

APPENDIX M: Water Resource Related Agreements

City of Minnetonka Water Resources Management Plan

JUN 12 1986

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City Clerk

AGREEMENT ENTERED INTO PURSUANT TO PROVISIONS OF THE JOINT POWERS AGREEMENT ESTABLISHING THE BASSETT CREEK WATER MANAGEMENT ORGANIZATION, RELATING TO THE CONSTRUCTION OF AN IMPROVEMENT PROJECT IN COOPERATION WITH THE U. S. CORPS OF ARMY ENGINEERS

THIS AGREEMENT, made and entered into this 16th day of June, 1986, by and between the City of Minneapolis, Minnesota, hereinafter referred to as "Minneapolis", and the City of Minnetonka, Minnesota, hereinafter referred to as "Minnetonka",

WHEREAS, the Cities of Crystal, Golden Valley, Medicine Lake, Minneapolis, Minnetonka, New Hope, Plymouth, Robbinsdale, and St. Louis Park entered into a Joint Powers Agreement in 1968 creating the Bassett Creek Flood Control Commission, and that Agreement was updated and reapproved in 1983 creating the Bassett Creek Water Management Organization pursuant to Chapter 509, Minnesota Laws of 1983, and

WHEREAS, since those dates the Bassett Creek Commission has been funded by the nine member Cities (the "Members") and has conducted extensive engineering studies and adopted on May 18, 1972, a watershed management plan, and after that date the Commission has worked extensively with the Corps of Engineers and the cities, and

WHEREAS, the Commission has coordinated its effort to implement the watershed management plan by working with the United States Corps of Army Engineers and has compiled a complete plan for the entire watershed, which plan was presented by the United States Corps of Army Engineers and the Commission to all

Members and members of the public and which plan has been approved by the Commission, and

WHEREAS, the plan for flood control in the Bassett Creek Watershed was authorized by the 95th Congress, Second Session, by Section 173 of the Water Resources Development Act of 1976 (Public Law 587, 94th Congress), and

WHEREAS, the Commission and its Members have proceeded with the planning process and the Minnesota State Department of Transportation constructed an outfall by digging a storm tunnel in the City of Minneapolis which will receive waters from Bassett Creek and act as the outfall into the Mississippi River, and

WHEREAS, the costs of the outfall are being funded by the Minnesota Department of Transportation with the understanding that the United States Corps of Army Engineers will reimburse the Minnesota Department of Transportation when the United States Congress appropriates money for the construction of this tunnel, and

WHEREAS, in 1979 the Bassett Creek Cities entered into an agreement to construct upstream improvements in the Cities of Golden Valley and Crystal and entered into a 215 Agreement with the U. S. Corps of Army Engineers which Agreement provides that if and when funded, the Corps of Army Engineers would reimburse the Bassett Creek Member Cities and each Member City adopted the Agreement and has paid their proportionate share to Golden Valley, and

WHEREAS, on May 22, 1985, the Commission held a public hearing pursuant to Article VII, Subd. 5, of the Joint Powers

Agreement, and the Commission ordered the improvements (the "Improvements") set forth below:

Construction of flood storage in recreational and open space areas throughout the Bassett Creek Watershed; and construction of a tunnel under the City of Minneapolis. The flood storage will generally consist of increased temporary inundation on existing golf courses, parks, and open space. The outlet tunnel is a cooperative venture with the Minnesota Department of Transportation and the Corps of Army Engineers. The project consists of approximately 2.2 miles of tunnel (12 to 13 feet in diameter), six flood control structures, five earth embankments, two bridge removals, one railroad bridge replacement, one railroad bridge modification, one low-head dam removal and replacement, nine culvert replacements, one culvert removal, 5000 linear feet of channel improvement and bank protection, 157,000 cubic yards of storage area excavation, and flood proofing of five private residences,

and

WHEREAS, the Federal Government will reimburse Golden Valley for the construction completed under a contract executed under Section 215 of Public Law 90-483, and

WHEREAS, the Commission has appointed the City of Minneapolis as the member of the Commission who will contract with the U. S. Corps of Army Engineers and will enter into a Local Cooperative Agreement with the United States of America to provide rights-of-way, maintenance, and other provisions, and it is deemed necessary that Minneapolis have contracts with each of the eight other Members indicating the method of proceeding to be followed in constructing this work and further agreeing that Minneapolis will receive the cooperation of each of the other Member Cities and this Commission and that each Member shall

provide rights-of-way and will provide their proportionate share pursuant to the public hearing held on May 22, 1986, and the provisions of the Joint Powers Agreement, and

WHEREAS, Minneapolis is desirous of having a commitment from the other eight Members that each of the Member Cities will pay to Minneapolis their proportionate share of the monies required to fund the local cost share of this joint local-federal flood control project, and

WHEREAS, at the public hearing held on May 22, 1986, the total cost of the project was estimated to be \$3,867,000, and the allocation of these costs was established by the Commission on the basis of percentages and dollar amounts into which are incorporated land costs and land credits (and therefore the percentages and the land costs and credits are not necessarily the same), and

WHEREAS, the allocation of costs set forth by the Bassett Creek Water Management Commission is as follows:

Municipality	Percent	Estimated Cost Including Land Cost and Land Credits
Crystal	4.19%	\$162,000
Golden Valley	37.94%	1,467,200
Medicine Lake	0.79%	30,500
Minneapolis	16.30%	630,000
Minnetonka	0%	0
New Hope	2.60%	100,500

Plymouth	30.00%	1,160,200
Robbinsdale	2.69%	104,000.
St. Louis Park	5.49%	212,300

and

WHEREAS, the Member Cities have been advised that the final costs may be lower than those previously stated if the federal government agrees to give additional credits for certain lands and the Bassett Creek Water Management Commission has pledged to aggressively seek said credits, and

WHEREAS, Minnesota Statutes Section 471.59 and Chapters 429 and 475 provide that two or more governmental units may enter into a cooperative agreement for the exercise of any power common to the contracting parties and the parties hereto do have power to construct flood walls, provide drainage of surface waters, construct, reconstruct, extend and maintain dikes and other flood control works, and to finance the same, and Minneapolis plans to enter into contracts with each of the other Members affected by these storm, surface, and flood waters and with the U. S. Corps of Army Engineers:

NOW, THEREFORE, IT IS MUTUALLY AGREED By and between the parties hereto as follows:

1. Minneapolis shall be designated as the local sponsor representing the interests of the nine Member Cities who form the Bassett Creek Water Management Commission for the construction of the flood control project as designed by Bassett Creek Water Management Commission and the United States Corps of Army

Engineers, which project has been approved by the U. S. Congress and will be funded by federal funds and local funds under a Congressionally mandated cost sharing formula.

2. The construction of the entire project contemplated herein shall be under the supervision and direction of U. S. Corps of Army Engineers in consultation with the Bassett Creek Water Management Commission and the City of Minneapolis acting as the local sponsor for all Members of the Commission who have entered into a similar contract with Minneapolis.

3. (a) The City of Minnetonka hereby agrees to pay to the City of Minneapolis its proportionate share of said costs as payments become due. Each of the Members will pay all costs of right-of-way acquisition and shall receive credit in accordance with the aforeadopted formula which provides credits in the amount of \$4,000 per acre. Land acquisition which includes structures shall have the value of the structures included as a capital cost of this project.

(b) The final costs of the Improvement shall be apportioned and divided between the nine Members of the Commission in the percentage ratios stated above and as approved after a duly called and held public hearing held on May 22, 1986, by the Commission. The final computation of costs shall be calculated by Barr Engineering Co. pursuant to the approved formula including land acquisition costs and land

credits being attributed to each Member of the Commission.

