

COOPERATIVE AGREEMENT

(Plymouth Creek Restoration Project: Dunkirk Lane to 38th Ave. N. (2025-CR-P))

This Cooperative Agreement (“**Agreement**”) is made as of this 19th day of September, 2024 by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (“**Commission**”), and the City of Plymouth, 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 several capital improvements including the Plymouth Creek Restoration Project: Dunkirk Lane to 38th Ave. N. (2025-CR-P) (“**Project**”).
- C. The Project is in the City of Plymouth and will be designed and constructed by the City as described in the feasibility report for the Project prepared by Barr Engineering Co., entitled *Plymouth Creek Stream Restoration Project (2025 CR-P) Feasibility Report*, dated May 2024 (“**Feasibility Report**”), which is attached hereto as Exhibit A. The Project will consist of the work identified in the Feasibility Report as Option 3a – restore all high, medium, and low priorities areas and create a meander of the stream channel in reach 2.
- D. The estimated planning level opinion of cost of the Project, including feasibility study, design, administration, and construction, is \$2,600,000 which will be funded by the Commission according to the terms and conditions of this Agreement.
- E. On September 19, 2024, the Commission adopted a resolution ordering the Project and directing that it be constructed by the City.
- F. In accordance with the Plan, the Project costs will be certified to Hennepin County (“**County**”), which will levy taxes throughout the watershed for Project costs in 2024 and 2025 for collection and settlement in 2025 and 2026, pursuant to Minnesota Statutes, section 103B.251.
- G. 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 Option 3a in the Feasibility Report, plus appendices, which includes restoring all high, medium, and low priority areas along a 7,000-foot section of Plymouth Creek from Dunkirk Avenue to 38th Avenue North, removing accumulated sediment in two areas of the creek, improving riparian vegetation by removing invasive species and dying trees and planting native species, and constructing a meander of the channel near Plymouth Creek Elementary School (in reach 2). The Project is estimated to reduce total phosphorus by 148.4 pounds per year and reduce total suspended solids 296,720 pounds per year.
2. Design and Plans; Land Use Rights. 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 land use rights necessary for implementation of the Project in the form of either right-of-entry agreements or easements, as it deems appropriate. Said instruments will run in favor of the City and, accordingly, the drafting and recording of such instruments to any extent necessary 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 land use 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. 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 further require the contractor to name the Commission as additional insured 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 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 Minnesota Statutes, section 103B.251 in the amount of \$2,600,000 by tax levy in 2024 and 2025 for collection in 2025 and 2026. The total reimbursement paid by the Commission to the City for the Project may not exceed the total amount levied, less Commission expenses. Out-of-pocket costs incurred and paid by the Commission related to the Project including but not limited 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 the County. All such levied 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 under this Agreement will not exceed the lesser of the amount specified above (\$2,600,000) or the amount the Commission receives from the County for the Project, as contemplated herein, 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 and either the State Auditor or the Legislative Auditor for at least six years after completion of the Project.
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 shall be responsible for any ongoing maintenance in areas owned by the City or subject to City easements allowing for such

maintenance. In such 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 easements, the City agrees to provide property owners with a letter outlining recommended best practices and guidance for maintaining any improvements on their property (e.g. native vegetation buffers, trees, and stabilization measures). This section 9 will survive termination of this Agreement.

10. Data Practices. The City shall retain and make available data related to the Project and this Agreement in accordance with applicable laws, including, but not limited to, 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.
12. 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 alleged 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 12 will survive termination of this Agreement.
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.
14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

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 PLYMOUTH

By: _____
Its Mayor

And by: _____
Its City Manager

Date: _____

EXHIBIT A
Feasibility Report

[attached hereto]