

AGENDA

1. CITY COUNCIL WORK SESSION CALLED TO ORDER
2. ROLL CALL: Parisian, Murphy, Mayor Blonigan, Mayor Pro Tem Wagner
3. DISCUSSION
 - A. Consider Schedule for LRT Municipal Consent
 - B. Assessment Policy Discussion
 - C. Joint Powers Agreement(s) - Basset Creek Watershed Mgmt Commission, Shingle Creek Watershed Mgmt Organization
 - D. Limited Use Agreement - Orchard Ave
4. STAFF UPDATES
 - A. Housekeeping items
5. COUNCIL UPDATES
6. ADJOURNMENT



City of Robbinsdale

TO: Mayor and City Council
PREPARED BY: Tim Sandvik, City Manager
APPROVED BY: Tim Sandvik, City Manager
DATE: May 15, 2024
RE: Consider Schedule for LRT Municipal Consent

Background:

As Council is aware, the Blue Line Extension project office will be requesting Municipal Consent sometime this fall. MN Stat 473.3994 is attached to this memo, for reference of process.

Analysis:

This past January, BLRT project office personnel attended a Council Work Session, at which Robbinsdale Council Members made clear their desire to wait until the Ward 2 Council seat is filled. The special election date to fill that vacancy is August 13, 2024. The new Council Member would likely be sworn in on, or around, August 20, 2024.

Statute does not explicitly establish any formality that a City Council may use to provide Municipal Consent (or otherwise), so staff is asking that Council establish parameters so staff can properly prepare. Council may consider hosting a special work session(s), a Public Hearing, an "Open House" with a formal meeting to follow, or a combination of the aforementioned and/or other engagement/meetings.

Staff is also asking that Council review the current list of items that have been conveyed to the LRT project office. Some fall under the 30% Engineered plans, some outside; however, staff believes it is in the best interest of Council to official convey concerns, unanswered questions, and priorities before, and after the Municipal Consent process.

Recommendation:

No formal action is to be taken

Attachments:

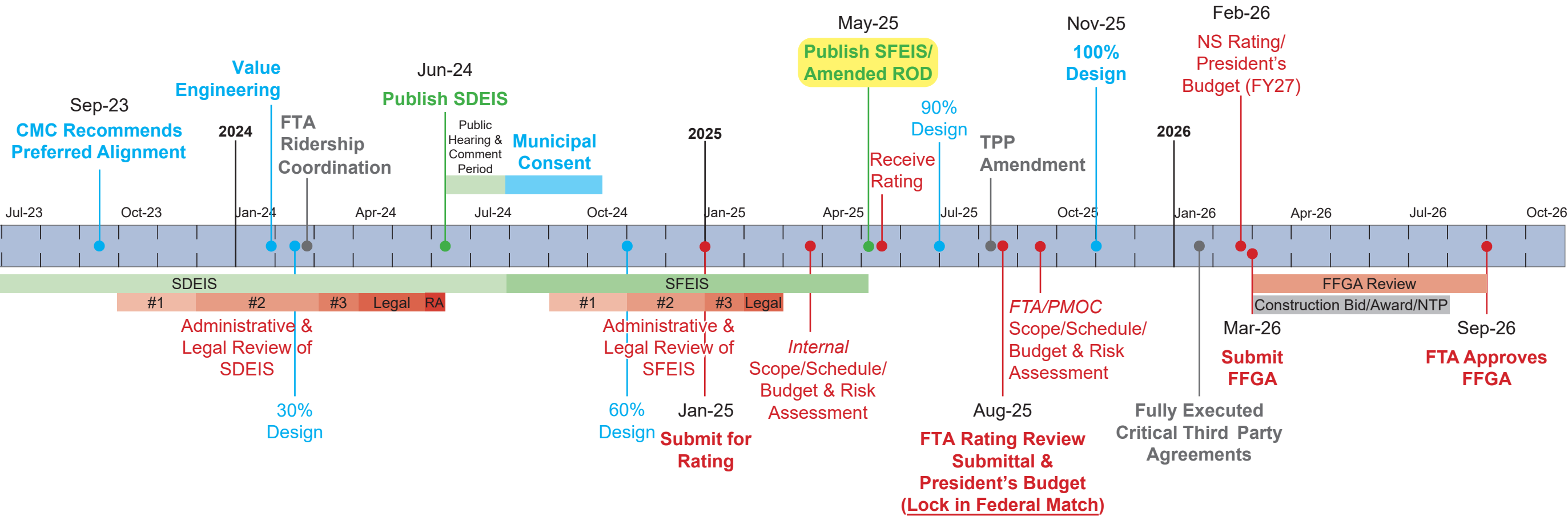
1. BLRT_Roadmap2FFGA_R00-13_20240409 (002)
2. MN Stats 473.3994 LIGHT RAIL TRANSIT; DESIGN PLANS
3. CC Considedrations - LRT DRAFT

BLUE LINE LRT EXTENSION

Timeline to FFGA

R00-13

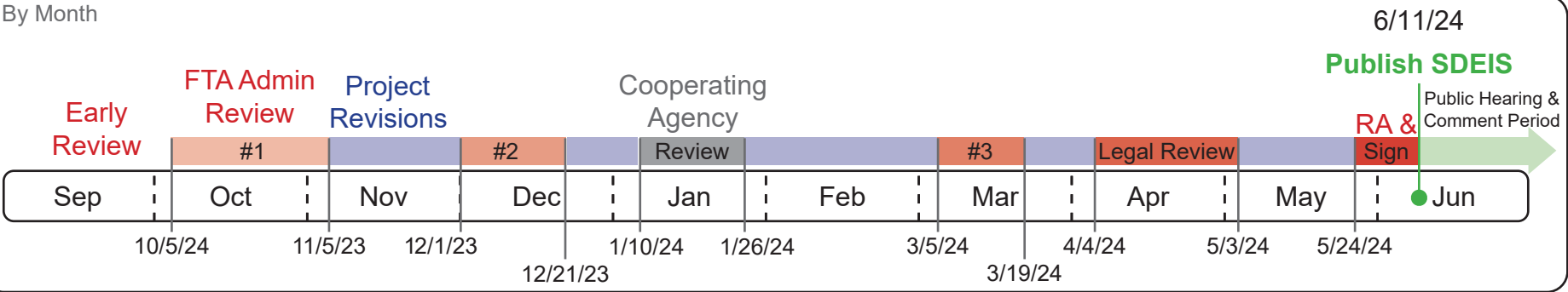
As of: 4/9/2024



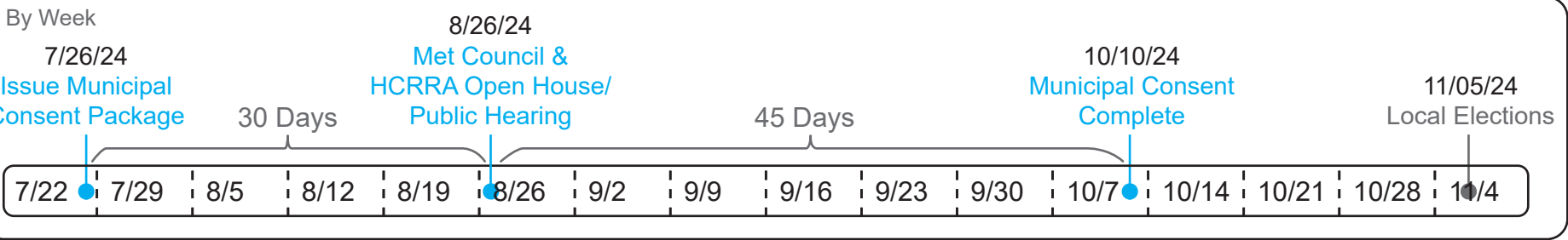
KEY:

- Environmental Activities
- Design Activities
- FTA Coordination Activities
- Other Activities

SDEIS Review and Publication



Municipal Consent Process



473.3994 LIGHT RAIL TRANSIT; DESIGN PLANS.

Subdivision 1. [Repealed, 1989 c 339 s 24]

Subd. 1a. **Designation of responsible authority.** For each proposed light rail transit facility in the metropolitan area, the governor must designate either the Metropolitan Council or the state of Minnesota acting through the commissioner of transportation as the entity responsible for planning, designing, acquiring, constructing, and equipping the facility. Notwithstanding such designation, the commissioner and the council may enter into one or more cooperative agreements with respect to the planning, designing, acquiring, constructing, or equipping of a particular light rail transit facility that provide for the parties to exercise their respective authorities in support of the project in a manner that best serves the project and the public.

Subd. 2. **Preliminary design plans; public hearing.** Before final design plans are prepared for a light rail transit facility in the metropolitan area, the responsible authority and the regional railroad authority or authorities in whose jurisdiction the line or lines are located must hold a public hearing on the physical design component of the preliminary design plans. The responsible authority and the regional railroad authority or authorities in whose jurisdiction the line or lines are located must provide appropriate public notice of the hearing and publicity to ensure that affected parties have an opportunity to present their views at the hearing. The responsible authority shall summarize the proceedings and testimony and maintain the record of a hearing held under this section, including any written statements submitted.

Subd. 3. **Preliminary design plans; local approval.** At least 30 days before the hearing under subdivision 2, the responsible authority shall submit the physical design component of the preliminary design plans to the governing body of each statutory and home rule charter city, county, and town in which the route is proposed to be located. The city, county, or town shall hold a public hearing. Within 45 days after the hearing under subdivision 2, the city, county, or town shall review and approve or disapprove the plans for the route to be located in the city, county, or town. A local unit of government that disapproves the plans shall describe specific amendments to the plans that, if adopted, would cause the local unit to withdraw its disapproval. Failure to approve or disapprove the plans in writing within 45 days after the hearing is deemed to be approval, unless an extension of time is agreed to by the city, county, or town and the responsible authority.

Subd. 4. **Preliminary design plans; council hearing.** If the governing body of one or more cities, counties, or towns disapproves the preliminary design plans within the period allowed under subdivision 3, the council shall hold a hearing on the plans, giving the commissioner of transportation, if the responsible authority, any disapproving local governmental units, and other persons an opportunity to present their views on the plans. The council may conduct independent study as it deems desirable and may mediate and attempt to resolve disagreements about the plans. Within 60 days after the hearing, the council shall review the plans and shall decide what amendments to the plans, if any, must be made to accommodate the objections presented by the disapproving local governmental units. Amendments to the plans as decided by the council must be made before continuing the planning and designing process.

Subd. 5. **Final design plans.** (a) If the final design plans incorporate a substantial change from the preliminary design plans with respect to location, length, or termini of routes; general dimension, elevation, or alignment of routes and crossings; location of tracks above ground, below ground, or at ground level; or station locations, before beginning construction, the responsible authority shall submit the changed component of the final design plans to the governing body of each statutory and home rule city, county, and town in which the changed component is proposed to be located. Within 60 days after the submission of the plans, the city, county, or town shall review and approve or disapprove the changed component located in the city, county, or town. A local unit of government that disapproves the change shall describe specific amendments to the plans that, if adopted, would cause the local unit to withdraw its disapproval. Failure to approve or

disapprove the changed plans in writing within the time period is deemed to be approval, unless an extension is agreed to by the city, county, or town and the responsible authority.

(b) If the governing body of one or more cities, counties, or towns disapproves the changed plans within the period allowed under paragraph (a), the council shall review the final design plans under the same procedure and with the same effect as provided in subdivision 4 for preliminary design plans.

Subd. 6. [Repealed, 1993 c 353 s 20]

Subd. 7. **Council review.** If the commissioner is the responsible authority, before proceeding with construction of a light rail transit facility, the commissioner must submit preliminary and final design plans to the Metropolitan Council. The council must review the plans for consistency with the council's development guide and approve the plans.

Subd. 8. **Metropolitan significance.** This section does not diminish or replace the authority of the council under section 473.173.

Subd. 9. **Light rail transit operating costs.** (a) Before submitting an application for federal assistance for light rail transit facilities in the metropolitan area, the Metropolitan Council must prepare an estimate of the amount of operating subsidy which will be required to operate light rail transit in the corridor to which the federal assistance would be applied. The estimate must indicate the amount of operating subsidy estimated to be required in each of the first ten years of operation of the light rail transit facility. If the commissioner of transportation is the responsible authority, the commissioner must provide information requested by the council that is necessary to make the estimate.

(b) The council must review and evaluate the estimate developed under paragraph (a) with regard to the effect of operating the light rail transit facility on the currently available mechanisms for financing transit in the metropolitan area.

Subd. 10. **Corridor Management Committee.** (a) The responsible authority must establish a Corridor Management Committee to advise the responsible authority in the design and construction of light rail transit in each corridor to be constructed. The Corridor Management Committee for each corridor shall consist of the following members:

- (1) one member appointed by each city and county in which the corridor is located;
- (2) the commissioner of transportation or a designee of the commissioner;
- (3) two members appointed by the Metropolitan Council, one of whom shall be designated as the chair of the committee;
- (4) one member appointed by the Metropolitan Airports Commission, if the designated corridor provides direct service to the Minneapolis-St. Paul International Airport; and
- (5) one member appointed by the president of the University of Minnesota, if the designated corridor provides direct service to the university.

(b) The Corridor Management Committee shall advise the responsible authority on issues relating to environmental review, preliminary design, preliminary engineering, final design, implementation method, and construction of light rail transit in the corridor.