(c) It is further agreed that the cost estimate of Three Million Eight Hundred Sixty-Seven Thousand (\$3,867,000) is an estimate of the total cost of the Improvement and that the actual costs will not be determined until the final credits have been worked out with the Corps of Army Engineers and the construction has been completed by the Corps of Army Engineers and final statements have been submitted to Minneapolis by the Corps of Army Engineers. The City of Minnetonka agrees to pay to Minneapolis its percentage share within 30 days of the time billed by Minneapolis.

(d) Land acquisition costs shall be calculated on the basis of \$4,000 per acre of credit plus inclusion of the total capital costs to the project for any structures acquired by any Member of the Commission which are necessary to construct this project.

4. All Members of the Bassett Creek Water Management Commission agree to provide without cost to the other Members of the Commission any permits necessary for Minneapolis or the Corps of Engineers to enter into any public right-of-way under the respective jurisdiction of any Member City if the consent of said parties is required for construction and maintenance of these improvements. It is further understood and agreed that each Member City of the Bassett Creek Water Management Commission will

obtain all necessary construction, slope, storm sewer, drainage, or other easements to cross private property within its corporate boundaries. The acquisition costs shall be borne by the acquiring municipality who shall receive credit pursuant to the aforesated formula.

5. The improvements constructed pursuant to this Agreement shall become the property of the City wherein the improvement is located and shall be maintained by said City where the improvement is located at the sole cost and expense of the latter. This maintenance requirement may be changed by the Members of the Commission if the authority is extended to the Commission and maintenance is included as a portion of the responsibilities of the Commission and duly ordered by the Commission. All Bassett Creek Water Management Cities agree that the Improvements are available for the drainage of surface waters including the waters flowing to the Improvements from any other Member of the Commission and from lands located within the Bassett Creek Watershed.

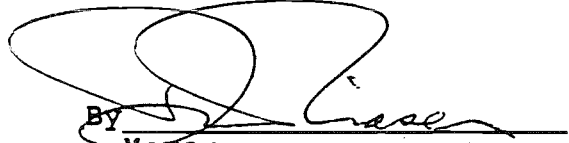
6. The City of Minnetonka hereby grants to Minneapolis and the U. S. Corps of Army Engineers permission to enter into and upon those portions of public rights-of-way under the jurisdiction of the City of Minnetonka or under the jurisdiction of Hennepin County or the State of Minnesota if the consent of the City is required, for the purpose of constructing the Improvements. Each Bassett Creek Water Management Commission Member City agrees that it will permit all Members of the Commission, for the purpose of inspection or

review, the right to enter on to all public rights-of-way included within the Improvement for the purpose of inspecting the Improvements.

7. Minneapolis hereby agrees to pay the share of the Improvements which are estimated to be local costs and which are in the estimated amount of \$3,867,000. Each Bassett Creek Water Management Commission Member City agrees to pay to Minneapolis its proportionate share within 30 days after billing by the City of Minneapolis. Each Bassett Creek Water Management Commission Member City agrees to cooperate and jointly urge the funding of this project by the United States of America pursuant to the approved United States Corps of Army Engineers plan for the Bassett Creek Watershed.

IN TESTIMONY WHEREOF, the parties hereto cause this Agreement to be executed by their respective duly authorized officers as of the day and year first above Written.


CITY OF MINNEAPOLIS

By 
Mayor

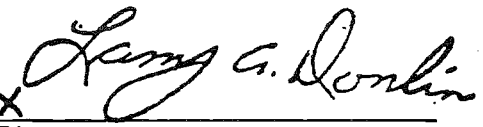
Approved as to form and Execution:


Assistant City Attorney

Attest 
Assistant City Clerk


Countersigned 
Finance Officer

CITY OF Minnetonka

By X 
Its Mayor

By X 
Its Acting City Manager

Approved as to form and Execution:


Mtnka City Attorney

AMENDED JOINT AND COOPERATIVE AGREEMENT FOR THE
ESTABLISHMENT OF A BASSETT CREEK WATERSHED MANAGEMENT
ORGANIZATION TO PLAN, CONTROL AND PROVIDE FOR THE
DEVELOPMENT OF BASSETT CREEK

PREFACE

In 1968, the nine cities with land in the Bassett Creek watershed entered into a joint powers agreement which established the Bassett Creek Flood Control Commission. For the past 25 years the Commission, consisting primarily of citizen volunteers and city staff members who have volunteered their time, have worked long and hard to achieve the goals set forth when the commission was established. An overall watershed management plan was prepared and approved after public hearings. The Commission has received technical advice from the United States Army Corps of Engineers in their planning and has obtained the support and aid of all United States Senators and Congressional Representatives representing the member cities. In 1976 the Commission and the Corps of Engineers were successful in having Bassett Creek included in the 1976 Water Resources Development Act (Section 173 Public Law 94-587). The Board of Engineers for Rivers and Harbors submitted a favorable report to the Secretary of the Army on March 30, 1977. The Secretary of the Army has by letter under date of June 19, 1978 notified the U.S. Congress of the approval of the Chief of Engineers.

The Bassett Creek Flood Control Commission has participated with the Minnesota Department of Transportation, the Federal Highway Administration, the City of Minneapolis and the Corps of Engineers in the planning and construction of a deep tunnel in Minneapolis which is designed to carry Bassett Creek under a portion of the City of Minneapolis. The Commission has held hearings and approved and ordered upstream construction in the cities of Golden Valley, Plymouth, Minneapolis, and

Crystal. The local share of these costs is being paid by the nine member communities pursuant to an agreement consistent with the funding requirements set forth in Articles VII and VIII of the joint powers agreement which has been in effect from 1968 to 1993. The prior joint powers agreement contained the following "Statement of Intent":

STATEMENT OF INTENT REGARDING
AGREEMENT

"Bassett Creek leaves Medicine Lake and flows generally eastward through the Village of Medicine Lake, Plymouth, Golden Valley and into the City of Minneapolis. In Minneapolis, the creek is channeled into a conduit and runs underground to the Mississippi River to its eventual outfall. As the creek runs through the aforementioned communities it collects storm waters and in effect acts as the storm sewer for a large densely populated area and large unpopulated area. It also carries waters channeled to it or naturally flowing to it from the Villages of Minnetonka and New Hope and the Cities of Crystal, Robbinsdale, and St. Louis Park.

For a long time the improvement and development of this creek to carry the increased quantity of storm water has been needed to allow for the orderly planning and development of the up-stream communities who must rely on the creek as the outfall for storm waters collected or naturally flowing from areas within these communities. As the communities contributing water to the creek have grown, and the lands naturally draining into the creek have been covered with buildings and hard surfaced areas, the ability of the creek and its appurtenant facilities to accommodate the water has diminished. Studies have been conducted by the municipalities both individually and collectively and a study has been made by the United States Army Corps of Engineers. The threat of flood damage increases each year with the increased use of land in the watershed area.

The nine member communities have been meeting over a number of years in an effort to solve the storm water problems in the watershed drained by Bassett Creek. Each year it becomes more apparent that solutions must be sought to allow for a more orderly and efficient planning of the area and to allow the individual communities to plan storm sewer facilities which must be constructed to serve lands within the individual communities. It is also apparent to all nine municipalities that planning and construction to control the Bassett Creek cannot be done on the basis of each community looking at its individual problems. The creek downstream must be improved to accommodate the waters which will eventually be channeled and diverted to the outfall. To determine the downstream improvements it is necessary to know how much water will be contributed by the individual communities upstream and how much storm water will be retained in ponding areas upstream and the area of lands within the watershed which will be controlled by the individual communities as "open lands" and which will not contribute as much storm water as lands which are developed residentially, commercially, or for industrial purposes.

