COOPERATIVE AGREEMENT
(Bryn Mawr Meadows Water Quality Improvement Project BC-5)

This Cooperative Agreement (the "**Agreement**") is made as of this ___ day of _____, 2022 by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization (the "**Commission**"), the Minneapolis Park and Recreation Board, a body corporate and politic under the laws of Minnesota (the "**Park Board**"), and the City of Minneapolis, a Minnesota municipal corporation (the "**City**").

RECITALS

A. 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 Minnesota Statutes, section 103B.231.

B. The Plan includes a capital improvement program (CIP) that lists several capital improvements, including the Bryn Mawr Meadows Water Quality Improvement Project BC-5 (the "**Project**"). The Project is located in the City of Minneapolis and mostly within the Bryn Mawr Meadows Park (the "**Park**") property, which is owned and operated by the Park Board. Those components of the Project that are not located in the Park are located within City right-of-way.

C. On July 22, 2021, the Commission, the Park Board, and the City entered into a Preliminary Cooperative Agreement regarding the Project's design and implementation (the "**Preliminary Agreement**"). The Preliminary Agreement was prompted by the parties' desire to work collaboratively due to the considerable long-term benefit that the Project will produce for the Park, the community, and residents, with the end goal of delivering the Project in an efficient, cost-effective manner that minimizes physical disturbance of the project area and maximizes value for taxpayers.

D. The Preliminary Agreement outlines certain obligations of the parties related to the Project and its implementation, and it further provides that the Project is to be designed simultaneously with the Park Board's significant reconstruction and revitalization project for Bryn Mawr Park (the "**Park Project**"). The Preliminary Agreement separates the Project into two components: the "**Park Elements**" and the "**City Elements**," which since the Preliminary Agreement have been more carefully refined by the parties and are each more specifically defined in section 1 of this Agreement.

E. Pursuant to Section 1.B of the Preliminary Agreement, following 90 percent design of the Project, the Commission, the Park Board, and the City are to enter into a cooperative agreement to facilitate the construction of the Park Elements and the City Elements and the Commission's reimbursement to the Park Board and the City for said construction, among other terms and conditions contained herein.

F. The 90 percent plans for the Project (the "**Plans**") have been finalized by the Commission in collaboration with the Park Board and the City in accordance with Section 2.A of the Preliminary Agreement.

G. Initially estimated Project costs ($912,000 total) were certified to Hennepin County in 2019 and 2020 for collection and settlement in 2020 and 2021, respectively. That original figure represented numerous anticipated components of the Project, including feasibility studies, design, administration, and construction of both Project components, the Park Elements and the City Elements. Updated estimates for both components have been prepared as part of the Plans, which were used by the Commission to determine the reimbursement figures contemplated herein.

H. The Park Board and the City are willing to construct the Project in accordance with the terms and conditions hereinafter set forth, and the Commission is willing to reimburse the Park Board and the City for such construction 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. Construction of the Project.

   a. Park Elements. The Park Elements consist generally of two new stormwater ponds, appropriate disposal of contaminated soils, and all underground stormwater piping and related infrastructure, regardless of its location. The Park Elements, including cost estimates, are specifically itemized on Exhibit A attached hereto. The Park Board will incorporate the Park Elements, as contained in the Plans, into its Park Project design, as required in Section 2.B of the Preliminary Agreement. The Park Board further agrees to construct the Park Elements in accordance with the Plans and this Agreement.

   b. City Elements. The City Elements consist generally of restoration of curb and gutter, setting catch basins within the roadway, roadway and sidewalk restoration, and turf restoration within City right-of-way, which the City intends to perform with its own staff. The City Elements, including cost estimates, are more specifically itemized on Exhibit B attached hereto. The City agrees the construction of the City Elements will be in accordance with the Plans and this Agreement, in coordination with the Park Board's construction of the Park Elements.

   c. Coordination. The Park Board and the City agree to cooperate and work in good faith with one another and to the extent reasonably necessary to ensure that the Project as a whole is completed. The Commission acknowledges that it may be desirable for the Park Board and the City to delegate their respective construction responsibilities, as outlined herein, to one another in any manner that they determine to be efficient, and the Commission will not oppose any such efforts to the extent they are deemed necessary by the Park Board and City, provided, however, that all obligations for Project construction are carried out in conformance with the terms and conditions contained herein and otherwise in accordance with any applicable laws.

2. Design and Plans. As previously indicated, the Plans, which include all Park Elements and City Elements, have been submitted to the Commission and approved in accordance with the Preliminary Agreement and the Commission's CIP project review process. Said plans, prepared

by Barr Engineering and dated _____, 20___, are incorporated into this Agreement as if fully set forth herein. Any desired changes to the Plans prior to finalizing them and awarding any Project contract that fundamentally change the Project must be submitted to the Commission and shall require written approval of the Commission's engineer following a reasonable review period, which shall be no less than 10 business days but may be less if the Commission's engineer can accommodate. Minor changes related to the Plans may be approved without requiring additional approvals by the Commission. For purposes of this paragraph only, "minor changes" shall mean only those changes to the Project that do not materially change the effectiveness of the Project to meet its intended purposes, the aesthetics, form, or function of the Project, maintenance tasks associated therewith, cost, or the environmental impacts of the Project. For the sake of clarity, any changes to the Plans prior to finalizing and awarding any Project contract that are not considered minor changes herein do require Commission approval.