Subd. 11. [Repealed, 1998 c 404 s 84]

Subd. 12. [Repealed, 1999 c 230 s 46]

Subd. 13. [Repealed, 2008 c 287 art 1 s 126]

Subd. 14. **Transfer of facility after construction.** If the commissioner of transportation is the responsible authority for a particular light rail transit facility, the commissioner must transfer to the Metropolitan Council all facilities constructed and all equipment and property acquired in developing the facility upon completion of construction.

History: 1987 c 405 s 2; 1989 c 339 s 3-6; 1991 c 291 art 4 s 9; 1993 c 353 s 7-15; 1994 c 628 art 3 s 99; 1997 c 7 art 2 s 59; 1998 c 404 s 57-59; 1999 c 230 s 40-42; 2000 c 260 s 68; 2008 c 287 art 1 s 104; 2010 c 382 s 87; 2011 c 76 art 1 s 72



Specific to the Route – South to North

1. Lowry Ave Station – City of Robbinsdale is requesting:
 - a. Project Office formally document feedback from North Memorial Hospital
 - b. Project Office commit to a safety plan – as the station would be operated by the Metropolitan Council (Metro Transit), it rests on a Hennepin Council Facility (CR 81), as planned it sits in the City of Robbinsdale AND City of Minneapolis within Minneapolis Parks Board property.
 - c. Project Office commit to a controlled/secure platform
 - d. Project Office should consider bus hub provisions at this location
2. In tandem with the project, add curb and gutter on York Ave between Lowry and Parkview.
3. Current plans indicate a two-way frontage road access near North Memorial. While the City sees value in this consideration, the City requires that project office receive formal feedback from North Memorial.
 - a. If reconstruction includes work on the retaining wall between York and Abbott with precast concrete walls, City logo should be imprinted and colored.
4. The City would like to consider the reduction in France Ave behind Citizen's Bank during project construction.
5. The City would support the removal of the existing pergola at the NW corner of 36th & CR 81 – this could be relocated to a different area.
6. The City continues to support the left turn lane into Lake View Terrace Park boat launch (southbound on CR 81). Staff have seen multiple iterations.
7. The City may consider the elimination of impervious surface at the “turnaround” north of the access to LVT (near 37th Ave N).
8. The City does not support the loss of Ash trees by Hidden Shores on Lakeland Ave.
9. There needs to be a right turn lane for the semis exiting southbound CR 81 for the Lakeland Ave. N. frontage road. Semis depend on this section of frontage road in addition to moving vans for Birdtown Flats, etc...
 - a. The City would request that a sidewalk be installed on 39th Ave between CR 81 and West Broadway.
10. The City supports the placement of the “Downtown Station”, south of 40th Ave N.

11. The City does not support negative impacts at the Southeast corner of 40th Ave. N. and CR 81 (particularly 4227 40th Ave. N). This house will suffer from the adjacent traffic impacts.
12. Size and placement of parking facility – Most recent iterations have included a three hundred (300) stall ramp, which exceeds the number of spaces desired by the City Council. Additionally, the most recent version that staff has seen includes bus access on West Broadway and/or 40th Ave N. The City does not support additional traffic on side streets (including West Broadway, 40th Ave N, and Hubbard Ave). The City would like to see primary access come from CR 81. Further, the most recent iteration includes a location north and west of the intersection of 40th Ave and CR 81 – if this site is not chosen, the City must be presented with alternatives.
13. Elim church site should be considered an alternate for the Bus center-Parking ramp site. If US Bank is pre-emptively redeveloped, alternate plans should be developed. The funeral home site would provide a reasonable Plan C.
14. The City is requesting concrete streets be installed around the bus hub.
15. The City is requesting that there are not stops within 600 feet of the bus hub.
16. Turning movements on 42nd, near McDonald's access, needs further study. Current plans suggest potentially limiting egress/ingress to right turns only – the City is concerned this will limit access to McDonald's and other businesses, as well as City parking. Further, without proper engineering and design, people will continue to turn left (westbound on 42nd Ave N, OR exiting the parking lot on to 42nd Ave N).
17. The City does not support the loss of approximately 30% of parking for Robin Center, CVS, and any impacts of the retaining wall at Town Center.
18. In order to support at-grade structure, between 40th Ave N and (at least) 42nd Ave N, the City is requiring engineering and design elements be explicitly produced and shared with City officials. In December, Dan Soler and Christie Beckwith sat with the City Manager to discuss what the project office could share to ease concerns the Council has raised. At the January 9, 2024 City Council meeting, no plans were shared/discussed by the project office.
19. The City supports maintaining the left turn lane (southbound CR 81) to Twin Lakes/Three Rivers boat launch.
20. The City does not support 90-degree parking at Robin Center. This would require a variance and would not normally be permitted. **City Code Section 510.17 Subd. 3(b):** *Ninety degrees (90°) head in parking, directly off of and adjacent to a public street or alley, with each stall having its own direct access to the public street or alley, shall be prohibited. However, the city council may approve sixty degree (60°) head in angle parking, directly off and adjacent to a public street or alley, with each stall having its*



own direct access to a public street or alley, as a conditional use as regulated by subsection [535.01](#).

21. The Lakeland Ave. N. frontage road should not be disconnected between CVS and the gas station.
22. The City does not support the loss of the right turn lane from north bound CR 81 to 47th Ave. N. This will create conflicts with traffic turning into the neighborhood on the east side. This access point is almost exclusive and turning vehicles will conflict with accelerating northbound traffic. Further, any alterations to that intersection must consider neighbor traffic. The City requests a turn lane is shown.
23. The City requests that the new wall along the path near the water tower would be concrete panels and include a stamp of the Robbinsdale logo in blue (eg: Maple Grove along 94)
24. The City is requesting that area marked “Curb, Median, & Truck Apron” as indicated by red, be plantings.
25. The City is requesting that where beneficial (City’s discretion), re-platting take place
26. The City is requesting all overhead line that cross/run parallel to construction be undergrounded.

General Considerations, Observations

1. The City continues to patiently wait for the following data:
 - a. Ridership breakdown by stops. The project office received numbers in 2023, and has since shared projections for the entire LRT extension, but refuses to share individual stop projections. Since this includes justification for a parking structure, the City is requesting this data immediately.
 - b. Trip Time data.
2. The City has requested a response to the following:
 - a. In the event of a derailment at 40th Ave. N., 41st Ave. N., or 42nd Ave. N. what provisions will be available for emergency services to cross CR 81?
 - b. How will public safety officials acquire training related to LRT operations?
 - c. What apparatus will the project provide/provide reimbursement for? Does this include the creation/addition of a Public Safety substation?
3. The City is requesting that Hennepin County and the Metropolitan Council explicitly state where they support Anti Displacement policy (including what they will enact). Further, the City is requesting that both entities explicitly declare what amount of

resources (including personnel and dollars) will be dedicated to Anti Displacement efforts.

4. The City requests that Metro Transit continue to address public safety concerns at stations and on Light Rail.
5. The City does not support the reduction of speed on CR 81 if it shifts vehicle traffic on to side streets/residential neighborhoods. The City formally requests a traffic study indicating what a reduction in corridor speed, if proposed, does to local traffic.
6. The City is requiring a formal plan and commitment from Hennepin County and Metro Transit regarding snow plowing, snow storage, and snow removal on the rail corridor, roads, any parking structure, and walkways/paths.
7. The City supports updates to the intersection of 42nd Ave N and West Broadway.
8. The City is requesting the project office consider stormwater management infrastructure needs, including correlated costs, in tandem with construction.
9. The City is requesting the project office commit to a “no net loss” of vegetation, including but not limited to, plantings related to water quality treatment AND beautification.
10. The City is requiring formal notification of TPSS location(s)
11. The City is requesting that the project office show the need to continue the Rte 32 (to potentially be a BRT route in the future), north of the Lowry Station (as this seems redundant).
12. The City is requesting all lighting installed use LEDs with Dark Sky Compliance
13. The City is requesting clarification on Platform Security – eg: who provides proactive efforts, and who responds to emergency calls.
14. The City is requesting that the LRT (Met Council and/or Hennepin County) commit to paying utility fees for signals and street lights (including maintenance and replacement).
15. The City is requesting that storm water retention enhancements be a shared expense – prior agreements related to CR 81 would be null/void
16. The City requests access for conduit for Fiber along any construction.
17. The City will compile specific requests for areas outside the immediate corridor – those include, but are not limited to:
 - a. reconstruct the bridge on 36th near June and Halifax.



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- b. reconstruct the pedestrian facilities downtown, including ADA compliance and consider utilities in tandem.
 - c. Parks investments, including sidewalks and trails system
 - d. Consider engineering that promotes safety at 42nd Ave N and West Broadway
 - e. CR 9 from CR 81 to TH 100
18. Request that Met Council pay taxes on land used for Parking Ramp
19. Met Council/Hennepin County responsible for all maintenance of landscaping, fencing, retaining walls, crosswalks, and signage along the corridor
20. Reimburse the City for all ROW that was purchased as a part of CR 81 reconstruction in 2005-2008
21. Follow direction from the City relating to streetscaping. Now would be the time to create a plan for execution...
22. Council needs to determine whether or not a set of demands related to municipal consent are agreeable. "Municipal consent by the City of Robbinsdale is dependent on..."



City of Robbinsdale

TO: Mayor and City Council
PREPARED BY: Tim Sandvik, City Manager
APPROVED BY: Tim Sandvik, City Manager
DATE: May 15, 2024
RE: Assessment Policy Discussion

Background:

At the May 7th, 2024 City Council meeting, Council did not approve the proposed Street project as had been discussed over the past months.

Analysis:

At least one of the dissenting votes noted they would not support the project, due to the special assessment policy.

Staff will introduce the conversation, and look for guidance on next steps. As City operations have traditionally followed a timeline and sequence, staff will outline the following:

- 41st Ave Street and Utilities project (not approved for 2024)
- Lowry Ave Street and Utilities project (pending, 2024)
- Bond issuance for 2024 projects and Capital (established calendar will no longer work)
- Oakdale Ave, including water connection to North Memorial (potential 2025)
- York Ave from 33rd to 36th (potential 2025)
- Shoreline/Chowen project, including storm water through Sanborn Park (potential 2025)
 - Aforementioned is in the process of being evaluated for outside funding

Recommendation:

Staff will look for direction on next steps, with no formal action immediately sought.

Attachments:

1. City of Robbinsdale - Special Assessment Policy



City of Robbinsdale

Special Assessment Policy

Adopted by Resolution 7839, August 18th, 2020

Section I

General Policy Statement

The purpose of this Assessment Policy is to establish a fair and equitable manner of recovering and distributing the cost of public improvements. The procedures used by the City of Robbinsdale for levying special assessments are those specified by Minnesota Statutes Chapter 429, which provide that all or a part of the cost of improvements may be assessed against benefiting properties.

Three basic criteria must be satisfied before a particular parcel can be assessed. They are:

1. The land must have received special benefit from the improvement.
2. The amount of the assessment must not exceed the special benefit.
3. The assessment must be uniform in relation to the same class of property within the assessment area.

It is important to recognize that the actual cost of extending an improvement past a particular parcel is not the determining factor in determining the amount to be assessed. However, in most cases the method for determining the value of the benefit received by the improvement, and therefore the amount to be assessed, shall be the cost of providing the improvement. This holds true as long as the cost does not exceed the increase in market value due to the project, for the property being assessed. The entire project shall be considered as a whole for the purpose of calculating and computing an assessment rate. In the event City staff has doubt as to whether or not the costs of the project may exceed the special benefits of the property, the City Council may obtain such appraisals as may be necessary to support the proposed assessment.

The City must recover the expense of installing public improvements undertaken, while ensuring that each parcel pays its fair share of the project cost in accordance with this assessment policy. While there is no perfect assessment policy, it is important that assessments be implemented in a reasonable, consistent and fair manner. There may be exceptions to the policy or unique circumstances or situations, which may require special consideration and discretion by the City Council.

The policy also identifies situations and outlines the process in times where property owners require assistance to pay for certain emergency works, or when actions are required to bring a property into compliance with City Ordinances.

This assessment policy is intended to serve as a guide for the systematic assessment process in the City of Robbinsdale.

Section II

Improvements Eligible for Special Assessment

The following public improvements, as authorized by Minnesota Statute 429.021 are eligible for special assessments in the City of Robbinsdale:

1. Street, Alley and Curb & Gutter.
2. Sidewalks and trails.
3. Storm sewer systems.
4. Sanitary Sewer systems.
5. Watermain systems.
6. Street Lights.
7. Acquisition and construction of public parking lots.
8. Construction, reconstruction and maintenance of retaining walls.

The City of Robbinsdale also retains authority to recover, through special assessment, maintenance direct costs associated with certain property owner initiated emergency situations or to remedy City initiated ordinance violations. These include, but are not limited to, the following:

1. Emergency Water / Sewer service repairs.
2. Tree Removals as a consequence of storm damage.
3. Retaining Wall Repair / Replacement.
4. Snow and ice removal.
5. Abatement of nuisances including but not limited to removal of trash and rubbish, weed elimination, and correction of violations of the Housing maintenance code.
6. Tree trimming and removal of diseased or unsound trees.
7. Removal of obstructions from sight triangles at intersections.
8. Sump pump provision or rectification.
9. Delinquent utility billings.