All of the nine communities within the Bassett Creek watershed recognize the aforesated problems. In seeking solutions to the overall drainage problem it becomes apparent that the only way the problems can be solved is by joint planning, joint cooperation, joint financing and a sincere desire on the part of each community to solve the overall drainage problem within the watershed. This means that some agency, commission, district, corporation, political subdivision, or other vehicle must be found to plan and finance improvements to and to control the development of lands within the watershed. Chapter 112 of the Minnesota Statutes provides for the formation of a watershed district with the powers and duties of conserving and controlling water and watercourses within a watershed. The creation of such a district creates a new political subdivision with the power to sue or be sued, to incur debts, liabilities and obligations, to exercise the powers of eminent domain, to provide for assessments, to borrow money and issue bonds and to do all other acts necessary to carry out the powers vested in the district by said Chapter 112. The managers of the district would be appointed by the Minnesota Water Resources Board and subsequent appointments would be by the Board of County Commissioners of Hennepin County. It is the belief of the parties to this agreement that the creation of such a district would remove control one step further from the electorate and the residents of this watershed area who ultimately would pay the costs of the aforesaid improvements. It would also create another political subdivision which would have to plan and work with the individual parties to this agreement to solve the storm water and drainage problems within the watershed.

The purpose of this statement of intent regarding the agreement is to clarify and establish for any court of review or any arbitrator or for the elected successors to the representatives who have entered into this agreement, the reasons and purposes for this joint and cooperative agreement. The parties to this agreement realize that the success or failure of the Bassett Creek Flood Control Commission created by this agreement is dependent upon the sincere desire of each member community to cooperate in the exercise of a joint power to solve a joint problem. Each party to this agreement pledges this cooperation."

It is the intent of this amended agreement to carry forward the same purposes as aforesated and to revise the Joint Powers Agreement to meet the mandates of Minnesota Statutes, Sections 103B.201 through 103B.251 and Minnesota Rules Chapter 8410 relating to "Metropolitan Area Local Water Management". This amended agreement shall continue the existence of a Watershed Management Organization in accordance with the provisions of the Metropolitan Surface Water Management Act as set forth in Minnesota Statutes 1992 Sections 103B.201 to and including 103B.251. The organization hereby created shall have all of the powers and

responsibilities set forth in said statutes for the Bassett Creek Watershed. The purpose of the organization shall be to assist the 9 member communities to preserve and use natural water storage and retention systems to:

1. Protect, preserve, and use natural surface and groundwater storage and retention systems;
2. Minimize public capital expenditures needed to correct flooding and water quality problems;
3. Identify and plan for means to effectively protect and improve surface water and groundwater quality;
4. Establish more uniform local policies and official controls for surface water and groundwater quality;
5. Prevent erosion of soil into surface water systems;
6. Promote groundwater recharge;
7. Protect and enhance fish and wildlife habitat and water recreational facilities;
8. To secure other benefits associated with the proper management of surface water.
9. To promote and encourage cooperation among member cities in coordinating local surface water and groundwater plans and to be aware of their neighbor's problems and to protect the public health, safety, and general welfare.
10. To continue the work of the Bassett Creek Water Management Commission and to carry out the plans, policies and programs developed by said Commission from 1968 to 1993.

JOINT AND COOPERATIVE AGREEMENT

The parties to this Agreement are governmental units of the State of Minnesota, 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. This agreement is made pursuant to the authority conferred upon the parties by Minnesota Statutes 1992, Sections 471.59 and 103B.201 to and including Section 103B.251.

NAME

I.

The parties hereto create and establish the Bassett Creek Watershed Management Commission.

GENERAL PURPOSE

II.

The general purpose of this agreement is to provide an organization which can investigate, study, plan and control the construction of facilities to drain or pond storm waters, to alleviate damage by flood waters; to improve the creek channel for drainage; to assist in planning for land use; to repair, improve, relocate, modify, consolidate or abandon, in whole or in part, drainage systems within the watershed area; and to do whatever is necessary to assist in water conservation and the abatement of surface water and groundwater contamination and water pollution. In addition to the aforesated purposes, the organization hereby created shall serve as the organization for the Bassett Creek watershed and shall carry out all of the duties and responsibilities outlined in Minnesota Statutes, Section 103B.201 through 103B.251, both inclusive.

DEFINITIONS

III.

For the purposes of this agreement, the terms used herein shall have the meanings as defined in this article.

Subdivision 1. "Commission" means the organization created by this agreement, the full name of which is "Bassett Creek Watershed Management Commission." It shall be a public agency of its members.

Subdivision 2. "Board" means the Board of commissioners of the Commission, consisting of one commissioner or one alternate commissioner from each of the governmental units which is a party to this agreement and which shall be the governing body of the Commission.

Subdivision 3. "Council" means the governing body of a governmental unit which is a member of this Commission.

Subdivision 4. "Governmental Unit" means any city, county, or town.

Subdivision 5. "Member" means a governmental unit which enters into this agreement.

Subdivision 6. "Bassett Creek Watershed" means 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 Board of Water and Soil Resources originally filed pursuant to Minnesota Statutes, 473.877 Subd. 2 and as now amended by Minnesota Statutes, Chapter 103B.

MEMBERSHIP

IV.

The membership of the Commission shall consist of all of the following governmental units as shall elect, through resolution or

ordinance adopted by their respective Councils, to become members:

City of Crystal
City of Golden Valley
City of Medicine Lake
City of Minneapolis
City of Minnetonka
City of New Hope
City of Plymouth
City of Robbinsdale
City of St. Louis Park

(The foregoing list is intended to include all governmental units which are presently partially or entirely within the Bassett Creek Watershed.)

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

BOARD OF COMMISSIONERS

V.

Subdivision 1. The governing body of the Commission shall be its Board. Each member shall be entitled to appoint one representative on the Board, and one alternate who may sit when the representative is not in attendance and said representative or alternate representative shall be called a "Commissioner".

Subdivision 2. The council of each member shall determine the eligibility or qualification of its representative on the Commission but the terms of each Commissioner shall be as established by this agreement.

Subdivision 3. The term of each Commissioner and Alternate

Commissioner appointed by each member shall be three years and until their successors are selected and qualify and shall commence on February 1, except that the terms of the Commissioners first appointed shall commence from the date of their appointment and shall terminate as follows:

- a. The Commissioners appointed by the Cities of Crystal, Golden Valley, and Medicine Lake shall terminate on February 1, 1994.
- b. The Commissioners appointed by the Cities of Minneapolis, Minnetonka, and New Hope shall terminate on February 1, 1995.
- c. The Commissioners appointed by the Cities of Plymouth, Robbinsdale, and St. Louis Park shall terminate on February 1, 1996.

Any vacancy shall be filled for the unexpired term of any Commissioner by the council of the governmental unit of the member who appointed said Commissioner. The Commission shall notify the Board of Water and Soil Resources of member appointments and vacancies within 30 days after the Commission is notified by a member. Each member agrees to publish a notice of vacancies resulting from the expiration of a Commissioner's or Alternate Commissioner's term or where a vacancy exists for any reason. Publication and notice shall be in accordance with Minnesota Statutes, Section 103B.227, Subds. 1 and 2, as they now exist or as subsequently amended.

Subdivision 4. The council of each member agrees that its representative commissioner will not be removed from the Board prior to the expiration of the Commissioner's term, unless said Commissioner consents in writing or unless said council has presented the Commissioner with charges in writing and has held a public hearing after reasonable notice to

the Commissioner. A member may remove a Commissioner or an Alternate Commissioner for just cause or for violation of a Code of Ethics established by the Commission or by the Member City or for malfeasance, nonfeasance, or misfeasance. Said hearing shall be held by the Member City Council who appointed the Commissioner. A Commissioner or Alternate Commissioner who is an elected officer of a Member City who is not reelected may be removed by the appointing Member City at the appointing Member's discretion. Any decision by a Member to remove a Commissioner or Alternate Commissioner may be appealed to the Board of Water and Soil Resources. A certified copy of the Council's Resolution removing said Commissioner shall be filed with the Secretary of the Board of Commissioners and shall show compliance with the terms of this section.

