

AMENDMENT TO AMENDED JOINT AND COOPERATIVE AGREEMENT  
ESTABLISHING THE SHINGLE CREEK WATERSHED MANAGEMENT COMMISSION  
TO PLAN, CONTROL AND PROVIDE FOR THE DEVELOPMENT  
OF THE SHINGLE CREEK WATERSHED

THIS AGREEMENT is made by and between the cities of Brooklyn Center, Brooklyn Park, Crystal, Maple Grove, Minneapolis, New Hope, Osseo, Plymouth, and Robbinsdale, all of which are Minnesota municipal corporations (the "Member Cities").

WITNESSETH:

WHEREAS, the Member Cities are parties to a joint powers agreement forming the Shingle Creek Watershed Management Commission entitled the AMENDED JOINT AND COOPERATIVE AGREEMENT ESTABLISHING THE SHINGLE CREEK WATERSHED MANAGEMENT COMMISSION TO PLAN, CONTROL AND PROVIDE FOR THE DEVELOPMENT OF THE SHINGLE CREEK WATERSHED (the "Joint Powers Agreement"), the effective date of which was May 1, 1994; and

WHEREAS, the Member Cities wish to amend the Joint Powers Agreement as hereinafter provided;

NOW, THEREFORE, on the basis of the premises and the mutual covenants and agreements contained in the Joint Powers Agreement as hereinafter amended, the parties agree to amend the Joint Powers Agreement as follows:

1. Article VIII. FINANCES is amended to read as follows:

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 the Treasurer's Authorized Deputy Treasurer. The Treasurer shall be required to file with the Secretary of the Board a bond in the sum of at least \$10,000 or such higher amount as shall be determined by the Board. The Commission shall pay the premium on said bond.

Subdivision 2. 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, engineering and legal expenses, 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 5 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 Shingle Creek Watershed.

Subdivision 3.

(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 Commission as the amount to be assessed against each member as a cost of the improvement. The Board shall submit in writing a statement to each member, setting forth in detail the expenses incurred by the Commission for each project.

Each member 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 4. 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. It is expressed as a goal of this Agreement that cost sharing of capital improvement costs be assigned and agreed to by members pursuant to Article VIII, Subdivision 7, Subsections 1 and 2 of this Agreement. Without such agreement, all improvements will be constructed pursuant to 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, Sections 103D.915 and 103D.921 and acts amendatory thereof and in addition thereto. Mailed notice shall be sent to the Clerk of each member municipality at least 30 days prior to the hearing.

Subdivision 4. On or before July 1 of each year, the Board shall adopt a detailed budget for the ensuing year and decide upon the total amount necessary for the general fund. Budget approval shall require a favorable vote by a majority of all eligible votes of the then existing members of the Board.

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

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

Subject to the limitations of Subdivision 5 below, each member agrees to provide the funds required by the budget. If no objections are submitted to the Board, each member agrees to provide the funds approved by the Board, after the Board has conducted the aforementioned hearing. Modifications or amendments to the original budget require a favorable vote by a majority of all eligible voters of then existing members of the Board.

The 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.

Subject to the limitations of Subdivision 6 below, upon notice and hearing, the Board by a favorable vote of a majority of all eligible votes of then existing members may adopt a supplemental budget requiring

additional payments by the members within 60 days of its adoption but in no event shall the budget require any member to contribute in excess of one-half of one percent of the net tax capacity of all taxable property within the watershed or within any member's corporate boundaries in any one calendar year.

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

Subdivision 5. Assessments levied against Member Cities for general fund purposes are subject to all of the following limitations:

1. Assessment Cap.

A. Definition. For purposes of this subdivision, the term "Assessment Cap" means the total amount that the Commission may levy against Member Cities for general fund purposes in any year without the consent of a majority of Member Cities. The Assessment Cap for 2004 is \$262,750. Thereafter, the Assessment Cap will increase or decrease each year 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. (For example, the Assessment Cap for 2005 will be adjusted on the basis of the change in the CPI from the end of the second quarter of 2003 to the end of the second quarter of 2004.)

B. Limitation and City Consent. The Commission may levy an amount for general fund purposes in excess of the Assessment Cap only with the consent of a majority of Member Cities expressed by resolutions duly adopted by the city councils before September 1<sup>st</sup> of the preceding year. The Commission may request authority to exceed the Assessment Cap for one or more years.

If a majority of Member Cities do not consent to the levy of an assessment in excess of the Assessment Cap, the Commission may levy an amount up to the Assessment Cap and the Commission will make necessary changes to the budget.

2. Limitation on Increase of Assessment. The Commission may not assess a total levy against Member Cities for general fund purposes in any year in an amount that exceeds 120% of the

previous years' assessment without the consent of a majority of the Member Cities given in the same manner as described in paragraph 1B above.

3. Limitation Based on Tax Capacity. The Commission may not assess a levy or combination of levy and supplemental levies against the Member Cities for general fund purposes in any one year that requires any member to contribute an amount in excess of one-half of one percent of the net tax capacity of that portion of the city lying within the Watershed.

Subdivision 6. Supplemental Budget and Limit on Assessment. The Board may adopt a supplemental budget in accordance with Subdivision 4. However, the amount assessed against the Member Cities for general fund purposes, when added together with other assessments for general fund purposes for the same year, may not exceed the limitations on assessments set forth in Subdivision 5 without the consent of the Member Cities. The consent of the Member Cities shall be secured in the same manner as is provided in Subdivision 5, except that the September 1 deadline for Member City approval does not apply.

Subdivision 7. Cost Allocation for Capital Projects. The Commission shall apportion to the respective members on either (1), (2) or (3) of the following bases:

- (1) A negotiated amount to be arrived at by the members who have lands in the subdistrict responsible for the capital improvement.
- (2)
  - (a) Fifty percent of all capital costs or the financing thereof shall be apportioned to each member on the basis of the net tax capacity of each member within the boundaries of the watershed to the total net tax capacity in the Shingle 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 Shingle Creek Watershed 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 agreement is not reached to proceed as set forth in Subsection 1 or 2 of this Subdivision and 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 2. This amendment shall be in full force and effect upon the filing of a certified copy of a resolution approving said amendment by all nine Member Cities. Said resolutions shall be filed with the Chair of the Shingle Creek Watershed Commission, who shall certify the effective date of the amendment in writing to all Member Cities. The effective date of the amendment shall be when approved by all of the Member Cities and when the mayor and other authorized city representatives have executed the amended agreement.

IN WITNESS WHEREOF, the undersigned government units, by action of their governing bodies, have caused this Agreement to be executed in accordance with the authority of Minnesota Statutes, Sections 103B.201 through 103B.255 and Section 471.59.

Dated: \_\_\_\_\_

CITY OF BROOKLYN CENTER

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF BROOKLYN PARK

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF CRYSTAL

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF MAPLE GROVE

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF MINNEAPOLIS

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF NEW HOPE

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF OSSEO

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

Dated: \_\_\_\_\_

CITY OF PLYMOUTH

By: Judy A. Johnson  
Its Mayer

And by: Laurie Ahrens  
Its City Manager

Dated: \_\_\_\_\_

CITY OF ROBBINSDALE

By: \_\_\_\_\_  
Its \_\_\_\_\_

And by: \_\_\_\_\_  
Its \_\_\_\_\_

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