Section III

Initiation of Public Improvements

Public improvements may be initiated in any of the following ways:

1. Public improvements may be initiated by petition of at least 35% of the affected property owners. Affected property owners are those who will be assessed for the improvement, not necessarily those adjacent to the improvement (as is the case with an area wide assessment). Petitions for improvements will be considered by the City Council, but simply petitioning for a project does not ensure it will proceed to construction. A simple majority of the City Council is required to order improvements that are petitioned for.
2. Public improvements may be initiated by the City Council. A resolution ordering the improvements requires a supermajority of the Council rather than a simple majority.
3. A developer, in conjunction with a development or redevelopment project may petition for improvements. No petition for improvements will be considered by the City Council without a waiver from the developers stating that they waive all right to appeal the assessments for improvements for which they have petitioned.
4. Improvement works may be initiated by the City Engineer as part of an asset replacement strategy, to ensure that City infrastructure is maintained in a condition suitable to serve its purpose to the community.

Section IV

Public Improvement Procedures

The following is a general procedure that will be followed by the City Council for all public improvement projects from initiation to certification of the assessment roll to the County Auditor. Formats for the various reports and resolutions referenced in this section follow those recommended in the Local Improvement Guide published by the League of Minnesota Cities

Preliminary Design:

Submission of petition for improvements to the City Council, or initiation of a project by the City Council or City Engineer. Projects approved in the Capital Improvements Plan are considered to be City initiated unless accompanied by resident petition.

City Council accepts or rejects petition. If accepted, council adopts a resolution Declaring Adequacy of Petition and Ordering Preparation of Report. For projects initiated by the City the City Council will adopt a Resolution Ordering Preparation of Report on Improvement. Improvements for which a petition is not accepted by the City Council will not be able to be petitioned again for a six month time period.

City staff or designated Consultant prepares feasibility report for the improvements. The feasibility report must evaluate whether the improvement is necessary, feasible and cost effective. The feasibility report must also include a proposed assessment roll showing which parcels would be assessed for the project and the estimated assessment amount for each parcel.

City Council reviews feasibility report and either accepts or rejects the report. If accepted, the City Council adopts a resolution Receiving the Report and scheduling the Public Hearing.

Staff publishes notice of the Public Hearing and mails notices to affected property owners. This notice must be published twice in the official City newspaper. The two publications must be a week apart and at least three days prior to the date of the public hearing. Notices must be mailed to the owner of record not less than 10 days prior to the date of the public hearing.

City Council conducts Public Hearing and accepts public testimony. At the conclusion of the Public Hearing the Council may approve the project by adopting a Resolution ordering the improvement and the preparation of plans and specifications. At this point the estimated assessment amounts become pending assessments, and are reported to the Finance Department for tracking.

Final Design:

Staff or the designated Consultant prepares plans and specifications for the improvement. Plans may be presented to the City Council for approval. The City Council may adopt a Resolution Approving Plans and Specifications and Ordering Advertisement for Bids.

Staff solicits bids for the project. Bid solicitations for assessed projects less than \$350,000 must be published in the official newspaper and in a trade journal for at least two weeks. Assessed projects exceeding \$350,000 must be advertised for three weeks in the official paper and in a trade journal. Bids will be opened, checked for mathematical accuracy and tabulated. Staff will consider the qualifications of the bidder to determine the lowest responsible bidder.

From time to time, alternate methods of bidding projects (Best Value) will be allowed as State law permits.

Bids are presented to the City Council for review and approval. City Council awards the contract by adopting a Resolution Accepting Bid.

Levying Assessments:

City staff calculates the total project costs, the City share of the costs and the proposed assessment amounts, and presents them to the City Council. The City Council sets a date for a public hearing on the assessments by adopting a Resolution Declaring Cost to be Assessed and Calling Hearing on Proposed Assessment.

City staff publishes notice of the assessment hearing in the official newspaper. This notice must be published one or more times at least two weeks prior to the hearing date.

City Council conducts the assessment hearing and accepts public testimony. At the conclusion of the hearing the City Council may adopt a Resolution Adopting Assessments. This resolution sets the assessment amount, the repayment term and interest rate to be applied to the assessment for each parcel to be assessed. At this point the pending assessments become levied assessments. The City may accept prepayment of levied assessments as specified in the Resolution Adopting Assessments.

City staff certifies to the County Auditor those assessments not paid in full for inclusion with the property tax statement for each parcel being assessed.

In situations where the final assessment amount to be levied is not dependent on the final project cost, the Assessment Hearing may be held at the same meeting as the Improvement Hearing subject to the notification requirements as outlined above.

Section V

Assessment Methods

Assessments are calculated using different methods of measurement; per lot, adjusted front foot and area. For any particular project one of these methods will more adequately reflect the true benefits received than the others. The City Engineer will recommend in the feasibility report, which assessment methods are to be used for a particular project. In general, the assessment methods specified below will be used unless extenuating circumstances or justification exist to warrant changing to another method.

For purposes of calculating assessments, the following methods may be used:

Per Lot (or unit)

A per lot assessment will apply equally to all parcels of land within the assessment area. This assessment is typically used in areas where the parcels are of a similar shape and size, or in cases where the benefit received by a parcel is the same for parcels of varying shapes and sizes.

Commercial, industrial or multifamily parcels may be converted into an equivalent number of residential parcels by dividing the area of the parcel by 6000 square feet (the average size of a single family lot 120'x50'). In this way land use types of differing intensity can be assessed on a standard basis using the same assessment rate as single family properties.

Adjusted Front Footage

The actual physical dimensions of a lot shall be carefully considered, especially the frontage length to streets. The number of frontages and the length of these frontages shall form the basis of calculating assessments. The following procedures will be used to calculate the adjusted front footage for a lot. Adjusted front footages will be calculated to the nearest foot. The assessment process needs to consider certain roads such as County Roads, which the City does not construct or maintain, but does have cost participation and therefore assesses at a lower rate. A flow chart of the process is attached in Appendix 1 of this document to clarify the steps involved.

1. Lots with one frontage

Generally, for lots with one frontage, the adjusted front footage is the actual frontage of the lot.

2. Lots with more than one frontage

For corner lots with two or more street frontages, the adjusted front footage is defined as 50% of each frontage being improved.

Area

When it has been determined to assess by the “area” method the actual area of a parcel, either in square feet or acres lying within the project area shall be used. The following features will be deducted from the area of a parcel for purposes of assessments: public right of ways, natural waterways and lakes and wetlands designated by the Department of Natural Resources.

Direct Cost

In the cases of the property owner initiated emergency situations or the City initiated ordinance violations, the costs assessed shall be the direct costs for the work / abatement as provided by an appropriate Contractor plus reasonable administrative costs. Assessments for delinquent utilities shall also be determined based on the direct cost method and shall include outstanding balances, accrued fees and charges plus reasonable administrative costs

Section VI

Assessment Computations

Street and Curb and Gutter Improvements

New Construction:

All new streets will be assessed 100% to the abutting benefited properties. Street and curb and gutter assessments are typically calculated on an adjusted front foot basis, however a per lot basis may be used if all parcels are of a similar size.

Cost of construction of streets shall be based on the proposed width of the street to be constructed.

Reconstruction:

Street reconstruction assessments will apply for those parcels with an existing constructed street adjacent to the lot. This policy assumes that 100% of the original street construction cost was assessed to the adjacent benefiting properties. Street reconstruction shall include replacement of the roadway surface, existing curb and gutter, storm sewer and sidewalks as necessary. Addition of new curb and gutter and/or sidewalks in areas that did not previously have those improvements shall be assessed in addition to the reconstruction assessment.

Reconstruction assessments for single family parcels shall be made using one of the methods outlined in Section V of this document. The unit assessment rate per front foot is based on the proposed width of the street. Current rates are attached in Appendix 2. The rates shall be adjusted based on the most recent "Construction Cost Index" relative to the date of the assessment hearing. This Index is published in the American City and County magazine, with the 2001 base index being 162.7. Assessment rates used for a project shall be the rate in effect at the time of the public hearing to consider the improvements (Section IV step 6), regardless of the rate in effect at the time of assessment.

The proposed street widths shown in Appendix 2 are typical widths constructed within the City. Any proposed street widths that are not specifically noted in Appendix 2 shall have assessment rates calculated individually using the same approach as those listed. Street widths used to compute assessments shall be inclusive of any center medians.

In order to maintain relativity between assessment amount and property valuation, the maximum amount assessable shall be capped at 8% of the property valuation.

Overlay and Sealcoating:

Overlays and sealcoating may be assessed in accordance with rates attached in Appendix 2.

Curb and Gutter Only:

New concrete curb and gutter in areas that did not previously have concrete curb and gutter will be assessed 100% on an adjusted front foot basis. Replacement of existing concrete curb and gutter only will not be assessed.

Alleys

Upgrading existing gravel alleys and replacement of alleys will be assessed as follows –

The City will contribute 25% of the paving work of the alley along with any City utility work. The remaining portion of the project cost will be assessed to adjacent properties on a per lot basis.

All adjacent properties will be subject to an equal assessment amount regardless of whether there is meaningful access to the property or not.

Sidewalks and Trails

New construction:

Construction of new sidewalks in areas that did not previously have sidewalk will be assessed 100% to the adjacent properties, on an adjusted front foot basis. Construction of new bituminous trails shall not be assessed.

Reconstruction/Replacement:

Replacement of existing concrete sidewalks shall be included in the street reconstruction assessment in those areas where street reconstruction is taking place. In other areas, sidewalk replacement costs will not be directly assessed, but will be covered by a future street reconstruction assessment.

Storm Sewer Improvements

Construction of new storm sewers and replacement of existing storm sewer facilities shall be funded from the Storm Sewer Utility fund and not assessed. This shall include, but are not limited to property acquisition, construction and maintenance of storm water ponding areas and stormwater conveyance systems.

Sanitary Sewer Improvements

New Construction:

Construction of new sanitary sewer mains, lift stations and other facilities needed to serve properties not currently served by City sewer will be assessed to the benefiting properties 100% on an area basis. Assessable items shall include but are not limited to conveyance systems, manholes and lift stations. Assessments shall be based on a standard 8 inch sewer main, constructed at a depth of no more than 14 feet. Costs for oversizing or excessive depth will not be assessed, but rather funded by the Sanitary Sewer Utility fund.

Reconstruction:

Reconstruction of sanitary sewer facilities shall be funded from the Sanitary Sewer Utility fund, and not assessed.

Sanitary Sewer Services:

In the City of Robbinsdale sanitary sewer service lines are defined as being owned by the property owner from the main to the home, including the wye at the main. Repairs made to service lines will be assessed 100% to the benefiting property owner. Property owners may petition the City to assess the costs of sanitary sewer service repairs.

Water System Improvements

New Construction:

Construction of new watermains to serve properties not currently served by City water will be assessed to the benefiting properties 100% on an area basis. Assessments shall be based on the installation of an appropriately sized ductile iron watermain. Costs for oversizing will not be assessed but rather funded by the Water Utility Fund.

Reconstruction:

Reconstruction of watermains shall be funded from the Water Utility fund, and not assessed.

Water Services:

In the City of Robbinsdale water service lines are defined as being owned by the property owner from the main to the home, including the corporation stop and curb box shut off. Repairs made to service lines will be assessed 100% to the benefiting property owner. Property owners may petition the City to assess the costs of water service repairs.

Treatment Plants, Wells and Water Towers:

Construction and reconstruction of treatment plants, wells and water towers will be funded from the Water Utility Fund, and not assessed.

Trees

Removal of privately owned trees damaged as a result of a storm may be assessed if petitioned for by the property owner. The costs to remove storm damaged private trees will be assessed 100% to the property owner.

Street Lights

Street lights may be petitioned for in accordance with the City of Robbinsdale Mid-Block Lighting Policy. The costs of installing these lights will be assessed to the block on a per lot basis. Monthly costs for operation of the additional lights will be charged to the property owners as specified in the Mid-Block Lighting Policy.

The City maintains the right to introduce a Street Light Utility Fund that would pay for the addition, replacement and operation of all streetlights in the public realm within the City.

Retaining Walls

The City may reconstruct retaining walls on private property if petitioned for by the property owner. The costs to replace private retaining walls will be assessed 100% to the property owner. Replacement of retaining walls on public property will not be assessed.

Other Assessable Items

The City of Robbinsdale incurs costs in the abatement of public nuisances such as weeds, trash pickup, snow/ice removal, removal of obstacles in sight triangles at intersections and removal of diseased trees. Works necessary to provide a new sump pump system, or to bring an existing system into Code compliance may be eligible for special assessment. Delinquent utility bills are also assessable under State Statute.

Costs to perform works for these items will be assessed 100% to the property owner.

Section VII

Policy on Reassessment

The City of Robbinsdale in constructing or reconstructing any public improvement shall design such improvements to last for a definite period. The life expectancy, or service life shall be as stated below. When such project needs renewing or replacement, the amount to be assessed shall be limited to the to an amount determined by dividing the actual life of the improvement by the service life of the original improvement, multiplied by the assessment amount as prescribed in Section V.

The following are hereby established as “life expectancies” or “service lives” of public improvements unless otherwise stated in the resolution ordering the improvement and preparation of plans and specifications, in which case the life set forth in resolution shall govern.

1. Sidewalks – 20 years
2. Streets (reconstruction, curb & gutter) – 20 years
3. Streets (mill and overlay / reclaim) – 10 years
4. Alleys – 30 years
5. Watermains – 30 years
6. Sanitary sewers – 30 years
7. Storm sewers – 30 years

Section VIII

Policy Relating to State Aid Routes

The State of Minnesota provides funding for the construction, reconstruction and maintenance of streets established and designated as State Aid routes. Approximately 20% of the streets in Robbinsdale are State Aid routes. State Aid funds are available for most improvements, but not all costs associated with street construction qualify for funding.