Subdivision 5. Each member shall within 30 days of appointment file with the Secretary of the Board of Commissioners a record of the appointment of its Commissioner and Alternate Commissioner. The Commission shall notify the Board of Water and Soil Resources of Member appointments and vacancies within 30 days after receiving notice from the Member. Members shall fill all vacancies within 90 days after the vacancy occurs.

Subdivision 6. Commissioners shall serve without compensation from the Commission, but this shall not prevent a governmental unit from providing compensation for its Commissioner for serving on the Board, if such compensation is authorized by such governmental unit and by law. Commission funds may be used to reimburse a Commissioner or Alternate Commissioner for expenses incurred in performing Commission business and if authorized by the Board.

Subdivision 7. At the first meeting of the Board and in February

of each year thereafter, the Board shall elect from its Commissioners a Chair, a Vice Chair, a Secretary, a Treasurer, and such other officers as it deems necessary to conduct its meetings and affairs. At the organizational meeting or as soon thereafter as it may be reasonably done, the Commission shall adopt rules and regulations governing its meetings. Such rules and regulations may be amended from time to time at either a regular or a special meeting of the Commission provided that a ten day prior notice of the proposed amendment has been furnished to each person to whom notice of the Board meetings is required to be sent; a majority vote of all eligible votes of the then existing members of the Commission shall be sufficient to adopt any proposed amendment to such rules and regulations.

The Board shall notify each Member City of the location and time of regular and special meetings called by the Board. A meeting shall be held at least annually, and all meetings shall be called and open to the public pursuant to Minnesota Statutes, Section 471.705, or as amended.

POWERS AND DUTIES OF THE BOARD

VI.

Subdivision 1. The Commission, acting by its duly appointed Board of Commissioners, shall as it relates to flood control, water quality, ground water recharge and water conservation or in its construction of facilities and other duties as set forth in Minnesota Laws have the powers and duties set out in this article.

Subdivision 2. It may employ such persons 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.

Subdivision 3. It may contract for space and for material and supplies to carry on its activities either with a member or elsewhere.

Subdivision 4. It may acquire necessary personal property to carry out its powers and its duties.

Subdivision 5. It shall develop an overall plan containing a capital improvement program within a reasonable time after qualifying, and said plan shall meet all of the requirements as established in Minnesota Statutes, Chapter 103B. Said overall plan shall establish a comprehensive goal for the development of Bassett Creek and shall establish a proposed procedure for accomplishing the purposes of the organization as set forth in Article II.

In preparing the overall plan, the Board may consult with the engineering and planning staff of each member governmental unit. It may consult with 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 improvement and development of the Bassett Creek watershed.

Said overall plan shall include the location and adequacy of the outlet or outfall of said Bassett Creek. The plan shall include the quantity of storage facilities and the sizing of an adequate outlet for all branch lateral storm sewers within the Bassett Creek watershed. The plan shall comply with state statutes and regulations promulgated and adopted by the Board of Water and Soil Resources.

Upon completion of the overall plan, or amendments thereto, the Board shall supply each member with a copy of the proposed plan and shall submit the plan for review and comment to Hennepin County, all soil and water conservation districts in Hennepin County and to all statutory and home rule charter cities having territory within the watershed. All governmental units which expect that substantial amendment of its local

comprehensive plan will be necessary in order to bring their local water management into conformance with the Commission's watershed plan shall describe as specifically as possible, the amendments to the local plan which it expects will be necessary. The Commission shall hold a public hearing after 60 days mailed notice to the clerk of each member governmental unit. The mailed notice of the hearing shall be sent at the same time the plan is submitted to the members and to other governmental agencies. After such public hearing, the Board shall prescribe the overall plan which shall be the outline for future action by the Commission.

The Commission shall then submit the plan, any comments received and any appropriate amendments to the plan to the Board of Commissioners of Hennepin County. The County shall approve or disapprove projects in the capital improvement program which may require the provision of county funds pursuant to Minnesota Statutes Sections 103B.251 or 103D.901. The County shall have 60 days to complete its review. If the County fails to complete its review within 60 days the plan and capital improvement programs shall be deemed approved.

After completion of the review by Hennepin County, the plan and capital improvement program shall be submitted to the Metropolitan Council for its review. After completion of the review by the Metropolitan Council pursuant to Minnesota Statutes, Section 103B.231, Subd. 8, the Commission shall submit the plan to the Minnesota Commissioner of Natural Resources and the Minnesota Pollution Control Agency for review and comment on the consistency of the plan with state laws and rules relating to water and related land resources and to the Board of Water and Soil Resources for review as provided in Minnesota Statutes, Section 103B.231, Subd. 9.

After return of the plan, the Commission shall submit to each of its

members a copy of the plan and all comments of the reviewing authorities. The Commission shall wait for at least 30 days for comments from the members.

The Commission shall adopt the overall plan within 120 days after approval of the plan by the Board of Water and Soil Resources. The Commission shall then implement the approved plan and approved capital improvement program by resolution of the Commission as hereinafter set forth. The adoption of said overall plan shall be only upon a favorable vote of a majority of all eligible votes of the then existing members of the Commission. A copy of the adopted plan shall be filed with the clerk of each member governmental unit. Upon notice and hearing as provided for in adopting the overall plan, said plan may be amended by the Board on its own initiative or on the petition of any member governmental unit.

The review provisions set forth in this section are those required by Minnesota Statutes, Section 103B.231. If the law is amended, approvals shall be as required by law and the provisions contained in this section shall be amended accordingly.

Subdivision 6. It shall make necessary surveys or utilize other reliable surveys and data and develop projects to accomplish the purposes for which the Commission is organized.

Subdivision 7. It may cooperate or contract with the State of Minnesota or any subdivision thereof or federal agency or private or public organization to accomplish the purposes for which it is organized.

Subdivision 8. It may order any member governmental unit or units 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 Bassett Creek watershed.

Subdivision 9. It may order any member governmental unit or units to acquire, operate, construct or maintain dams, dikes, reservoirs and appurtenant works or other improvements necessary to implement the overall plan.

Subdivision 10. It shall regulate, conserve and control the use of storm and surface water and groundwater within the Bassett Creek watershed.

Subdivision 11. It may contract for or purchase such insurance as the Board deems necessary for the protection of the Commission.

Subdivision 12. It may establish and maintain devices for acquiring and recording hydrological and water quality data within the Bassett Creek watershed.

Subdivision 13. It may enter upon lands within or without the watershed 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 Chairman or Secretary of the Board of Commissioners with a Notice of Claim as required by Chapter 466.05 of the Minnesota Statutes.

Subdivision 14. It shall provide any member governmental unit 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.

Subdivision 15. 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 Bassett Creek

watershed. The use of commission funds for litigation shall be only upon a favorable vote of a majority of the eligible votes of the then existing members of the Commission.

Subdivision 16. 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.

Subdivision 17. 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.

Subdivision 18. 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.

Subdivision 19. It shall cause to be made an annual audit by a certified public accountant or the state auditor of the books and accounts of the Commission and shall make and file a report to its members at least once each year including the following information:

- a. the approved budget;
- b. a reporting of revenues;
- c. a reporting of expenditures;
- d. a financial audit report or section that includes a balance sheet, a classification of revenues and expenditures, an analysis of changes in final balances, and any additional statements considered necessary for full financial disclosure;
- e. the status of all Commission projects and work within the

watershed; and

- f. the business transacted by the commission and other matters which affect the interests of the commission.

Copies of said report shall be transmitted to the clerk of each member governmental unit.