3. Contract Administration. In constructing the Project, the Park Board and the City, as the case may be, may perform the work themselves or will advertise for bids and award contracts in accordance with any and all requirements of applicable law, and further will award any contracts and supervise and administer the construction of the Project to ensure that it is completed in accordance with the Plans. Contractors shall be required to name the Commission as additional insured on all liability policies required by the Park Board and the City, and the Commission shall be given the same notification of cancellation or non-renewal as is given to the Park Board and the City. Contractors shall also be required to defend, indemnify, protect, and hold harmless the Commission, its agents, officers, and employees, from all claims or actions arising from negligent acts, errors, or omissions of the contractors. The Commission Engineer, as signatory to the contract documents for work related to the Project, will perform construction inspection and oversight for all Project-related work, and will relay any relevant information, documentation and direction to the Park Board and the City, as the case may be. The City and Park Board retain the right to also inspect any portion of the construction that they will own. Formal communications with any contractors performing work on the Project shall be made only by a party who formally contracts for such work. A sign shall be placed at the Project's construction site stating, "Water Quality Pond Project Paid for by the Taxpayers of the Bassett Creek Watershed."

4. Park Elements and Contingency. "Park Elements Cost" is the total dollar amount of the portion of the construction contract entered into by the Park Board consisting of the Park Elements. In an effort to keep the work of the Park Board's contractor moving, and without delay, the Commission approves a 3% contingency ("Contingency") amount to be used for minor change orders as defined below in subsection 5.a, provided, however, that the change order would not result in the total cost of said Park Elements exceeding $1,516,770. The Park Board agrees that, prior to awarding a construction contract for the Park Elements, it will provide an itemized, unit-cost breakdown of such contract as it relates to the Park Elements to Commission and City staff so that (i) the parties will know the breakdown of the "Park Elements Cost" for purposes of this section, and (ii) Commission staff can determine whether its governing body needs to consider the three options provided in section 7 below. The Park Board agrees that it will require unit cost bidding for the Park Elements so that it will be able to provide the itemized cost breakdown contemplated above and will afford itself no less than 30 days to award a contract after receiving bids for the Park Elements to accommodate the Commission's right to consider the aforementioned three options, in the event it needs to do so.

5. Change Orders. Following the execution of a construction contract for the Project, the Project shall be constructed in accordance with the Plans, subject to necessary change orders that may be implemented only in accordance with this section. The authority to approve a change order shall be determined based on whether the proposed change order constitutes a minor change order or major change order, as described below.

   a. Minor Change Order. A minor change order for the Project is one that (i) will not materially change the effectiveness of the Project to meet its intended purposes; (ii) will not require the Commission to reimburse either the Park Board or the City an amount that exceeds the total amount authorized for reimbursement in section 7; and (iii) does not exceed the Contingency, if related to the Park Elements. The parties authorize their respective representatives, as identified below, to approve and execute a minor change order. If any representative determines a proposed change order is not a minor change order, or does not consent to it, the proposed change order shall be considered and acted on by the governing body of each party.

      The Commission: Administrator, in consultation with the Commission Engineer;
      The City: Director of Public Works/Surface Water + Sewers; and
      The Park Board: Assistant Superintendent, Planning Services.

   b. Major Change Order. Any proposed change order that does not constitute a minor change order must be approved by the governing bodies of the parties affected.

6. Contract Payments. The Park Board and the City, depending on which party is administering the respective Project contract(s), will pay contractors and all other expenses related to the construction of the Project and keep and maintain complete records of such costs incurred.

7. Commission Reimbursement. In exchange for constructing the Project, the Commission agrees to reimburse the Park Board and the City a combined amount that will not exceed $1,593,000. Although the parties do not know exactly how that total reimbursement figure will be divided between the Park Board and the City as of the date of this Agreement, such figures are estimated to be $1,516,770 to the Park Board for its construction of the Park Elements, and $76,230 to the City for its construction of the City Elements, it being the intent of the parties to provide flexibility for dividing Project responsibilities subsequent to entering into this Agreement while at the same time not committing the Commission to Project reimbursement that will exceed the sum of said estimates. In no event will the Park Board or the City be required to cover any Project costs beyond that which the Commission has agreed to reimburse. If prior to performing any work or entering into any contracts related to the Project, it is made known to any party that the actual cost of the Park Elements or the City Elements will exceed the amounts allocated by the Commission above, the Commission's governing body shall be given an opportunity to review the Project and either (i) direct the parties to proceed and elect to reimburse the Park Board and/or the City for any additional costs, as relevant to the cause of the overage; (ii) direct that the scope of the Project be reduced such that the costs will not exceed the amounts allocated above; or (iii) eliminate the Project from the scope of the Park Project altogether. To that end, prior to entering into construction contracts and/or agreements for Project work or performing any Project work, as the case may be, the parties to this Agreement shall work together in good faith to determine the

ongoing feasibility of the Project and, if necessary to make the Project feasible, the parties may reduce the Project scope. Reimbursement to the Park Board and City will be made within 90 days of Project completion, provided a request for payment has been received from either the Park Board or the City that contains such detailed information as may be requested by the Commission to substantiate costs and expenses, and further provided that the requesting party is in compliance with this Agreement. The Park Board and the City shall together complete and submit final reimbursement requests to the Commission, which shall include as-built drawings or survey data necessary to develop as-built drawings, pay applications, and related construction documentation, and such information shall be assembled by the Commission Engineer for reporting purposes to the Commission. Upon written request, the parties shall provide any additional Project information to the Commission as may be reasonably requested.