Assessments for State Aid streets within the City of Robbinsdale will be the same as those for regular local streets. State Aid funding provided for reconstruction of a particular segment of street will be used by the City to fund non-assessed costs, and will not be used to reduce assessments to the properties adjacent to these facilities. In this way assessments for reconstruction are consistent throughout the City, and the taxpayers in general benefit from the State Aid funding because it helps to defray costs that would otherwise be City costs.

Section IX

Policy Relating to County Roads

Assessments for County Roads within the City of Robbinsdale will be at a rate slightly reduced from that for normal residential streets and State Aid Roads. The County has a cost participation policy that shares the overall cost of reconstruction. Because the cost to the City is reduced, the associated assessment rate to adjoining residents is reduced.

This approach provides a degree of equity because cost to residents to restore / replace utilities under County Roads is often higher than normal residential streets.

Frontage roads parallel to County Roads will be treated like normal residential streets for the purpose of this assessment policy.

Section X

Deferral of Assessments

The City of Robbinsdale has established a policy on deferring special assessments for senior citizens for whom it would be a hardship to make payments. Deferral of special assessments is available for project related assessments, but may not be applied to assessments for abatement of nuisances or for delinquent utility bills. Special assessments may be deferred, for those that qualify, until such time as:

1. The property or any part thereof is sold, transferred, or subdivided.
2. Death of the owner and the spouse not otherwise eligible for deferment.
3. The property loses its homestead status.
4. The owner is no longer determined to be in a hardship category.

Eligibility requirements are that the owner must be 65 years of age or older on January 1st of the payment year, that the property to be assessed is homesteaded and that the annual principle and interest on the assessment is in excess of 1½ percent of the owner's annual income. For example if the principle and interest is \$100 annually, then an owner whose income is less than \$6,667 would qualify to have the assessments deferred (i.e. $\$6,667 \times 0.015 = \100). Interest would be added annually to the deferred amount based on the interest rate specified in the resolution approving the assessments.

Applicants who wish to apply for deferment of assessments for next year must submit the following information no later than October 15th to the City Clerks office, 4100 Lakeview Avenue North.

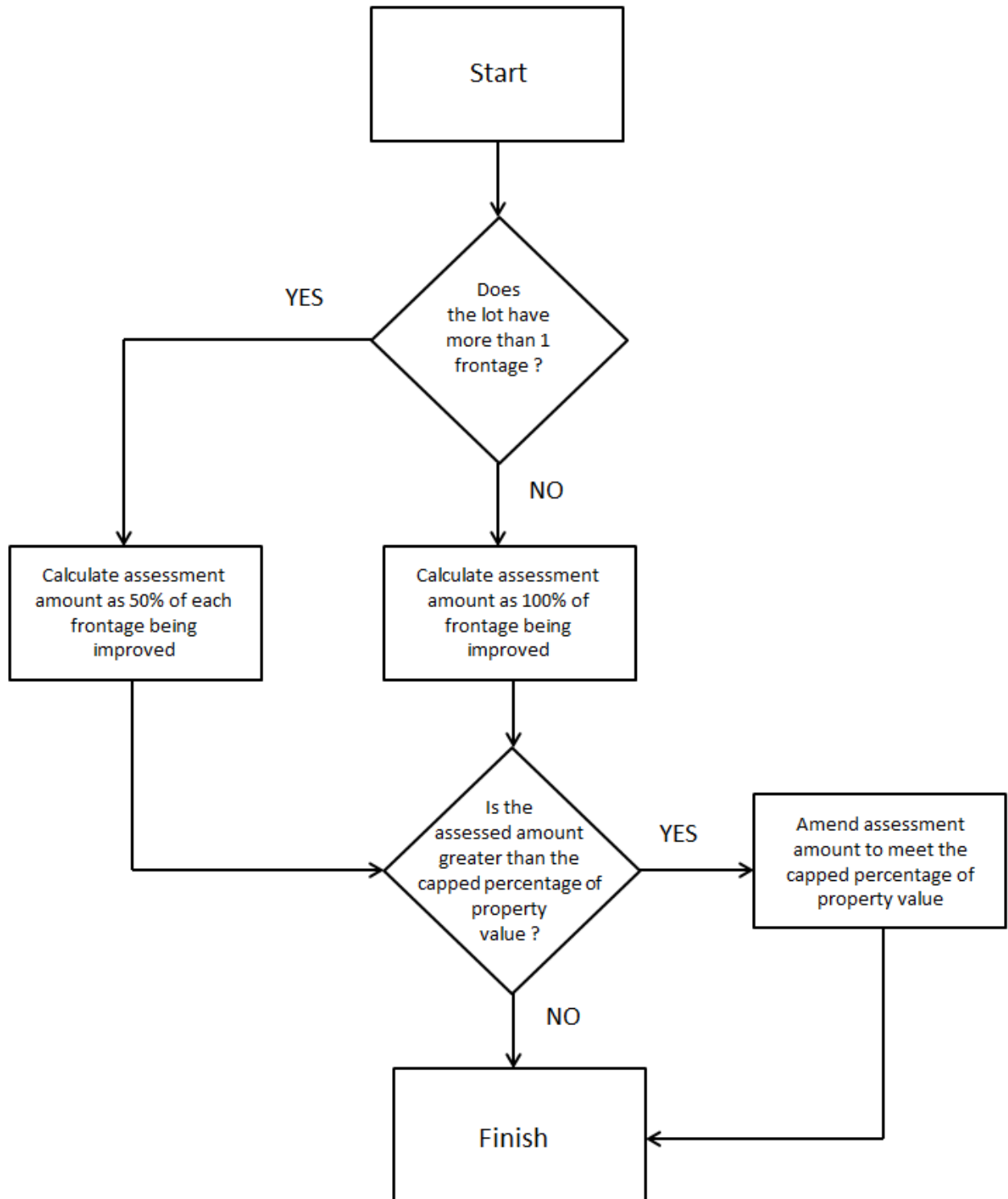
1. Financial disclosure Statement, including a copy of your proof of income.
2. A copy of your birth certificate.
3. Four notarized copies of form HC 227 – Application for deferral of Special Assessments.

After an application had been received and reviewed, the request will be forwarded to the City Council for approval. After council approval the City Clerk will authorize the deferral and forward the request to the Hennepin County Auditor and recorded in the Registrar of Deeds Office.

Appendicies

Appendix 1	Special Assessment Front Footage Flow Chart for Street Reconstruction Projects
Appendix 2	Reconstruction Rates Pavement Overlay and Resurfacing Rates
Appendix 3	Special Assessment Term and Rate Flowchart

Appendix 1 - Special Assessment Front Footage Flow Chart for Street Reconstruction Projects



Appendix 2 - Reconstruction Assessment Rates as at November 2020

	Proposed Street Width (ft)	30	32	36	40	44	48
Local Roads and State Aid Streets	Construction Rate per lineal ft	\$355.41	\$359.27	\$379.77	\$394.36	\$408.94	\$423.52
	Adjusted rate allowing for unassessable portion	\$549.43	\$555.58	\$587.60	\$610.42	\$633.21	\$655.97
	Assessment Rate (per adjusted foot)	\$109.89	\$111.12	\$117.52	\$122.08	\$126.64	\$131.19

* This rate is independent of street width

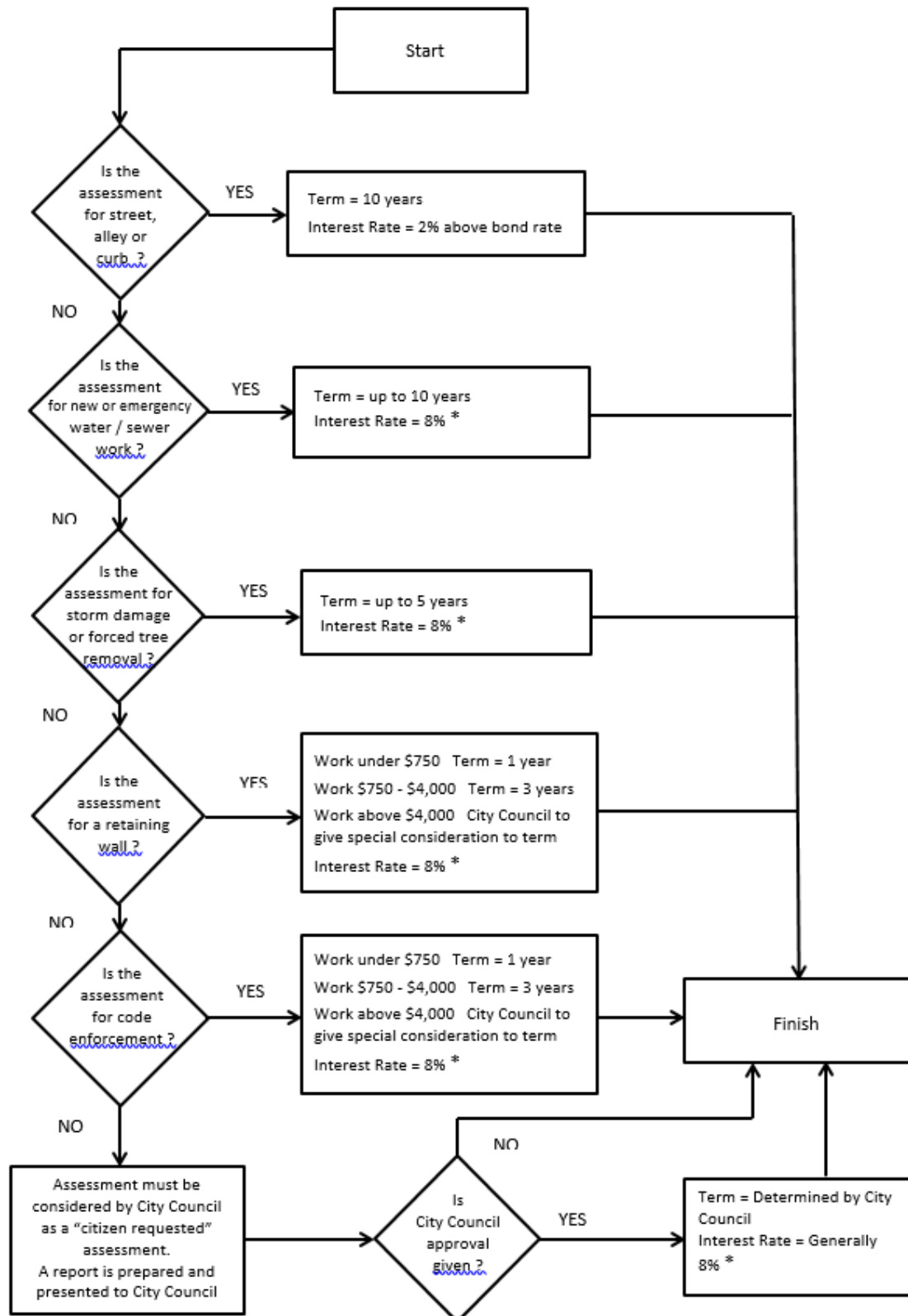
County Roads	Assessment Rate (per adjusted foot)	\$52.65 *
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Appendix 2 - Pavement Overlay and Resurfacing Rates as at November 2020

Street Width (ft)	30		32		36		40		44		48
Overlays											
Overlay Rate per lineal ft	\$21.99		\$23.45		\$26.38		\$29.31		\$32.24		\$35.18
Adjusted rate allowing for unassessable portion	\$42.98		\$45.94		\$51.68		\$57.49		\$63.29		\$69.09
Assessment Rate (per adjusted foot)	\$21.49		\$22.97		\$25.84		\$28.74		\$31.64		\$34.55
Resurfacing											
Resurfacing Rate per lineal ft	\$57.71		\$61.56		\$69.25		\$76.95		\$84.64		\$92.34
Adjusted rate allowing for unassessable portion	\$112.82		\$120.59		\$135.67		\$150.90		\$166.13		\$181.37
Assessment Rate (per adjusted foot)	\$56.41		\$60.30		\$67.83		\$75.45		\$83.07		\$90.68

	Proposed Street Width (ft)	30	32	36	40	44	48
Local Roads and State Aid Streets	Construction Rate per lineal ft	\$355.41	\$359.27	\$379.77	\$394.36	\$408.94	\$423.52
	Adjusted rate allowing for unassessable portion	\$549.43	\$555.58	\$587.60	\$610.42	\$633.21	\$655.97
	Assessment Rate (per adjusted foot)	\$109.89	\$111.12	\$117.52	\$122.08	\$126.64	\$131.19

Appendix 3 – Special Assessment Term and Rate Flow Chart



***Rate is reviewed annually**



City of Robbinsdale

TO: Mayor and City Council

PREPARED BY: Tim Sandvik, City Manager

APPROVED BY: Tim Sandvik, City Manager

DATE: May 15, 2024

RE: Joint Powers Agreement(s) - Basset Creek Watershed Mgmt Commission,
Shingle Creek Watershed Mgmt Organization

Background:

Staff have been presented proposed updates with the two watershed management groups that serve Robbinsdale.

Analysis:

Staff will present highlights of the attached, red-lined proposals, share thoughts, and look for Council Direction on next steps.