Subdivision 20. Its books, reports and records shall be available for and open to inspection by its members at all reasonable times.

Subdivision 21. It may recommend changes in this agreement to its members.

Subdivision 22. 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 Minnesota Statutes, Sections 103B.201 through 103B.251.

Subdivision 23. It shall 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 obtaining permits and complying with the requirements of Chapter 103G of the Minnesota Statutes.

Subdivision 24. Each member reserves the right to conduct separate or concurrent studies on any matter under study by the Commission.

Subdivision 25. It shall establish a procedure for establishing citizen or technical advisory committees and to provide other means for public participation.

METHOD OF PROCEEDING

VII.

Subdivision 1. The procedures to be followed by the Board in carrying out the powers and duties set forth in Article VI, Subdivisions 5,

6, 7, 8, 9, and 10, shall be as set forth in this article.

Subdivision 2. The Commissioners shall be the same as those serving as Commissioners and Alternate Commissioners for the predecessor Bassett Creek Water Management Commission. The Board shall immediately proceed to revise the overall plan as set forth in Article VI, Subdivision 5 or as required by state statute. Upon adoption of said overall plan, the Board shall proceed to implement said plan, and this implementation may be ordered by stages.

Subdivision 3. The Bassett Creek Watershed Management Commission shall be the successor to the Bassett Creek Water Management Commission as constituted under the prior Joint Powers Agreement. All personal property, money, bank accounts, records or any other thing of value and on hand with the Bassett Creek Water Management Commission shall be transferred to the Bassett Creek Watershed Management Commission.

Subdivision 4. The location and adequacy of the outlet for Bassett Creek shall be determined and the Commission shall then prepare plans which will provide capacity to outlet the surface waters which will be collected within the Bassett Creek watershed. In determining the necessary capacity for said outlet, the Commission shall take into consideration the quantity of land within the watershed which each member governmental unit has to pond or act as a reservoir for surface waters. It shall consider only lands which are under public ownership or under public control and that will be perpetually dedicated to acting as a reservoir for surface waters. The commission may require from each member governmental unit a commitment in writing of the lands which shall be so dedicated, including a legal description of the gross area and the capacity in acre feet of water storage. No project which will channel or divert additional

waters to Bassett Creek shall be commenced by any member governmental unit prior to approval of the Board of the design of an adequate outlet or of adequate storage facilities. The adequacy of said outlet shall be determined by the Board after consultations with its professional engineers.

Subdivision 5. All construction, reconstruction, extension or maintenance of Bassett Creek including outlets, lift stations, dams, reservoirs, or other appurtenances of a surface water or storm sewer system which involve construction by or assessment against any member governmental unit or against privately or publicly owned land within the watershed shall follow the statutory procedures outlined in Chapter 429 of the Minnesota Statutes except as herein modified. The Board shall secure from its engineers or some other competent person a report advising it in a preliminary way as to whether the proposed improvement is feasible and as to whether it shall best be made as proposed or in connection with some other improvement and the estimated cost of the improvement as recommended and the proposed allocation of costs between members.

The Board shall then hold a public hearing on the proposed improvement after mailed notice to the clerk of each member governmental unit within the watershed. The Commission shall not be required to mail or publish notice except by said notice to the clerk. Said notice shall be mailed not less than 45 days before the hearing, shall state the time and place of the hearing, the general nature of the improvement, the estimated total cost and the estimated cost to each member governmental unit. The Board may adjourn said hearing to obtain further information, may continue said hearing pending action of the member governmental units or may take such other action as it deems necessary to carry out the purposes of this

Commission.

To order the improvement, in accordance with the powers and duties established in Article VI, Subdivisions 7, 8 and 9, a resolution setting forth the order for a capital improvement project shall require a favorable vote by two-thirds of all eligible votes of then existing Board of the Commission. In all cases other than for capital improvement projects, a majority vote of all eligible members of the Board shall be sufficient to order the work. The order shall describe the improvement, shall allocate in percentages the cost allocation between the member governmental units, shall designate the engineers to prepare plans and specifications, and shall designate the member who will contract for the improvement in accordance with Subdivision 7 of this Article.

After the Board has ordered an improvement or if the hearing is continued while the member governmental units act on said proposal, it shall forward said preliminary report to all member governmental units with an estimated time schedule for the construction of said improvement. The Board shall allow an adequate amount of time, and in no event less than 45 days, for each member governmental unit to conduct hearings, in accordance with the provisions of the aforesaid Chapter 429 or the charter requirements of any city, or to ascertain the method of financing which said member governmental unit will utilize to pay its proportionate share of the costs of the improvement. Each member governmental unit shall ascertain within a period of 90 days the method it shall use to pay its proportionate share of the costs.

If the Commission proposes to utilize Hennepin County's bonding authority as set forth in Minnesota Statutes, Section 103B.251, or if the Commission proposes to certify all or any part of a capital improvement to

Hennepin County for payment, then and in that event all proceedings shall be carried out in accordance with the provisions set forth in said Section 103B.251.

The Board shall not order and no engineer shall prepare plans and specifications before the Board has adopted a resolution ordering the improvement. The Board may order the advertising for bids upon receipt of notice from each member governmental unit who will be assessed that it has completed its hearing or determined its method of payment or upon expiration of 90 days after the mailing of the preliminary report to the members.

Subdivision 6. Any member governmental unit being aggrieved by the determination of the Board as to the allocation of the costs of said improvement shall have 30 days after the commission resolution ordering the improvement to appeal said determination. Said appeal shall be in writing and shall be addressed to the Board asking for arbitration. The determination of the member's appeal shall be referred to a Board of Arbitration. The Board of Arbitration shall consist of three persons; one to be appointed by the Board of Commissioners, one to be appointed by the appealing member governmental unit, and the third to be appointed by the two 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 shall 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 shall not be a resident of any member governmental unit and if appointed by the Chief Judge said person shall 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 shall be divided equally between the Commission and the appealing member. Arbitration shall be conducted in accordance with the Uniform Arbitration Act, Chapter 572 of the Minnesota Statutes.

Subdivision 7. Contracts for Improvements. All contracts which are to be let as a result of the Board's order to construct, repair, alter, reclaim or change the course or terminus of any ditch, drain, storm sewer, or watercourse, or to acquire, operate, construct or maintain dams, dikes, reservoirs or their appurtenances or to carry out any of the other provisions of the plan as authorized by Minnesota Statutes, and for which two or more member governmental units shall be responsible for the costs, shall be let in accordance with the provisions of Section 429.041 of the Minnesota Statutes. The bidding and contracting of said work shall be let by any one of the member governmental units, as ordered by the Board of Commissioners, after compliance with the statutes. All contracts and bidding procedures shall comply with all the requirements of law applicable to contracts let by a statutory city in the State of Minnesota.

The Commission shall not have the authority to contract in its own name for any improvement work for which a special assessment will be levied against any private or public property under the provisions of Chapter 429 or under the provisions of any City charter. These contracts shall be awarded by action of the council of a member and shall be in the name of a member governmental unit. This section shall not preclude the Commission from proceeding under Minnesota Statutes, Section 103B.251.

Subdivision 8. Contracts with Other Governmental Bodies. The Commission may exercise the powers set forth in Article VI, Subdivision 7, but said contracts for a capital improvement shall require a favorable vote

of two-thirds majority of the eligible votes of the then existing members of the Commission.

Subdivision 9. Supervision. All improvement contracts awarded under the provisions of Subdivision 7 of this Article shall be supervised by the member governmental unit awarding said contract or said member governmental unit may contract or appoint any qualified staff member or members of the Commission to carry out said supervision, but each member agrees that the staff of this Commission shall be 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 shall have the right to enter upon the place or places where the improvement work is in progress for the purpose of making reasonable tests and inspections. The staff of this Commission shall report and advise and recommend to the Board on the progress of said work.

