was constructed in 2012, but the Fruen Mill Area portion of the project was not completed as the necessary owner permissions could not be obtained at the time. Because the necessary owner permissions are now available, and the Fruen Mill Area remains a critical part of the restoration project, the Commission approved the addition of the Fruen Mill Area to this Project. The inclusion of the Fruen Mill Area into this Project does not require a Plan amendment as it constitutes a later implementation of a previously approved CIP project. The Fruen Mill Area is included in and is part of the “Project” for the purposes of this Agreement; and

WHEREAS, the cost estimate for the Project including design, construction, and Commission costs directly related to the project is \$1,064,472; and

WHEREAS, the Plan specifies that the Project will be funded by a County tax levy under Minn. Stat. § 103B.251; and

WHEREAS, on September 15, 2016, the Commission adopted a resolution ordering the Project and directing that it be constructed by the City; and

WHEREAS, the first portion of the Project costs were certified to Hennepin County, which will levy taxes throughout the watershed, in 2016 for collection and settlement in 2017, and the Commission intends to certify the remaining portion of the Project costs to Hennepin County in 2017 for collection and settlement in 2018; and

WHEREAS, the City is willing to construct the Project on the terms and conditions hereinafter set forth.

NOW, THEREFORE, ON THE BASIS OF THE PREMISES AND MUTUAL COVENANTS HEREINAFTER SET FORTH, THE PARTIES AGREE AS FOLLOWS:

1. Project. The Project will consist of stabilizing streambanks and repairing areas damaged by erosion or affected by sedimentation in the Fruen Mill Area and from Cedar Lake Road downstream to the Bassett Creek Tunnel entrances, as described in the Feasibility Report for the Project.
2. 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.
3. Contract Administration. The City will advertise for bids and award contracts in accordance with the requirements of 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 contract in accordance with Minn. Stat. § 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”.
4. 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.

5. Commission Reimbursement. The Commission will use its best efforts to secure payment from the County in accordance with Minn. Stat. § 103B.251 in the amount of Four Hundred Thousand Dollars (\$400,000) by tax levy in 2016 for collection in 2017 and Six Hundred Sixty Four Thousand Four Hundred Seventy-two Dollars (\$664,472) by tax levy in 2017 for collection in 2018. The total reimbursement will not exceed One Million Sixty Four Thousand Four Hundred Seventy-two Dollars (\$1,064,472), less Commission expenses.

Out-of-pocket costs related to the Project, incurred and paid by the Commission 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 shall be repaid from the amount specified above from funds received in the tax settlement from Hennepin County. All such funds in excess of such expenses are 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.

6. Limits on Reimbursement. Reimbursement to the City will not exceed the amount specified above from the amount received from the County for the Project, less any amounts retained by the Commission for Commission expenses. Reimbursement 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.
7. Audit. All City books, records, documents, and accounting procedures related to the Project are subject to examination by the Commission.
8. 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.
9. Ongoing Maintenance. Upon completion of the Project, the City will assume responsibility for its ongoing maintenance.

10. 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.
11. 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.

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 MINNEAPOLIS

By: _____
Its Mayor

And by: _____
Its Manager

Date: _____