Recommendation:

NA

Attachments:

1. Redline - Previous JPA Draft - Most Current JPA Draft
2. BCWMC Existing JPA with markups

SHINGLE CREEK WATERSHED MANAGEMENT ORGANIZATION JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT (~~“Agreement”~~) is made and entered into by and among the cities of Brooklyn Center, Brooklyn Park, Crystal, Maple Grove, Minneapolis, New Hope, Osseo, Plymouth, and Robbinsdale. The cities that are parties to this Agreement may hereafter be referred to individually as a “Member” or collectively as the “Members.”

RECITALS

- A. Local government units in the metropolitan area are required by the Metropolitan Water Management Program (Minn. Stat. § 103B.201 to 103B.255) (~~“Act”~~) to plan for and manage surface water.
- B. Under the Act, one of the options available to local government units to satisfy the requirements of the Act is to adopt a joint powers agreement pursuant to Minn. Stat. § 471.59 to establish a watershed management organization to jointly plan for and manage surface water within a watershed.
- C. The Members elected to exercise their authority under the Act to adopt a joint powers agreement in 1984 ~~to establish~~ establishing the Shingle Creek Watershed Management Commission (~~“Commission”~~) to cooperatively manage and plan for the management of surface water within the watershed.
- D. The original joint powers agreement has been updated and amended several times, and the term of the current joint powers agreement expires at the end of 2024.
- E. The Members previously acted pursuant to their authority to establish the “Shingle Creek Watershed Board of Commissioners” (~~“Board”~~) and said Board is hereby reaffirmed as the entity charged with the authority and responsibility to manage the Commission.
- F. The Board has previously acted to adopt a Watershed Management Plan (~~“Watershed Management Plan”~~) for the watershed and has regularly updated the Watershed Management Plan in accordance with law.
- G. The parties desire to enter into this Agreement to reaffirm the Commission and the Board in furtherance of its efforts to continue working cooperatively to prepare and administer a surface water management plan to manage surface water within the watershed in accordance with the Act and Minn. R., chapter 8410.

AGREEMENT

In consideration of the mutual promises and agreements contained herein, the parties mutually agree as follows:

SECTION I ESTABLISHMENT, GENERAL PURPOSE, AND DEFINITIONS

- 1.1 Reaffirming the Establishment. The Members hereby reaffirm and ratify the establishment and continued operation of the “Shingle Creek Watershed Management Commission” pursuant to the Act and such other laws and rules as may apply.
- 1.2 General Purpose. The general purpose of this Agreement is to continue the Commission and its work on behalf of the Members to cooperatively adopt, administer, and update as needed the Watershed Management Plan, and to carry out the purposes identified in Minn. Stat. § 103B.201. The plan and programs shall operate within the boundaries of the Shingle Creek Watershed (“**Watershed**”) as identified in the official map filed with the Minnesota Board of Soil and Water Resources. The most current version of the official map defining the boundaries of the Watershed is incorporated herein by reference. The boundaries of the Watershed are subject to change utilizing the procedure set out in Minn. Stat. § 103B.225 as may be needed to better reflect the hydrological boundaries of the Area.
- 1.3 Definitions. The definitions contained in Minn. Stat. § 103B.205 and Minn. R., part 8410.0020 are hereby adopted by reference, except that the following terms shall have the meanings given them in this section.
- (a) Act. “Act” means the Metropolitan Surface Water Management Program set out in Minn. Stat. §§ 103B.201 to 103B.255.
- (b) Alternate Commissioner. “Alternate Commissioner” means the person appointed by a Member to serve as its alternate to represent ~~it~~the Member on the Board in the absence or disability of its appointed Commissioner.
- (c) Board. “Board” means the board of commissioners established by this Agreement to manage and make decisions on behalf of the Shingle Creek Watershed Management Commission.
- (d) Capital Improvement. “Capital Improvement” has the meaning given it in Minn. R., part 8410.0020, subp. 3 and includes the purchase of capital equipment that satisfies the eligibility criteria established by the Board for funding as a CIP Project.
- (e) Capital Improvement Program. “Capital Improvement Program” has the meaning given the term in Minn. Stat. § 103B.205, subd. 3.
- (f) ~~(e)~~ CIP Project. “CIP Project” means a planned Capital Improvement that is part of the Commission’s ~~capital improvement program~~Capital Improvement Program, is set out in its Water Management Plan, and is eligible for funding by the Commission.

- (g) City Council. “City Council” means the city council of a Member to this Agreement.
- (h) ~~(f)~~ Commission. “Commission” means the watershed management organization established by this Agreement ~~and as provided in~~ accordance with the Act, the full name of which is the “Shingle Creek Watershed Management Commission.”
- (i) ~~(g)~~ Commissioner. “Commissioner” means the person appointed by a Member as its primary representative on the Board.
- ~~(h) Council.~~ “Council” means the city council of each Member to this Agreement.
- (j) ~~(i) Local Governmental Units~~ County. “County” means Hennepin County, Minnesota.
- (k) ~~(j)~~ Local Water Plan. “Local Water Plan” means the local water management plan each Member is required to develop and have reviewed as provided in Minn. Stat. § 103B.235 and Minn. R., part 8410.0160.
- (l) ~~(k)~~ Member. “Member” means a city that is a signatory to this Agreement and is identified in section 2.1 of this Agreement.
- (m) Non-CIP Project. “Non-CIP Project” means a project undertaken by a Member or the Commission pursuant to this Agreement that does not qualify as a CIP Project and is not part of the projects included in the amount certified to the County to be included in the County’s levy. Examples of Non-CIP Projects include, but are not limited to, research projects, feasibility studies, water quality projects, maintenance projects, and projects funded through the closed project account.
- (n) ~~(l)~~ TAC. “TAC” means the Technical Advisory Committee established by the Board and that is made up of ~~an employee of~~ a representative each Member, as appointed by the Member.
- (o) ~~(m)~~ Watershed. “Watershed” means the Shingle Creek Watershed, which includes the area contained within a line drawn around the extremities of all terrain whose surface drainage is tributary to Shingle Creek and within the mapped areas delineated on the map filed with the Minnesota Board of Water and Soil Resources pursuant to the Act.
- (p) ~~(n)~~ Watershed Management Plan. “Watershed Management Plan” means the plan developed and adopted in accordance with the Act, including all amendments and updates.

SECTION II MEMBERSHIP

- 2.1 Members. The following local government units are Members of the Commission: City of Brooklyn Center, City of Brooklyn Park, City of Crystal, City of Maple Grove, City of Minneapolis, City of New Hope, City of Osseo, City of Plymouth, and City of Robbinsdale.
- 2.2 ~~Change in Boundaries~~Effect of Changes. No change in governmental boundaries, structure, or organizational status shall affect the eligibility of any local government unit listed above to be represented on the Commission, so long as such local government unit continues to exist as a separate political ~~sub~~subdivision.-

SECTION III BOARD OF COMMISSIONERS

- 3.1 Establishment. The parties hereby reaffirm the establishment and continued operation of the “Shingle Creek Watershed Board of Commissioners” in accordance with the Act. The Board shall carry out the purposes and have the powers as provided herein.
- 3.2 Board Appointments. The Commission is governed by the Board, which is comprised of nine Commissioners appointed by the Members. Each party to this Agreement is a Member of the Board and shall determine the eligibility and qualifications of its representative on the Board.
- (a) Commissioner. Each Member is responsible for appointing one person to serve as its representative (“**Commissioner**”) on the Board. Each Member is responsible for publishing a notice of a vacancy, whether resulting from expiration of its Commissioner position or otherwise, as required in Minn. Stat. § 103B.227, subd. 2. Each Commissioner shall have one vote on the Board and must be present to vote. The authority of a Commissioner to vote shall be suspended if the appointing Member is delinquent in making any payments due to the Commission. The voting authority of the Commissioner shall be restored once the Member pays all past due amounts.
- (b) Alternate Commissioner. Each Member may also appoint one Alternate Commissioner (“**Alternate Commissioner**”) to the Board in the same manner required to appoint a Commissioner. The Alternate Commissioner may attend all meetings and speak during the public input portion of the meeting, but is only authorized to actively participate in and vote at a Board meeting in the absence or disability of the appointing Member’s Commissioner. If the absent Commissioner is also an officer of the Board, the Alternate Commissioner shall not be entitled to serve as such officer. If necessary, the Board may select a current Commissioner to temporarily undertake the duties of the absent officer.

- (c) Term. The term of each Commissioner and Alternate Commissioner shall be three years commencing on February 1st. The terms are staggered so that no more than three Commissioners are up for appointment in a single year. The Commissioners from the Cities of Brooklyn Center, Brooklyn Park, and Crystal are appointed in the same year; the Commissioners from the Cities of Maple Grove, Minneapolis, and New Hope are appointed in the same year; and the Commissioners from the Cities of Osseo, Plymouth, and Robbinsdale are appointed in the same year. A Commissioner and an Alternate Commissioner shall serve until their successors are selected and qualify, unless they resign or are removed earlier as provided herein.
 - (d) Notices. A Member shall provide the Commission written notice of its appointments, including the resolution making the appointments or a copy of the minutes of the meeting at which the appointments were made. The Commission shall notify BWSR of appointments and vacancies within 30 days after receiving notice from the Member. Members shall fill all vacancies within 90 days after the vacancy occurs.
 - (e) Vacancy. A Member shall notify the Commission in writing within 10 days of the occurrence of a vacancy in its Commissioner or Alternate Commissioner positions. The Commission will notify BWSR of the vacancy within 30 days of receiving the notice of a vacancy as required by Minn. Stat. § 103B.227, subd. 1. The Member shall publish notice of the vacancy at least once in its official newspaper as required by Minn. Stat. § 103B.227, subd. 2. The notices must state that those interested in being appointed to serve on the Commission may submit their names to the Member for consideration. The notice must be published at least 15 days before the Member's City Council acts to fill the vacancy. The City Council must make the appointment within 90 days from the occurrence of the vacancy. The Member shall promptly notify the Commission of the appointment in writing. The appointed person shall serve the unexpired term of the position.
 - (f) Removal. The City Council of a Member may remove its Commissioner for just cause as provided in Minn. Stat. § 103B.227, subd. 3 and in accordance with Minn. R., part 84100.0040. If a Commissioner is an elected official, or is an appointed official serving an indefinite term at the pleasure of the City Council, the City Council may remove the person at will, including if the person is not reelected. A Member may remove its Alternate Commissioner without cause. The Member shall notify the Board of the removal in writing within 10 days of acting to remove the Commissioner. The Commission shall notify BWSR of the vacancy within 30 days of receiving notice of the removal. The City Council shall act to fill the vacancy created by the removal within 90 days as provided in this Agreement.
- 3.3 Compensation and Expenses. Commissioners and Alternate Commissioners shall serve without compensation from the Commission. Commission funds may, but are not required to, be used to reimburse Commissioners and Alternate Commissioners for

expenses incurred in performing Commission business if authorized by the Board. Nothing herein prohibits a Member from choosing, in its sole discretion and cost, to compensate or reimburse the expenses of its Commissioner or Alternate Commissioner.

- 3.4 Board Officers. Each year at its February meeting the Board shall elect from among its Commissioners a Chair, Vice Chair, Secretary, and Treasurer. All such officers shall hold office for a term of one year until their successors have been duly elected by the Board. An officer may serve only while they remain a Member of the Board. A vacancy in an officer position shall be filled by Board election for the remainder of the unexpired term of such office.
- 3.5 Duties of Board Officers. The Chair shall serve as the presiding officer at Board meetings, execute documents on behalf of the Board, sign checks, and perform other duties and functions as may be determined by the Board. The Vice-Chair shall undertake the duties of the Chair in the absence or disability of the Chair. The Secretary shall maintain the records of the Commission, Board meeting minutes, ensure meetings are properly noticed, countersign documents with the Chair, and perform such other duties as assigned by the Board. The Secretary may delegate one or more specific duties of the position. The Treasurer shall oversee the Commission's budget and finances, sign checks, and perform such other duties as assigned by the Board.
- 3.6 Quorum. A majority of the Commissioners shall constitute a quorum. Less than a quorum may adjourn a scheduled meeting. A simple majority of a quorum is required for the Board to act unless a higher number of votes is required by law or this Agreement. A Board vacancy or the suspension of voting rights as provided herein shall temporarily reduce the number of Commissioners required for a quorum.
- 3.7 Meetings. The Board shall conduct meetings in accordance with the Minnesota Open Meeting Law (Minn. Stat., chap. 13D) and this section.
- (a) Regular Meetings. The Board shall develop a schedule of its regular meetings. The Board shall post the schedule on the Commission's website and provide a copy to each Member. The Secretary shall maintain a copy of the schedule of regular meetings. The Chair and Vice-Chair may cancel a meeting due to a lack of business items. The Secretary shall make a good faith effort to notify Commissioners of a meeting cancellation.
- (b) Special Meetings. The Board may hold such special meetings as it may determine are needed to conduct the business of the Commission. A special meeting may be called by the Chair or by any two Commissioners. The Secretary shall post and provide notice of special meetings to the Commissioners. Emailing notices to Commissioners shall constitute sufficient notice under this Agreement.
- (c) Annual Meeting. The February Board meeting shall constitute the annual meeting of the Commission.

- (d) Rules of Procedure. The Board shall conduct its meetings generally in accordance with the procedures set out in the most current version of Robert's Rules of Procedure without requiring strict conformance to its requirements. The Board may modify such rules as it determines is appropriate to facilitate the conducting of its business or adopt a different set of rules for its meetings. The Board may amend its rules from time to time as it determines is appropriate upon a majority vote of all Commissioners. The Board may also waive one or more specific rules as it determines are necessary to facilitate the conducting of its business. Voting and statutory requirements are not waivable.