Subdivision 10. Land Acquisition. The Commission shall not have the power of eminent domain. The member governmental units agree that any and all easements or interest in land which are necessary will be negotiated or condemned in accordance with Chapter 117 of the Minnesota Statutes by the unit wherein said lands are located, and each member agrees to acquire the necessary easements or right of way or partial or complete interest in land upon order of the Board of Commissioners to accomplish the purposes of this agreement. All reasonable costs of said acquisition shall be considered as a cost of the improvement. If a member governmental unit determines it is in the best interests of that member to acquire additional lands, in conjunction with the taking of lands for storm and surface drainage or storage, for some other purposes, the costs of said acquisition will not be

included in the improvement costs of the ordered project. The Board in determining the amount of the improvement costs to be assessed to each member governmental unit may take into consideration the land use for which said additional lands are being acquired and may credit the acquiring municipality 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 unit refuses to negotiate or condemn lands as ordered by the Board, any other member may negotiate or condemn outside its corporate limits in accordance with the aforesaid Chapter 117. 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 within the Bassett Creek watershed except upon order of the Board of this Commission.

The Commission shall have authority to establish land acquisition policies as a part of the overall plan. The policies shall be designed to equalize costs of land throughout the watershed. Said policy is contained in the existing watershed management plan and may be continued in any revised overall plan required by Minnesota Statutes.

Subdivision 11. Pollution Control and Water Quality. The Commission shall have 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 Surface Water Management Act. All member governmental units 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 shall 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 shall order the member governmental unit 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.

Subdivision 12. Local Water Management Plans. The Commission shall have power and authority to review the members' local water management plans, capital improvement programs and official controls required by Minnesota Statutes Section 103B.235 and/or by rules promulgated and adopted by the Board of Water and Soil Resources. The members also understand that the overall plan and capital improvement program required for the entire watershed must consist of the local parts in the plan and therefore every effort shall be made by the Commission to coordinate the local plans with the watershed's overall plan. The members further understand and agree that upon completion and approval of the overall plan required by Minnesota Statutes 103B.231, each member will be required to present their local management plan to the Commission as required by Minnesota Statutes, Section 103B.235. It is therefore important that each member provide the Commission with their best effort to coordinate and plan for the individual member's local plan at the same time the watershed overall plan is being assembled.

FINANCES

VIII.

Subdivision 1. The 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. The Board shall designate one or more national or state bank or trust companies, authorized by Chapters 118 and 427 of the Minnesota Statutes to receive deposits of public moneys and to act as depositories for the Commission funds. In no event shall there be a disbursement of Commission funds without the signature of at least two Board members, one of whom shall be the Treasurer or his Authorized Deputy Treasurer. The Treasurer shall be required to file with the Secretary of the Board a bond in the sum of at least \$10,000 or such higher amount as shall be determined by the Board. The Commission shall pay the premium on said bond.

Subdivision 2. The members agree to contribute all cash, bank deposits, and other assets held by the Bassett Creek Water Management Commission to the new Bassett Creek Watershed Management Commission to carry out the purposes of the Commission. Each member governmental unit has contributed its proportionate share of said funds based on the net tax capacity and area of all taxable property within the Bassett Creek watershed.

Subdivision 3. Each member agrees to contribute each year to a general fund, said fund to be used for general administration purposes including, but not limited to: salaries, rent, supplies, development of an overall plan, insurance, and bonds, and to purchase and maintain devices to measure hydrological and water quality data. Said funds may also be used for normal maintenance of the facilities, but any extraordinary maintenance or repair expense shall be treated as an improvement cost and processed in accordance with Subdivision 4 of this Article. The annual contribution by each member shall be based fifty percent (50%) on the net

tax capacity of all property within the Watershed and fifty percent (50%) on the basis of the total area of each member within the boundaries of the Watershed each year to the total area in the Bassett Creek watershed. In no event shall any assessment require a contribution to exceed one-half of one percent of the net tax capacity within the watershed.

Subdivision 4.

(a) An improvement fund shall be established for each improvement project instituted under Article VII, Subdivision 3. Each member agrees to contribute to said fund its proportionate share of the engineering, legal and administrative costs as determined by the amount to be assessed against each member as a cost of the improvement. The Board shall submit in writing a statement to each member, setting forth in detail the expenses incurred by the Commission for each project.

Each member agrees to pay to or contract with the member governmental unit awarding said contract for the improvement, its proportionate share of the cost of the improvement in accordance with the determination of the Board under Article VII, Subdivision 5. The member awarding the contract shall submit in writing copies of the engineer's certificate authorizing payment during construction and the member being billed agrees to pay its proportionate share of said improvement costs within 30 days after receipt of the statement. The member awarding the contract shall advise other contributing members of the tentative time schedule of the work and the estimated times when the contributions shall be necessary.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, the Commission may by a vote of 2/3rds of all eligible votes of the then existing members of the Commission decide to proceed to fund all or

any part of the cost of a capital improvement contained in the capital improvement program of the plan pursuant to the authority and subject to the provisions set forth in Minnesota Statutes, Section 103B.251. The Commission and Hennepin County may establish a maintenance fund to be used for normal and routine maintenance of an improvement constructed in whole or in part with money provided by Hennepin County pursuant to Minnesota Statutes, Section 103B.251. The levy and collection of an ad valorem tax levy for maintenance shall be by Hennepin County based upon a tax levy resolution adopted by a majority vote of all eligible members of the Commission and remitted to the County on or before the date prescribed by law each year. If it is determined to levy for maintenance, the Commission shall be required to follow the hearing process established by Minnesota Statutes, Section 103D.915 and 103D.921 and acts amendatory thereof and in addition thereto. Mailed notice shall be sent to the Clerk of each member municipality at least 30 days prior to the hearing.

Subdivision 5. On or before July 1 of each year, the Board shall adopt a detailed budget for the ensuing year and decide upon the total amount necessary for the general fund. Budget approval shall require a favorable vote by a majority of all eligible votes of the then existing members of the Board.

The Secretary of the Board shall certify the budget on or before July 1 to the clerk of each member governmental unit together with a statement of the proportion of the budget to be provided by each member.

The Council of each member agrees to review the budget, and the Board shall upon 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.

Each member agrees to provide the funds required by the budget and said determination shall be conclusive if no member enters objections in writing on or before August 1. 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 aforementioned hearing. Modifications or amendments to the original budget require a favorable vote by a majority of all eligible voters of then existing members of the Board.

The budget shall not in any event 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 and within said members corporate boundaries.

The schedule of payments by the members shall be determined by the Board in such a manner as to provide for an orderly collection of the funds needed.

Upon notice and hearing, the Board by a favorable vote of a majority of all eligible votes of then existing members may adopt a supplemental budget requiring additional payments by the members within 60 days of its adoption but in no event shall 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 any member's corporate boundaries in any one calendar year.

Members' attention is drawn to Minnesota Statutes, Section 103B.245, which authorizes a Watershed Management Tax District to be created within each member City to pay the costs of planning and for the purpose of paying capital costs and/or normal and routine maintenance of facilities.

Subdivision 5. Cost Allocation. All capital costs incurred by the Commission shall be apportioned to the respective members on either (1), (2), or (3) of the following bases:

(1) A negotiated amount to be arrived at by the members who have lands in the subdistrict responsible for the capital improvement.

(2) (a) Fifty percent of all capital costs or the financing thereof shall be apportioned to each member on the basis of the real property valuation net tax capacity of each member within the boundaries of the watershed each year to the total real property valuation net tax capacity in the Bassett Creek watershed area governed by this Agreement.

(b) Fifty percent of all capital costs or the financing thereof shall 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 Bassett Creek watershed area governed by this Agreement.