8. Audit. All Commission, Park Board and City books, records, documents, and accounting procedures related to the Project are subject to examination by each party and either the State Auditor or the Legislative Auditor for at least six years after completion.

9. Environmental Investigation and Remediation. The Park Board and the City will perform any 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 construction until any required environmental review and remediation of site contamination is completed or a plan for remediation is approved by appropriate regulatory agencies.

10. Ownership; Ongoing Maintenance.

    a. Following Project completion, which shall be determined by final reimbursement as required herein and the lapse of any applicable warranty period contained in any contract for the Project, the Park Board will own the areas above the ponds' normal water levels including any park or native vegetation associated with the ponds, and the City will own the underground pipes, manholes, inlets/outlets, and other associated infrastructure related to the ponds and the area below the ponds' normal water levels. For sake of clarification, none of the Project components will be owned by the Commission.

    b. The Park Board and the City shall enter into an easement and maintenance agreement ("Maintenance Agreement") with one another, which shall require the City and the Park Board to perform all ongoing maintenance of Project components following construction consistent with their ownership outlined in paragraph 8a above. The Maintenance Agreement shall authorize and require the City to perform, at its own cost, such maintenance as may be required to sustain the proper functioning of the Project components that it owns for their useful life. The Maintenance Agreement shall require the Park Board to allow access by permanent easement to the City-owned components previously mentioned for City maintenance activities. The Maintenance Agreement shall be fully executed by the parties and recorded against the Park property prior to the Commission's approval of any reimbursement request contemplated herein. In the event that the Park Board and City fail to finalize such a Maintenance Agreement, then the Park Board shall be solely responsible for performing all ongoing maintenance of the Project components within the Park property, at its own cost, and

the City shall be solely responsible for performing all ongoing maintenance of the Project components within the City right-of-way, at its own cost.

11. Notices. Any notice, demand, or other communication under this Agreement by any party to another shall be sufficiently given or delivered if it is dispatched by (i) email, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) delivered personally:

To the Commission:	Bassett Creek Watershed Management Commission Attention: Administrator 16145 Hillcrest Lane Eden Prairie, MN 55346 Email: laura.jester@keystonewaters.com
To the Park Board:	Minneapolis Park and Recreation Board Attention: Michael Schroeder, Assistant Superintendent for Planning 2117 West River Road Minneapolis 55411 Email: mschroeder@minneapolisparks.org
To the City:	City of Minneapolis Attention: Lisa Goddard 250 South 4th St, Room 300 Minneapolis, MN 55415 Email: lisa.goddard@minneapolismn.gov

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section.

12. Indemnification. Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other parties and the results thereof. Furthermore, each party shall indemnify, defend and hold harmless the other parties against all claims, losses, damage, liability, suits, judgments, costs and expenses, including reasonable attorneys' fees, resulting from the alleged negligent 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.

13. Data Practices. Each party shall 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.

14. Term. This Agreement shall be in effect as of the date first written above and shall terminate once the construction of the Project is completed and the Commission has completed its reimbursement payments to the Park Board and City, as provided herein. The ongoing ownership and maintenance obligations contained in section 10 and the indemnification provisions contained in section 12, however, shall survive termination.

15. Entire Agreement. The above recitals and the exhibits attached hereto are incorporated in and made part of this Agreement. This Agreement supplements the Preliminary Agreement, and together those two documents contain the entire understanding between the parties regarding this matter and no amendments or other modifications to their terms are valid unless reduced to writing and signed by all parties. Nothing contained in this Agreement shall alter or otherwise affect any of the rights held by the parties under the Preliminary Agreement, including, but not necessarily limited to, all rights afforded to the Commission in section 3 of that Preliminary Agreement.

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

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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:_____

MINNEAPOLIS PARK AND RECREATION BOARD:

By: _____
Its President

And by: _____
Its Secretary

Date:_____

Approved as to Form by:

Signature: _____
Park Board Attorney

CITY OF MINNEAPOLIS:

Approved as to Form by:

Signature: _____
Assistant City Attorney

Signature: _____
Department Head (or Designee) Authorized to Sign this Contract and/or Responsible for Administering and Monitoring Contract

Signature: _____
Finance Officer or Designee/Purchasing Agent

Date:_____

EXHIBIT A

Itemization of Park Elements

[to be inserted]

EXHIBIT B

Itemization of City Elements

[to be inserted]