SECTION IV POWERS AND DUTIES OF THE BOARD

- 4.1 Powers. The Board is authorized to exercise the powers in this section to carry out the purposes of the Commission.
- (a) Powers Granted. The Board shall have the following powers.
- (1) It may contract with or employ such persons or entities as it deems necessary to accomplish its duties and powers. Any employee may be on a full-time or part-time basis as the Board determines. Such employees and contracted consultants shall be considered Commission staff.
 - (2) It may contract for space, materials, supplies, and services to carry on its activities.
 - (3) It may acquire necessary personal property to carry out its powers and its duties.
 - (4) It shall prepare, adopt, implement, and update a Watershed Management Plan that satisfies the requirements of Minn. Stat. § 103B.231. The Watershed Management Plan shall address all items required by applicable laws and rules. In preparing said plan, the Board may consult with the engineering and planning staff of each Member and 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 Watershed.
 - (5) It shall develop and adopt a capital improvement program as part of the Watershed Management Plan. The Board shall determine which projects to include in the capital improvement program.
 - (6) It may undertake projects, including those provided in its capital improvement program, in accordance with the Watershed Management

Plan. It may acquire a temporary interest in real property if required to facilitate a project.

- (7) 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.
- (8) It may cooperate or contract with the State of Minnesota, any political subdivision thereof, federal agency, or private or public organization to accomplish the purposes for which it is organized.
- (9) It may order any Member 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 Shingle Creek Watershed.
- (10) It may order any Member to acquire, operate, construct, or maintain dams, dikes, reservoirs, and appurtenant works or other improvements necessary to implement the overall plan.
- (11) It shall regulate, conserve, and control the use of storm and surface water and groundwater within the Watershed.
- (12) It may contract for or purchase such insurance as the Board deems necessary for the protection of the Commission.
- (13) It may establish and maintain devices acquiring and recording hydrological and water quality data within the Watershed.
- (14) 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 Chair or Secretary of the Board with a Notice of Claim as required by ~~Chapter~~Minn. Stat., chap. 466.05~~of the Minnesota Statutes.~~
- (15) It shall provide any Member with technical data or any other information of which the Commission has knowledge which will assist the Member in preparing land use classifications or local water management plans within the Watershed.
- (16) 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 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. Such a vote is not required for the Board to expend Commission funds in the defense of a suit brought against the Commission or its Commissioners, in accordance with applicable laws, to the extent such costs are not paid by the Commission's insurer.

- (17) 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.
- (18) It may collect monies, subject to the provisions of this Agreement, from its Members, the County, and from any other source approved by a majority of its Board. The Board may accept gifts and seek and accept grants.
- (19) 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.
- (20) It shall cause to be made an annual audit of the books and accounts of the Commission by a certified public accountant or the State Auditor, and shall transmit a copy of the annual audit to each Member.
- (21) Its books, reports, and records shall be available for and open to inspection by the Members at all reasonable times.
- (22) It may recommend changes in this Agreement to the Members.
- (23) It may exercise all other powers necessary and incidental to the implementation of the purposes and powers ~~yet~~set forth herein and as outlined and authorized by the Act and such other law as may apply.
- (24) It shall cooperate with the applicable state agencies in complying with the requirements of Minn. Stat., chap. 103G.
- (25) Each Member reserves the right to conduct separate or concurrent studies on any matter under study by the Commission.
- (26) It may define and designate subtrunk and subdistricts within the watershed, and shall have authority to separate the watershed into different subtrunks and subdistricts, and to allocate capital improvement costs to a subtrunk or subdistrict area if that district is the only area that benefits from the capital improvement.

- (27) It shall establish a procedure for establishing citizen or technical advisory committees and to provide other means for public participation.
- (b) Powers Reserved. The Board shall not have any of the powers identified in this paragraph. Expressly identifying specific powers reserved to the Members is not intended to expand, by negative implication, the powers granted above to the Board.
- (1) Eminent Domain. The Commission does not have the power of eminent domain. Any easements or other interests in land necessary to be acquired for an Improvement Project shall be acquired as provided below.
- (2) Real Property. The Commission shall not own any interest in real property. All ~~Interests~~interests in lands shall be held in the name of the Member wherein said lands are located. This provision does not prohibit the Commission from acquiring a temporary interest in real estate as needed to conduct studies, undertake a project, or to otherwise carry out its duties.
- (3) Bonding. The Commission does not have the power to issue certificates, warrants, or bonds.
- (4) Special Assessments. 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.
- (5) Land Use Regulations. The Commission shall not have the authority to regulate the use and development of land under Minn. Stat. § 103B.211, subd. 1(a)(3).
- 4.2 Collection or Diversion of Waters. Each Member agrees that it will not directly or indirectly collect or divert any additional surface water to Shingle Creek or its tributaries without a permit from the Board. Permits may be granted by the Board for a Member to proceed with the construction or reconstruction of improvements within the individual Members' boundaries and at its sole cost upon a finding:
- (a) That there is an adequate outlet;
- (b) The construction is in conformance with the overall plan; and
- (c) The construction will not adversely affect other Members of this Agreement.
- 4.3 ~~Projects~~Local Water Plans.

- (a) Development. Each Member agrees to develop and maintain a Local Water Plan, capital improvement program, and official controls as necessary to bring local water management into conformance with the Watershed Management Plan. The development and implementation of Local Water Plans shall conform with all requirements of the Act, including Minn. Stat. § 103B.235 and Minn. R., part 8410.0160. In accordance with the Act, the Board shall approve or disapprove each local plan or any parts of each plan. The Members understand that the Watershed Management Plan, including the Commission's capital improvement program, must consist of local parts and therefore every effort shall be made by the Commission and all Members to coordinate local plans with the Watershed's overall plan, including planning for local plans at the same time the Watershed's overall plan is being developed.
- (b) Review. Each Member shall submit its proposed Local Water Plan to the Metropolitan Council and the Board for review as required by Minn. Stat. § 103B.235. The Board shall consider any comments on the Local Water Plan received from the Metropolitan Council and shall act on said plans in accordance with the Act.

4.4 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 Act. All Members 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 the Watershed. The Board may investigate on its own initiative, or request a Member to investigate, a complaint relating to pollution of surface water or groundwater draining into or affecting the Watershed. If the Board determines the Watershed is being polluted by an identifiable source, the Board may order the Member 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.

4.5 Boundary Changes. Any changes to the boundaries of the watershed shall be undertaken in accordance with Minn. Stat. § 103B.215.

SECTION V PROJECTS

5.1 (a) Capital Projects and Non-Capital Projects. The Board may undertake ~~a variety of projects including, but not limited to, research projects, water quality projects, maintenance projects,~~ on its own or in cooperation with one or more Members, Non-CIP Projects and CIP Projects. In most cases, CIP Projects involve entering into a cooperative agreement with a Member, which has the Member assuming responsibility for letting the contract and overseeing construction of the project. ~~The process for approving a CIP Project is set out below. For all projects that do not constitute a CIP Project, the~~ Board is more likely to undertake Non-CIP projects on its own.

5.2 Process for Non-CIP Projects. The Board may initiate and undertake ~~them~~ a Non-CIP Project upon a majority vote of all eligible Commissioners. The Commission may contract in its own name to complete such projects or enter into a cooperative agreement with a Member to have the Member undertake the project on its own or in cooperation with the Commission.

~~(b) Process for Capital Improvement Projects. The Board shall proceed in accordance with the following process with respect to proposed CIP Projects.~~

5.3 Process for CIP Projects. The process for undertaking a CIP Project is as follows.

(a) ~~(1)~~ Initiation. A CIP Project may be proposed by a Member or by the Board based on subwatershed assessments, lake/stream resource assessments, inspections, or a particular need or issue identified by a Member or the Board. A proposed project shall be submitted to the TAC and the Board to determine if there is sufficient support to proceed to a feasibility study.

(b) ~~(2)~~ Feasibility Study. If requested by the Board, the Commission Engineer shall study the feasibility of a proposed CIP Project and report its findings to the TAC and the Board. The report shall include an opinion of probable cost and how the project would be funded. The Board shall consider the feasibility study and decide whether to proceed with the proposed project.

(c) Plan Amendments. Proposed CIP Projects are amended into and made part of the Watershed Management Plan. The process the Commission must undertake to amend a CIP Project into the Watershed Management Plan depends on whether it constitutes a minor plan amendment or a major plan amendment as described below.

(1) ~~(3)~~ Minor Plan Amendment. The addition of a proposed CIP Project to the Watershed Management Plan typically constitutes a minor plan amendment that can be accomplished following the process set out in the Watershed Management Plan and Minn. R., part 8410.0140, subpart 2. A public hearing is not required for a minor plan amendment.

(2) ~~If, for any reason,~~ Major Plan Amendment. If a proposed amendment does not ~~constitute~~ qualify as a minor amendment, ~~it can only be made by undertaking the full~~ the Commission must undertake the major plan amendment process set out in to add the CIP project to the Watershed Management Plan. The major plan amendment process is set out in the amendment section of the Watershed Management Plan, Minn. Stat. § 103B.231, subd. 11, the amendment section of the Watershed Management Plan, and Minn. R., part 8410.0140. The public hearing required under Minn. Stat. § 103B.231, subds. 11 & 7(c) for a major plan amendment may be held in conjunction with the public hearing required by to request the County to levy funds for the project under Minn. Stat. § 103B.251, subds. 3 & 4 to

request the County to levy funds for the project, provided the requirements of both procedures can be satisfied at the single hearing.

- (d) ~~(4)~~ Public Hearing. If the ~~Board~~ Board proposes to pay any portion of a ~~proposed~~ CIP Project with funds to be raised through ~~the~~ County pursuant to levy under Minn. Stat. § 103B.251, the Board must call and conduct a public hearing as provided in the statute and ~~in accordance with the following. If the Commission's contribution toward the costs of the project will come~~ this paragraph. A public hearing is not required if the CIP Project is funded entirely from ~~grants~~, funds on hand, grants, or a combination thereof, and does not require the Board to certify any project costs to the County to be levied; ~~it is not necessary for the Board to conduct a public hearing~~ under Minn. Stat. § 103B.251 ~~for the proposed CIP Project. The~~. When a public hearing is required, it shall be ~~called and~~ conducted in accordance with ~~applicable laws and~~ the following.
- (1) ~~(i)~~ Calling. The Board must act by motion or resolution to call a public hearing on the proposed CIP Project. The Board shall set the date, time, and place for the public hearing.
- (2) ~~(ii)~~ Notice. The Board shall provide notice of the public hearing in accordance with Minn. Stat. § 103B.251, subd. 3.
- (3) ~~(iii)~~ Conducting. The Board shall conduct the public hearing at the scheduled date, time, and place to hear from the public and to consider the proposed CIP Project. Prior to taking public comment, the Commission Engineer shall provide a brief overview of the proposed CIP Project, an estimate of project cost, and a description of how the project will be funded.
- (4) ~~(5)~~ Board Decision. Once the public input portion of the public hearing is closed, the Board shall discuss and decide whether to approve the proposed CIP Project. The Board shall act by resolution to approve a CIP Project, which shall require a favorable vote by two-thirds of all eligible votes of the then existing Commissioners. The resolution shall, at minimum, order the project, identify the responsible engineer, identify the Member responsible for letting the contract and overseeing construction, set out the estimated cost and funding sources, authorize the Commission to enter into a cooperative agreement with the responsible Member, and certify a levy to the Hennepin County Auditor for the amount to be levied by the County for the project.

5.4 ~~(e)~~ Responsible Member.

- (a) ~~(1)~~ Member Projects. The Board shall work with Members to facilitate the completion of specific Non-CIP Projects and CIP Projects within their jurisdictional boundaries in accordance with the Watershed Management Plan. For any project that will be constructed by one or more Members and reimbursed

by the Commission, to the extent authorized by the Commission, the Member(s) responsible for implementing the project shall enter into a cooperative agreement with the Commission providing for all Commission-required terms and conditions related to the project and any such reimbursement. If any portion of the project is funded by a grant obtained by the Commission, the cooperative agreement shall include a subgrant agreement requiring the responsible Member to be responsible for complying with the applicable terms and conditions of the grant agreement. The terms of this ~~subsection~~ paragraph shall also apply to any Commission project that may be constructed by any other entity, public or private, if construction by such entities is deemed appropriate by the Commission.

- (b) ~~(2)~~ Commission Projects. The Board is authorized to undertake and contract for ~~projects~~ a CIP Project in the Commission's name, in accordance with the Watershed Management Plan and all applicable laws and regulations related to public procurement and contracting. Approval of Commission contracts for ~~a CIP Project~~ Projects shall require a favorable vote by two-thirds of all eligible votes of then existing Commissioners.

5.5 ~~(d)~~ Contracts for Improvements.

- (a) ~~(1)~~ Letting Contracts. All contracts ~~which are to be let as a result of the Commission's ordering of a project~~ for projects ordered by the Commission shall comply with the requirements of laws applicable to contracts let by the respective Member making such contract. The Commission shall not have the authority to contract in its own name for any work for which a special assessment will be levied against any private or public property under the provisions of Minn. Stat., chap. 429 or any city charter, and such contracts shall be awarded by action of the City Council of a Member and shall be in the name of said Member. This subsection shall not preclude the Commission from proceeding under Minn. Stat. § 103B.251 or from otherwise proceeding under this Agreement for projects that will not be specially assessed under Minn. Stat., chap. 429.
- (b) ~~(2)~~ Contract Administration. All improvement contracts will be duly supervised by the Member awarding ~~said~~ the contract, provided, however, that the 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 also have the right to enter upon the place or places where any improvement work is in progress for the purpose of making reasonable tests and inspections. Commission staff shall report, advise, and recommend to the Board on the progress of said work.