(c) Capital costs allocated under the 50% area/50% net tax capacity formula herein set forth may be varied by the Commission by a 2/3rds vote if:

(1) 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

(2) 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.

(d) Credits to any member for lands acquired by said member to pond or store storm and surface water shall be allowed against costs set forth in Subsections (a), (b), and (c) of this Section.

(3) If the project is constructed and financed pursuant to Minnesota Statutes, Section 103B.251, the members understand and agree that said costs will be levied on all taxable property in the watershed as set forth in the statute.

MISCELLANEOUS PROVISIONS

IX.

Subdivision 1. The Commission shall not have the power to issue certificates, warrants or bonds.

Subdivision 2. The Commission shall not have the power of eminent domain and shall not own any interest in real property. All interests in lands shall be held in the name of the corporate member wherein said lands are located.

Subdivision 3. The Commission shall not have the power to levy a special assessment upon any privately or publicly owned land. All such assessments shall be levied by the member wherein said lands are located. It shall have the power to require any member to contribute the costs

allocated or assessed according to the other provisions of this agreement.

Subdivision 4. Each member agrees that it will not directly or indirectly collect or divert any additional surface water to the Mississippi River or its tributaries from any subdistrict or subtrunk without a permit from the Board of Commissioners. Permits may be granted by the Board for a member to proceed with the construction or reconstruction of improvements within the individual corporate members' boundaries and at its sole cost upon a finding:

- (a) that there is an adequate outlet; and
- (b) that said construction is in conformance with the overall plan; and
- (c) that the construction will not adversely affect other members of this agreement.

Subdivision 5. Any member who is more than 60 days in default in contributing its share to the general fund shall have the vote of its Board member suspended pending the payment of its proportionate share.

Any member who is more than 60 days in default in contributing its proportionate share of the cost of any improvement to the contracting member shall upon application of the contracting member have the vote of its Board member suspended, pending the payment of its proportionate share.

Any Board member whose vote is under suspension shall not be considered as an eligible member as such membership affects the number of votes required to proceed on any matter under consideration by the Board.

DURATION

X.

Subdivision 1. Each member agrees to be bound by the terms of this agreement until January 1, 2015, and it may be continued thereafter at the

option of the parties.

Subdivision 2. This agreement may be terminated prior to January 1, 2015, by the unanimous consent of the parties. If the agreement is to be terminated, a notice of the intent to dissolve the Commission shall be sent to the Board of Water and Soil Resources and to Hennepin County at least 90 days prior to the date of dissolution.

Subdivision 3. In addition to the manner provided in Subdivision 2 for termination, any member may petition the Board to dissolve the agreement. Upon 90 days notice in writing to the clerk of each member governmental unit and to the Board of Water and Soil Resources and to Hennepin County, the Board shall hold a hearing and upon a favorable vote by a majority of all eligible votes of then existing Board members, the Board may by Resolution recommend that the Commission be dissolved. Said Resolution shall be submitted to each member governmental unit and if ratified by three-fourths of the councils of all eligible members within 60 days, said Board shall dissolve the Commission allowing a reasonable time to complete work in progress and to dispose of personal property owned by the Commission.

DISSOLUTION

XI.

Upon dissolution of the Commission, all property of the Commission shall be sold and the proceeds thereof, together with monies on hand, shall be distributed to the eligible members of the Commission. Such distribution of Commission assets shall be made in proportion to the total contribution to the Commission as required by the last annual budget.

EFFECTIVE DATE

XII.

This agreement shall be in full force and effect upon the filing of a certified copy of the resolution approving said agreement by all nine members. Said resolution shall be filed with the Chair of the existing Bassett Creek Watershed Management Commission (presently W. Peter Enck of the City of New Hope), who shall notify all members in writing of its effective date and shall set the date for the next meeting to be conducted under this amended Joint Powers Agreement.

IN WITNESS WHEREOF, the undersigned governmental units, by action of their governing bodies, have caused this agreement to be executed in accordance with the authority of Minnesota Statutes Sections 103B.211 and 471.59.

Approved by the City Council
November 16, 1993.

Approved by the City Council
September 7, 1993.

Approved by the City Council
July 6, 1993.

Approved by the City Council
August 2, 1993.

Approved by the City Council
September 13, 1993.

Approved by the City Council
June 14, 1993.

Approved by the City Council
JUL 16 1993, 1993.

Approved by the City Council
July 6, 1993.

Approved by the City Council
July 6, 1993.

CITY OF CRYSTAL
By Peter E. Maitorino
Attest Dorlene George

CITY OF GOLDEN VALLEY
By Joey A. Bepko
Attest Shirley G. Nelson

CITY OF MEDICINE LAKE
By Thomas G. Schroder
Attest Julia Deitte

CITY OF PLYMOUTH
By James P. [Signature]
Mayor
Attest Laurie Ravenhorst
City Clerk

Countersigned John Mair
City Comptroller-Treasurer Finance Officer

CITY OF MINNETONKA
By Timothy J. [Signature]
Attest Elizabeth P. [Signature]

CITY OF NEW HOPE
By [Signature]
Attest Laurie [Signature]

CITY OF MINNEAPOLIS
By [Signature]
Attest [Signature]

CITY OF ROBBINSVILLE
By David D. [Signature]
Attest [Signature]

CITY OF ST. LOUIS PARK
By Lyle W. [Signature]
Attest [Signature]

MEMORANDUM of UNDERSTANDING
Local Water Planning and Regulation

Minnehaha Creek Watershed District and the City of Minnetonka

This Memorandum of Understanding (MOU) is made by and between the Minnehaha Creek Watershed District, a watershed district with purposes and powers as set forth at Minnesota Statutes Chapters 103B and 103D (MCWD), and the City of Minnetonka, a body corporate and politic and a home rule charter city in the State of Minnesota.

Recitals and Statement of Purpose

WHEREAS in 2007 the MCWD revised its watershed management plan (WMP) under Minnesota Statutes §103B.231, which details the existing physical environment, land use and development in the watershed and establishes a plan to regulate water resource use and management to protect water resources, improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D;

WHEREAS the WMP incorporates the Rules adopted by the MCWD to protect water resources, improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D;

WHEREAS Minnetonka has developed a local water management plan under Minnesota Statutes §103B.235 that describes the existing and proposed physical environment and land use within Minnetonka and sets forth a regional subwatershed based capital improvement implementation plan for bringing local water management into conformance with the WMP;

WHEREAS on January 29, 2009, the MCWD Board of Managers approved Minnetonka's local water management plan by adoption of Resolution 08-097, attached and incorporated herein and that requires, as a precondition of approval, that Minnetonka and the MCWD enter into an MOU to memorialize their respective roles as to water resource protection and management within city boundaries;

WHEREAS Minnetonka currently exercises sole regulatory authority within city boundaries with respect to matters now subject to regulation under MCWD Rules B

(erosion control), C (floodplain alteration), and N (stormwater management) and wishes to continue to exercise sole authority;

WHEREAS MCWD approval of a local plan requires a finding that municipal ordinances are at least as protective of water resources as the MCWD Rules;

WHEREAS the finding by the MCWD Board of Managers that Minnetonka's municipal ordinances meet this criterion rests on Minnetonka's commitment to adopt ordinances that are materially equivalent to MCWD Rules B (erosion control), C (floodplain alteration), and N (stormwater management);

NOW THEREFORE it is mutually agreed by and between the parties that they enter into this MOU in order to document the understanding of the parties as to the roles and responsibilities of each.

1.0 Responsibilities of Minnetonka

1.1 Minnetonka retains and may exercise all municipal authority to issue permits for and regulate activities within its boundaries that affect water resources.