5.6 ~~(e)~~ Land Acquisition.

- (a) ~~(1)~~ By Members. Because the Commission does not have the power to acquire real property, the Members agree that any and all permanent easements or

interests in land which are necessary for any project will be negotiated or condemned in accordance with all applicable laws by the Member wherein said lands are located, and each Member agrees to acquire the necessary easements or interests in such land upon order of the Commission to accomplish the purposes of this Agreement. All reasonable costs of said acquisition shall be considered as a cost of the respective improvement. If a Member determines it is in the best interests of that Member to acquire additional lands in conjunction with the taking of lands for the Commission-ordered improvement, or for some other purpose, the costs of said acquisition will not be included in the improvement costs of the ordered project. The Board in determining the allocation of the improvement costs may take into consideration the land use for which said additional lands are being acquired and may credit the acquiring Member 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.

- (b) ~~(2)~~ Alternative Acquisition. If any Member refuses to negotiate or condemn lands as ordered by the Board, any other Member may negotiate or condemn outside of its corporate limits in accordance with, and to the extent authorized by, applicable laws. 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 except upon order of the Board. The Commission shall have authority to establish land acquisition policies as a part of the overall Watershed Management Plan. The policies shall be designed to equalize costs of land throughout the Watershed.

5.7 CIP Project Funding.

- (a) Member Contributions. The Member responsible for constructing a CIP Project, together with any other identified benefiting Members, shall contribute toward the project such amounts as identified in the Board's resolution ordering the project and in accordance with the terms of the cooperative agreement entered into for the project.
- (b) Commission Contributions. The Commission shall contribute toward the project such amounts as identified in the Board's resolution ordering the project and in accordance with the terms of the cooperative agreement entered into for the project. The contribution from the Commission may include grant funds it has received for the project. In such cases, the Board and the responsible Members enter into a subgrant agreement, which may be part of the cooperative agreement, setting out the obligations of the Member to ensure compliance with the grant requirements. The Commission's contribution is in addition to any amounts contributed by Members or other private or public entities. If the Commission's contribution is dependent on an amount to be levied by the County, the contribution is contingent on the Commission receiving such amount from the County.

(c) Maintenance Levy. The Commission may establish a maintenance fund to be used for normal and routine maintenance of a work of improvement constructed in whole or part with money provided by Hennepin County. As provided in Minn. Stat. § 103B.251, subd. 9, the Board may impose, with the County's consent, an ad valorem levy on all property located within the territory of the Watershed or a subwatershed unit. The levy shall be certified, levied, collected, and distributed as provided in Minn. Stat. §§ 103D.915 and 103D.921, as amended, and shall be in addition to any other money levied and distributed by the County to the Commission. Mailed notice of any hearing required under the aforementioned statutes shall be sent to the clerk of each Member municipality at least 30 days prior to the hearing. The proceeds of said maintenance levy shall be deposited in a separate maintenance and repair account to be used only for the purpose for which the levy was made.

5.8 Cost Allocation for CIP Projects. All capital costs incurred by the Commission shall be apportioned to the respective Members on any of the following bases.

(a) County Levy. If the project is constructed and financed pursuant to Minn. Stat. § 103B.251, the Members understand and agree that said costs will be levied on all taxable property in the Watershed as set forth in said statute.

(b) Negotiated Amount. A negotiated amount to be arrived at by the Members who have lands in the subdistrict responsible for the capital improvement.

(c) Tax Capacity and/or Total Area.

(1) Fifty percent of all capital costs or the financing thereof shall be apportioned to each Member on the basis of the net tax capacity of each Member within the boundaries of the Watershed each year to the total net tax capacity in the Watershed.

(2) 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 Watershed.

(3) Capital costs allocated under the 50% area/50% net tax capacity formula set forth above may be varied by a two-thirds vote of the Commission if:

(i) 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

(ii) 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.

(4) Any credits to due a Member for lands acquired by said Member to pond or store storm and surface water as provided herein shall be allowed against costs due under this section.

5.9 ~~4.4~~ Emergency Projects. The Commission may perform emergency projects in accordance with Minn. Stat. § 103B.252.

~~4.5 Local Water Plans.—~~

~~(a) Development. Each Member agrees to develop and maintain a Local Water Plan, capital improvement program, and official controls as necessary to bring local water management into conformance with the Watershed Management Plan. The development and implementation of Local Water Plans shall conform with all requirements of the Act, including Minn. Stat. § 103B.235 and Minn. R., part 8410.0160. In accordance with the Act, the Board shall approve or disapprove each local plan or any parts of each plan. The Members understand that the Watershed Management Plan, including the Commission's capital improvement program, must consist of local parts and therefore every effort shall be made by the Commission and all Members to coordinate local plans with the Watershed's overall plan, including planning for local plans at the same time the Watershed's overall plan is being developed.~~

~~(b) Review. Each Member shall submit its proposed Local Water Plan to the Metropolitan Council and the Board for review as required by Minn. Stat. § 103B.235. The Board shall consider any comments on the Local Water Plan received from the Met Council and shall act on said plans in accordance with the Act.~~

~~4.6 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 Act. All Members 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 the Watershed. The Board may investigate on its own initiative, or request a Member to investigate, a complaint relating to pollution of surface water or groundwater draining into or affecting the Watershed. If the Board determines the Watershed is being polluted by an identifiable source, the Board may order the Member 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.~~

~~4.7 Boundary Changes. Any changes to the boundaries of the watershed shall be undertaken in accordance with Minn. Stat. § 103B.215.~~

SECTION ~~V~~VI
FINANCES

6.1 ~~5.1~~ Generally.

- (a) Authority. 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.
- (b) Funds. The Commission shall have a general fund and may establish such other funds and accounts as it may determine are needed. The Commission has established a Capital Improvement Program Closed Project Account into which any levied funds remaining after the completion of a CIP Project are placed. Funds in the CIP Closed Project Account shall only be expended in accordance with a policy adopted by the Board for an authorized purpose.
- (c) ~~(b)~~ Disbursements. In no event shall there be a disbursement of Commission funds without the signature of at least two ~~Commissioners~~ Board officers, one of whom shall be the Treasurer or ~~a Commissioner designated by the Treasurer~~ the Treasurer's authorized deputy.
- (d) ~~(e)~~ Treasurer Bond. 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.
- (e) ~~(d)~~ Depository. The Board shall designate one or more national or state bank or trust companies, authorized by ~~Minnesota Statutes, chapters~~ Minn. Stat., chaps. 118 and 427, or such other law as may apply, to receive deposits of public moneys and to act as depositories for the Commission funds.

6.2 ~~5.2~~ Commission's General Fund. The Commission's general fund is funded by an annual contribution from each Member and is used to pay for general administration purposes including, but not limited to, salaries, rent, supplies, development of the Watershed Management Plan, engineering and legal expenses, insurance, and bonds, and to purchase and maintain any personal property deemed necessary by the Commission in furtherance of its purposes and powers as articulated in this Agreement. Said funds may also be used for normal maintenance of any facilities, but any extraordinary maintenance or repair expense shall be treated as an improvement cost and processed in accordance with the provisions for ~~Capital~~ CIP Project ~~Funding~~ funding under this Agreement. 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 Watershed.

6.3 ~~5.3~~ Operating Budget. The Board shall annually prepare, adopt, and submit an annual operating budget as provided in this section.

- (a) Adoption. 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

Commission's general fund. Budget approval shall require a favorable vote by a majority of all eligible votes of the then existing Commissioners.

- (b) Budget Cap. The total operating budget amount in a year shall not exceed the budget cap established as part of the prior joint powers agreement and that has been adjusted each year based on the consumer price index. The original budget cap was established in 2004 at \$262,750 and has been modified each year since based, pro rata, on the annual change in the consumer price index (U.S. City Average, All Items, All Urban Consumer) to the end of the second quarter of the preceding year. In 2024, the budget cap was \$446,740. The budget cap shall continue to be calculated each year by the Administrator and the operating budget prepared by the Commission for a year shall not exceed the budget cap calculated for that year. The only way the Commission's operating budget may exceed the budget cap is if a majority of all the Members expressly consent to the proposed operating budget exceeding the cap. If a proposed operating budget that exceeds the budget cap is not consented to by a majority of Members, the Commission must adjust its final operating budget so it does not exceed the budget cap.
- (c) Funding. The Commission's annual operating budget is funded by an annual assessment placed on the Members, subject to certain caps, as provided herein.
- (d) Caps on Member Assessments. The amount annually assessed each Member to fund the operating budget shall not exceed the following caps, unless authorized as provided herein.
- (1) ~~(b)-~~ Percentage Cap. The amount to be assessed Members under the proposed budget shall not exceed 120% of the amount assessed Members under the previous year's budget, unless the City Council of each Member adopts a resolution approving the increase. ~~In no case may~~
- (2) ~~a Member assessment~~ Tax Capacity Cap. The amount of a Member's annual contribution to the operating budget shall not exceed one-half of one percent of the net tax capacity of ~~that portion of the city lying~~ the Member's total area located within the Watershed.
- (e) ~~(e)-~~ Budget Certified to Members. On or before July 1st, the Secretary or the Commission Administrator shall certify the operating budget to the clerk of each Member, together with a statement of the proportion of the budget to be ~~provided~~ assessed and paid by each Member. If the proposed operating budget results in any of the caps established herein being exceeded, the budget sent to the Members for review must be accompanied by a letter clearly notifying the Members of the cap being exceeded, the reasons for the proposed exceedance, and the Member approval required to approve the proposed budget. If the approvals required herein to exceed the cap are not obtained, the total budget or assessment amount shall not exceed the capped amount.

- (f) ~~(d)~~ Member Review. The City Council of each Member agrees to review the proposed budget provided by the Commission. If any Member has any objections, they must submit them in writing to the Board prior to August 1. Upon the receipt of any such written objections, the Board shall set a date to hear the Member's objections and shall provide all Members notice of the hearing and a copy of the written objections. After hearing the objections, the Board may modify, amend, or affirm the proposed budget by majority of all eligible votes of the then existing Commissioners.
- (g) ~~(e)~~ Finalized. The proposed operating budget shall be considered final if no Member ~~filed files~~ an objection by August 1st. If a timely objection is received, the Board shall act to finalize the operating budget after conducting a hearing on the objections. The Board shall provide a copy of the final operating budget to each Member. If there ~~were~~are objections, the Board shall include its findings and decision regarding such objections with the final operating budget.

6.4 ~~5.4~~ Supplemental Budget.

- (a) Insufficient Funds. If the Board determines it will not have sufficient funds in the Commission's general fund to ~~pays~~pay its obligations or to otherwise fund Commission operations in the present year, the Board may adopt a supplemental budget to raise additional funds— as provided herein.
- (b) Public Hearing. The Board shall call a public hearing on the proposed supplemental budget and provide at least 10 days' written notice of the hearing, together with a copy of the proposed supplemental budget, to each Member.
- (c) Adoption. After conducting the public hearing, the Board may adopt the supplemental budget by a favorable vote of a majority of all eligible votes of the then existing Commissioners. The Board shall notify each Member of the adopted supplemental budget and the amount of additional assessment to be paid by each Member. ~~Members agree to pay their additional assessment to the Commission within 60 days of adoption of the supplemental budget~~
- (d) Cap. In no case may a supplemental budget cause the total operating budget to exceed ~~the 120% cap discussed above, or cause the total assessment paid by a Member to exceed 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.~~ either cap established in the "Caps on Member Assessments" paragraph above. The total operating budget shall not exceed the budget cap identified above unless it is approved by a majority of all the Members.
- (e) Additional Assessment. Members agree to pay their additional assessment to the Commission within 60 days of adoption of the supplemental budget.