1.2 Within 180 days of June 18, 2009, Minnetonka will adopt an ordinance or ordinances meeting the terms of this MOU, with the written determination of MCWD staff that the ordinance(s) is or are materially equivalent to MCWD Rule B, C, or N. If this requirement is not met, the MCWD will reassert its regulatory authority under Rules B, C, and N for activities that have not received all required approvals under Minnetonka's water resource ordinances as of that date.

1.3 In accordance with Minnesota Statutes §103B.211, subdivision 1(a)(3)(ii), the MCWD must approve the granting of any variance under a Minnetonka ordinance for which the MCWD has ceased to exercise regulatory authority.

1.4 Within 180 days of written MCWD notice that it has revised a rule for which Minnetonka exercises sole authority pursuant to paragraph 1.2, Minnetonka must revise its ordinance(s) to maintain material equivalence and obtain MCWD concurrence in the revision. MCWD will provide the City of Minnetonka with Rule language as part of this notification. Alternatively, Minnetonka may ask the MCWD to reassert its own regulatory authority as to that rule.

1.5 Minnetonka will designate a staff member as the official point of contact for regulatory matters under this MOU. Minnetonka will:

- a. Maintain a log of permits issued or considered under its water resource ordinance(s), and include in the log the permit site location, the date the application was received and /or issued, and a brief description of the project. This log will be forwarded to the District annually and made available upon request.
- b. Notify the MCWD of work by Minnetonka subject to the ordinances governed by this MOU prior to initiation of work.
- c. Include the MCWD as a recipient of any public notices as provided in the ordinances governed by this MOU for MCWD staff to review and forward comments on the project.
- d. Provide available project plans and specifications to the MCWD on request.

Minnetonka and the MCWD will meet by March 1st annually to review Minnetonka's regulatory activity under this MOU.

1.6 Annually, by the date specified for Minnetonka's submittal of its annual report under its NPDES municipal stormwater permit, Minnetonka will submit to the MCWD a concise but specific report describing:

- a. Progress on the local water management plan implementation program.
- b. Progress on meeting phosphorus load reduction requirements of the WMP.
- c. Any adjustments to the implementation and/or capital improvement program in the local water management plan.
- d. The permit log described in paragraph 1.5, above.
- e. A listing, with further specific available information as the MCWD may request, of grading and structural alterations approved or occurring within city boundaries since the last annual report (both private and public alterations) that could measurably affect hydraulic and hydrologic model outcomes.

Minnetonka may incorporate its annual report into its NPDES MS4 annual report, provided it addresses the above items with specificity.

2.0 Responsibilities of the MCWD

2.1 The MCWD will continue to apply and enforce its Rules, as they may be amended from time to time, to activity within Minnetonka, except as provided under paragraph 1.2, above. Specifically, but not exclusively, the MCWD will continue to apply its rules: (a) other than those regarding erosion control, floodplain alteration, and stormwater management; and (b) to actions by parties to whom Minnetonka's ordinances do not apply. The MCWD will continue to perform NPDES compliance monitoring pursuant to its joint powers agreement with the Minnesota Pollution Control Agency and may perform similar regulatory activities by agreement with other public bodies.

2.2 Minnetonka and the MCWD will meet at least annually to review Minnetonka's regulatory activity under this MOU.

2.3 The MCWD retains all authority that it may possess under Minnesota Statutes Chapters 103B and 103D and any other provision of law, except as explicitly withdrawn under this MOU, including but not limited to authority set forth at Minnesota Statutes §§103B.211, subdivision 1(a); 103D.335 and 103D.341. The MCWD may use its authority under Minnesota Statutes §103D.335, subdivision 14, to inspect work subject to Minnetonka permits whether or not the work is subject to an MCWD permit.

3.0 General

3.1 If the MCWD has reason to believe that Minnetonka is not adequately implementing its regulatory program as approved, it may engage Minnetonka in a review of its concerns. If the MCWD Board of Managers, after engagement with Minnetonka and a public hearing, finds that Minnetonka is not adequately implementing its regulatory program, it may by resolution reassert MCWD regulatory authority as to all actions that have not yet received all required approvals under Minnetonka water resource ordinances. The Board may consider whether: (a) ordinances have been adopted and conform to standards approved by the MCWD; (b) ordinances have been applied as written and MCWD approval of variances has been sought per §103B.211; (c) technical expertise and program resources as described in

the local plan have been maintained; and (d) compliance has been reasonably monitored and enforced.

3.2 The MOU is effective on the date that it has been executed by both parties, will remain in effect for five years, and will be extended automatically for five-year terms unless terminated by agreement of the parties. Notwithstanding, Minnetonka will continue to be subject to applicable statutes and rules requiring that it revise its local water management plan in response to MCWD revisions of the WMP.

3.3 This MOU may be amended only by a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding.

CITY OF Minnetonka

By Terry Schneider
Mayor

Date: 8/4/09

By [Signature]
City Manager

Date: 8/4/2009

MINNEHAHA CREEK WATERSHED DISTRICT

By James B. Collins
President, Board of Managers

Date: 8-6-09

APPROVED AS TO FORM AND EXECUTION

By [Signature]
Its Attorney

RESOLUTION

RESOLUTION NUMBER: 08-097

TITLE: City of Minnetonka Local Water Resources Management Plan - Approval

WHEREAS, on July 5, 2007, the MCWD adopted amendments to its comprehensive watershed management plan under Minnesota Statutes § 103B.231, which, as amended, details the existing physical environment, land use and development in the watershed and established a plan to manage water resources and regulate water resource use to improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D; and

WHEREAS, the MCWD Comprehensive Water Resources Management Plan, as amended incorporates the Rules adopted by the MCWD to protect water resources, improve water quality, prevent flooding and otherwise achieve the goals of Minnesota Statutes Chapters 103B and 103D; and

WHEREAS, the City of Minnetonka completed a draft Local Water Management Plan and submitted it to the MCWD for review and comment in 2008; and

WHEREAS, MCWD reviewed the draft Plan and provided detailed review comments to the City for consideration and incorporation into the Plan; and

WHEREAS, the City of Minnetonka submitted a final plan revision which MCWD reviewed in accordance with Minnesota Statutes § 103B.235 subd.3, State Rules 8410 and MCWD Comprehensive Water Resources Management Plan requirements for those portions of the City within MCWD boundaries; and

WHEREAS, the MCWD has determined that the final revised Plan, upon satisfaction of the conditions stated below, will be consistent with the MCWD Comprehensive Water Resources Management Plan; and

WHEREAS, the Metropolitan Council has received the Local Water Management Plan and has provided its written comments to the MCWD in a letter on June 27, 2008 and the District has fully considered the comments; and

WHEREAS the MCWD has determined that the Plan meets the requirements for local plan approval set forth in the MCWD's watershed management plan; and

WHEREAS the City presently exercises, and wishes to continue to exercise, sole regulatory authority for activities subject to MCWD Rules B, C, and N; and

WHEREAS the MCWD's ability to approve the Plan rests on the City's agreement to continue to enforce ordinances that implement all of the requirements in MCWD Rules B, C, and N within those parts of the City where the MCWD has jurisdiction, as well as the City's agreement to update said ordinances within 180 days of the revision and adoption of Rules B, C, or N by MCWD;

NOW, THEREFORE, BE IT RESOLVED, that the MCWD hereby approves the City of Minnetonka Local Water Management Plan, effective on the execution, within 180 days of this date, of a Memorandum of Understanding between MCWD and the City of Minnetonka establishing implementation responsibilities materially equivalent to those in the attached Memorandum of Understanding.

Resolution Number 08-097 was moved by Manager _____ seconded by Manager _____.
Motion to adopt the resolution _____ ayes, _____ nays, _____ abstentions. Date: _____.

Lee Keeley, Secretary Date: _____