~~5.5 Capital Improvement Program Project Funding-~~

- ~~(a) Member Contributions. The Member responsible for constructing a CIP Project, together with any other identified benefiting Members, shall contribute toward the project such amounts as identified in the Board's resolution ordering the project and in accordance with the terms of the cooperative agreement entered into for the project.~~
- ~~(b) Commission Contributions. The Commission shall contribute toward the project such amounts as identified in the Board's resolution ordering the project and in accordance with the terms of the cooperative agreement entered into for the project. The contribution from the Commission may include grant funds it has received for the project. In such cases, the Board and the responsible Members enter into a subgrant agreement, which may be part of the cooperative agreement, setting out the obligations of the Member to ensure compliance with the grant requirements. The Commission's contribution is in addition to any amounts contributed by Members or other private or public entities. If the Commission's contribution is dependent on an amount to be levied by the County, the contribution is contingent on the Commission receiving such amount from the County.~~
- ~~(c) Maintenance Levy. The Commission may establish a maintenance fund to be used for normal and routine maintenance of a work of improvement constructed in whole or part with money provided by Hennepin County. As provided in Minn. Stat. § 103B.251, subd. 9, the Board may impose, with the county's consent, an ad valorem levy on all property located within the territory of the Watershed or a subwatershed unit. The levy shall be certified, levied, collected, and distributed as provided in Minn. Stat. §§ 103D.915 and 103D.921, as amended, and shall be in addition to any other money levied and distributed by the county to the Commission. Mailed notice of any hearing required under the aforementioned statutes shall be sent to the clerk of each Member municipality at least 30 days prior to the hearing. The proceeds of said maintenance levy shall be deposited in a separate maintenance and repair account to be used only for the purpose for which the levy was made.~~
- ~~5.6 Cost Allocation for Capital Projects. All capital costs incurred by the Commission shall be apportioned to the respective Members on any of the following bases:~~
- ~~(a) County Levy. If the project is constructed and financed pursuant to Minn. Stat. § 103B.251, the Members understand and agree that said costs will be levied on all taxable property in the Watershed as set forth in said statute.~~
- ~~(b) Negotiated Amount. A negotiated amount to be arrived at by the Members who have lands in the subdistrict responsible for the capital improvement.~~
- ~~(c) Tax Capacity and/or Total Area.~~
- ~~(1) Fifty percent of all capital costs or the financing thereof shall be apportioned to each Member on the basis of the net tax capacity of each Member within the boundaries of the Watershed each year to the total net tax capacity in the Watershed.~~
- ~~(2) 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 Watershed.~~

- ~~(3) Capital costs allocated under the 50% area/50% net tax capacity formula set forth above may be varied by a two-thirds vote of the Commission if:~~
- ~~(i) 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~~
 - ~~(ii) 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.~~
- ~~(4) Any credits to due a Member for lands acquired by said Member to pond or store storm and surface water as provided herein shall be allowed against costs due under this section.~~

6.5 ~~5.7~~ Default. Any Member who is more than 60 days in default in contributing its share to the ~~general fund~~operating budget or to a CIP Project shall have the vote of its Commissioner suspended pending the payment of its proportionate share. Any Commissioner whose vote is under suspension shall not be considered for the purposes of determining a quorum or for determining the sufficiency of a vote.

SECTION ~~6~~VII TERMINATION AND DISSOLUTION

7.1 ~~6.1~~ Termination. This ~~agreement~~Agreement may be terminated prior to January 1, 2055, by the unanimous consent of the Members. If the ~~agreement~~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.

7.2 ~~6.2~~ Dissolution. In addition to the manner provided herein for terminating this Agreement, 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 Commissioners, 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~~City 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.

7.3 ~~6.3~~ Distribution of Assets. If this Agreement is terminated and not replaced with a new agreement providing for the continued operation of the Commission, or if the Commission is dissolved, 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.

SECTION ~~7~~VIII MISCELLANEOUS PROVISIONS

- 8.1 ~~7.1~~ Term. This Agreement shall be effective as of January 1, 2025 and shall remain in effect until January 1, 2055, unless terminated earlier as provided herein. The Members may agree to continue this Agreement as the preferred method for addressing their obligation to address surface water issues under law.
- 8.2 ~~7.2~~ Mediation. The Members agree that any controversy that cannot be resolved between Members shall be submitted to mediation. Mediation shall be conducted by a mutually agreeable process by all Members. If the Members are not able to mutually agree on a mediator, the party and the Board shall each select a mediator and the two mediators shall select a third. Each party to the mediation shall be responsible for the cost of the mediator it selected and shall share equally in the costs of the mediation and of the third mediator.
- 8.3 ~~7.3~~ Data Practices. The Commission shall comply with the requirements of Minnesota Statutes, chapter 13, the Minnesota Government Data Practices Act (“Act”). Any entity with which the Commission contracts is required to comply with the Act as provided in Minnesota Statutes, section 13.05. The contractor shall be required to notify the Board if it receives a data request and to work with the Commission to respond to it.
- 8.4 ~~7.4~~ Amendments. The Board may recommend changes and amendments to this Agreement to the governing bodies of the Members. Amendments shall be adopted by all governing bodies of the Members. Adopted amendments shall be evidenced by appropriate resolutions or certified copies of meeting minutes of the governing bodies of each party filed with the Board and shall, if no effective date is contained in the amendment, become effective as of the date all such filings have been completed.
- 8.5 ~~7.5~~ Waiver. The delay or failure of any party of this Agreement at any time to require performance or compliance by any other party of any of its obligations under this Agreement shall in no way be deemed a waiver of those rights to require such performance or compliance.
- 8.6 ~~7.6~~ Headings and Captions. The headings and captions of these paragraphs and sections of this Agreement are included for convenience or reference only and shall not constitute a part hereof.
- 8.7 ~~7.7~~ Entire Agreement. This Agreement, including the recitals and the official boundary map (which are incorporated in and made part of this Agreement), contains the entire understanding among the Members concerning the subject matter hereof. This Agreement supersedes and replaces the prior joint powers agreement among the Members regarding the Commission and such prior agreement is hereby terminated. Any outstanding obligations of the Members under the prior agreement are not affected by the termination and shall be continued under this Agreement.

- 8.8 ~~7.8~~ Examination of Books. Pursuant to Minnesota Statutes, section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices of the Board are subject to examination by the State.
- 8.9 ~~7.9~~ Governing Law. The respective rights, obligations, and remedies of the Members under this Agreement and the interpretation thereof shall be governed by the laws of the State of Minnesota which pertain to agreements made and to be performed in the State of Minnesota.
- 8.10 ~~7.10~~ Counterparts. This Agreement shall be executed in several counterparts and all so executed shall constitute one Agreement, binding on all of the Members hereto. Each party to the agreement shall receive a fully executed copy of the entire document following adoption by all Members.
- 8.11 ~~7.11~~ Enforcement. Members agree to be bound by the determination of the Commission and to agree to use their best efforts to carry out directives from the Commission; failure to respond may result in a legal action by the Commission to require the Member to act under a court order.
- 8.12 ~~7.12~~ Notice. To the extend this Agreement requires a notice to be mailed to a Member, the notice requirement may be satisfied by the Commission emailing the notice to its primary contact for the Member.
- 8.13 ~~7.13~~ Statutory References. All references to statutes in this Agreement include any amendments made thereto and any successor provisions.

IN WITNESS WHEREOF, the Members have entered into this Agreement by action of their respective governing bodies effective as of the date of the last Member to execute it.

{signature pages follow}

Summary report: Litera Compare for Word 11.7.0.54 Document comparison done on 4/30/2024 2:12:10 PM	
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Intelligent Table Comparison: Active	
Original DMS: dm://DOCSOPEN/924142/2	
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Delete	173
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<u>Move To</u>	0
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Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	393

JOINT POWERS AGREEMENT
FOR THE ESTABLISHMENT AND CONTINUED OPERATION OF THE
BASSETT CREEK WATERSHED MANAGEMENT COMMISSION~~**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**~~
(Showing Changes Effective August 29, 2014)

PREFACE

Preface Section is struck as it contains history of the establishment of the original Bassett Creek Flood Control Commission. It is replaced with recitals that include a high level of Commission history. This agreement is a historical document that will be kept with Commission documents.

~~———— 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

“Statement of Intent” is struck as it relays historical details on the reason for establishing the organization. It is replaced with recitals that include a high level of Commission history. This agreement is a historical document that will be kept with Commission documents.

~~———"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 aforesaid 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:

This section was updated and similar language included in Sections 1.1 and 1.2

1. Protect, preserve, and use natural surface and groundwater storage and retention systems; - Section 1.2 (c)
2. Minimize public capital expenditures needed to correct flooding and water quality problems; - Section 1.2 (d)
3. Identify and plan for means to effectively protect and improve surface water and groundwater quality; - Section 1.2 (e)
4. Establish more uniform local policies and official controls for surface water and groundwater quality; - Section 1.2 (f)
5. Prevent erosion of soil into surface water systems; - Section 1.2 (g)
6. Promote groundwater recharge; - Section 1.2 (h)
7. Protect and enhance fish and wildlife habitat and water recreational facilities; Section 1.2 (k)

8. To secure other benefits associated with the proper management of surface water. Section 1.2 (m)
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. – Section 1.2 (p)
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. – Section 1.2 (g)

JOINT AND COOPERATIVE AGREEMENT

Paragraph 1

[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.]

Recital A

Recital I

NAME

I.

~~The parties hereto create and establish the Bassett Creek Watershed Management Commission.~~ [Establishment reaffirmed in Section 1.1]

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.

1.2(b)

1.2(i)

1.2(j)

1.2(l)

1.2(n)

1.2(a)

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. – Section 1.3 (b)

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. – Section 1.3 (a)

~~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. – Section 1.3 (c)

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. – Section 1.3 (d)

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

Sec.
2.1

(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. – Section 2.2

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". – Section 3.2

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. – Section 3.2

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.

Sec.
3.2

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.

Sec.
3.2
(d)
and
(e)

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.

Sec. 3.2(f)
with
updated
language
and
references to
State law

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.

Sec.
3.2
(d)

~~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.~~

REVISED to
allow for
compensation
Section 3.3

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.

Sec.
3.4

Sec.
3.6

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.

Sec.
3.6

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. – Section 4.1

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. – Section 4.1 (a)(1)

Subdivision 3. It may contract for space and for material and supplies to carry on its activities either with a member or elsewhere. – Section 4.1 (a) (2)

Subdivision 4. It may acquire necessary personal property to carry out its powers and its duties. – Section 4.1 (a)(3)

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.~~

Sec. 4.1
(a)(4)

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. – Section 4.1 (a)(4)

~~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.~~

These paragraphs discuss development of the original watershed plan. Plan development language has been updated to reference 103B and MN Rule 8410 which lay out the procedure for developing, reviewing, and adopting watershed plan and the required plan contents. See Section 4.1 (a)(4)

~~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. – Section 4.1 (a)(4)

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. – Section 4.1 (a)(5)

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. – Section 4.1 (a)(6)

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. – Section 4.1 (a)(7)

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. – Section 4.1 (a)(8)

Subdivision 10. It shall regulate, conserve and control the use of storm and surface water and groundwater within the Bassett Creek watershed. – Section 4.1 (a)(9)

Subdivision 11. It may contract for or purchase such insurance as the Board deems necessary for the protection of the Commission. – Section 4.1 (a)(10)

Subdivision 12. It may establish and maintain devices for acquiring and recording hydrological and water quality data within the Bassett Creek watershed. – Section 4.1 (a)(11)

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. – Section 4.1 (a)(12)

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. – Section 4.1 (a)(13)

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. – Section 4.1 (a)(14)

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. – Section 4.1 (a)(15)

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. – Section 4.1 (a)(16)

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. – Section 4.1 (a)(17)

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: – Section 4.1 (a)(18)

Sec.
4.1
(a)(19)

- 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. – Section 4.1 (a)(18)

Subdivision 21. It may recommend changes in this agreement to its members. – Section 4.1 (a)(20)

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. – Section 4.1 (a)(21)

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. – Section 4.1 (a)(22)

Subdivision 24. Each member reserves the right to conduct separate or concurrent studies on any matter under study by the Commission. – Section 4.1 (c)

Subdivision 25. It shall establish a procedure for establishing citizen or technical advisory committees and to provide other means for public participation. – Section 4.1 (a)(23)

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.~~

These paragraphs describe the transition from the Flood Commission to the Watershed Management Commission and how the Bassett Creek outlet location and capacity would be determined.

~~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 persona 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.

Sec.
4.3 (a)

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.

Section 4.3
(a);
highlighted
sentence in
Sec 3.5

~~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 aforestated 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 1038.251.

Section
4.3 (d)

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~~

Section
4.3 (a)

~~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.

Sec
4.3
(a)

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.~~

See
updated
language
in Sec
4.3 (e)

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.

Section
4.3 (e)

Subdivision 8. Contracts with Other Governmental Bodies. The Commission may exercise the powers set forth in Article V1, 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. – Section 4.3 (c)

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.

Sec
4.3(e)

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.

Sec
4.3(f)

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. – Section 4.6

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.

Updated
language
in Sec
4.5 (a)
and (b)

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.

Section
5.1 (a)
and (b)

~~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.

Section
5.2

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.

Although significantly refined language, the power to require cities (members) to pay for portions of CIP projects is moved to Sections 4.3(a) and 5.3 (a)

Each member further 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

Section
and 5.3 (a)
and (b)

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. – Section 5.4(a)

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. – Section 5.4 (b) and (c)

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. – Section 5.4 (d)

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. – Section 5.4 (a)

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. – Section 5.4 (d)

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. – Section 5.4 (e)

~~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. – Section 5.5 (b)
- (2) (a) Fifty percent of all capital costs or the financing thereof shall be apportioned

Section 5.5 (c)

- 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. – Section 5.5 (a)

MISCELLANEOUS PROVISIONS

IX.

Subdivision 1. The Commission shall not have the power to issue certificates, warrants or bonds. – Section 4.1 (b)(3)

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. – Sections 4.1 (b)(1) and 4.1 (b)(2)

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. – Section 4.1(b)(4)

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 without adherence to all Commission rules and requirements ~~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~~

Section 4.2

~~(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.

Sec
3.2(g)

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, 2025, and it may be continued thereafter at the option of the parties. – Section 6.1

Subdivision 2. This agreement may be terminated prior to January 1, 2025, 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. – Section 6.2

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. – Section 6.3

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. – Section 6.4

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.



City of Robbinsdale

TO: Mayor and City Council
PREPARED BY: Tim Sandvik, City Manager
APPROVED BY: Tim Sandvik, City Manager
DATE: May 15, 2024
RE: Limited Use Agreement - Orchard Ave

Background:

Staff will present a proposed Limited Use Agreement for a temporary right of way obstruction on Orchard Ave.

Analysis:

NA

Recommendation:

NA

Attachments:

None