

## LOWER RUM RIVER WATERSHED MANAGEMENT ORGANIZATION JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT ("Agreement") is made and entered into by and among the cities of Andover, Anoka, and Ramsey. The cities that are parties to this Agreement may hereafter be referred to individually as a "Member" or collectively as the "Members."

### RECITALS

- A. The Lower Rum River Watershed is located East of the Mississippi River and is essentially a direct tributary to the Mississippi River. The watershed encompasses all or parts of the cities of Andover, Anoka, and Ramsey.
- B. Local government units in the metropolitan area are required by the Metropolitan Water Management Program (Minn. Stat. § 103B.201 to 103B.255) to plan for and manage surface water.
- C. Under the Act, one of the options available to local government units to satisfy its requirements 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.
- D. The Members elected to exercise their authority under the Act to adopt a joint powers agreement in ~~1995~~1985 establishing the Lower Rum River Watershed Management Commission ("Commission") to cooperatively manage and plan for the management of surface water within the watershed.
- E. The original joint powers agreement has been updated over time and the term of the current joint powers agreement expires at the end of 2024.
- F. The Members previously acted pursuant to their authority to establish the "Lower Rum River Watershed Board of Commissioners" ("Board") and said Board is hereby reaffirmed as the entity charged with the authority and responsibility to manage the Commission.
- G. The Board has previously acted to adopt a Watershed Management Plan for the watershed and has regularly updated the Watershed Management Plan in accordance with law.
- H. 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., chap. 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 “Lower Rum River Watershed Management Organization” 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 Lower Rum River 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 Projects; Generally. Waters from the Watershed flow through many sub-watersheds directly to the Rum River and the Mississippi River. The Commission does not have many CIP Projects and, to the extent it does have a project, it is the intent of this Agreement to encourage that the solutions should be handled by agreements between the Members.
- 1.4 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 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 Lower Rum River 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) CIP Project. “CIP Project” means a planned Capital Improvement that is part of the Commission’s 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) Commission. “Commission” means the watershed management organization established by this Agreement in accordance with the Act, the full name of which is the “Lower Rum River Watershed Management Commission.”
- (i) Commissioner. “Commissioner” means the person appointed by a Member as its primary representative on the Board.
- (j) County. “County” means Anoka County, Minnesota.
- (k) 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) 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) Watershed. “Watershed” means the Lower Rum River Watershed, which includes the area contained within a line drawn around the extremities of all terrain whose surface drainage is tributary to Lower Rum River and within the mapped areas delineated on the map filed with the Minnesota Board of Water and Soil Resources pursuant to the Act.
- (o) 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 Andover, City of Anoka, and City of Ramsey.
- 2.2 Additional Units of Government. The Board may, with the ratification of the councils of all Members, invite other units of government within the Rum River Watershed to become parties to this Agreement and in all respects enjoy the full rights, duties, and obligations of this Agreement.
- 2.3 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 subdivision.

## SECTION III BOARD OF COMMISSIONERS

- 3.1 Establishment. The parties hereby reaffirm the establishment and continued operation of the “Lower Rum River Watershed Board of Commissioners” in accordance with the Act. The Board shall serve as the governing body of the Commission and 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 a total of three Commissioners, one of which is appointed by each 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. A Commissioner may be considered present to vote if the person participates in the meeting remotely in accordance with the requirements of Minn. Stat. § 13D.02. The authority of a Commissioner to vote shall be suspended if the appointing Member is delinquent by more than 30 days in paying its annual assessment or in making any supplemental assessment payments due to the Commission. The voting authority of the Commissioner shall be restored once the Member pays all past due assessments 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 established by each Member. 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. If the Board agrees to hold a special meeting at the request of an applicant or permittee, that person shall be responsible for reimbursing the Commission for the costs of such meeting.

- (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, or such other parliamentary rules as identified by the Board, 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. The Watershed Management Plan shall establish a comprehensive goal for the development of the Watershed and shall establish a recommended procedure for accomplishing the purposes of the Commission.

- (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 shall make necessary surveys or utilize other reliable surveys and data and develop projects to accomplish the purposes for which the Commission is organized.
- (7) 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.
- (8) It may, if necessary to implement the plan, order a Member or Members 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 Watershed. The ~~Members~~Member further understand and agree that the Board in reviewing, ordering, or authorizing these projects will use the best management practices required to meet state and federal statutes and regulations. The Board will also consider the ability of the Members to fund the enforcement of local controls and any ordered capital improvements. The Board shall incorporate financial review and anticipated sources of revenue as a part of the overall management plan and as a part of local water management plans.
- ~~(9)~~ — It may order any Member or Members to acquire, operate, construct, or maintain dams, dikes, reservoirs, and appurtenant works or other improvements necessary to implement the overall plan. The ~~Members~~Member further understand and agree that the Board in reviewing, ordering, or authorizing these projects will use the best management practices required to meet state and federal statutes and regulations. The Board will also consider the ability of the Members to fund the enforcement of local controls and any ordered capital improvements. The Board shall incorporate financial review and anticipated sources of revenue as a part of the overall management plan and as a part of local water management plans. This section shall not apply to the Anoka Dam as the City of Anoka is solely responsible for the ongoing operations, maintenance, and replacement of the Dam as may be needed
- ~~(9)~~ \_\_\_\_\_
- (10) It shall regulate, conserve, and control the use of storm and surface water and groundwater within the Watershed necessary to implement the Watershed Management Plan.
- (11) It may contract for or purchase such insurance as the Board deems necessary for the protection of the Commission.



- (12) It may establish and maintain devices acquiring and recording hydrological and water quality data within the Watershed.
- (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 Chair or Secretary of the Board with a Notice of Claim as required by Minn. Stat., chap. 466.05.
- (14) 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.
- (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 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.
- (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.
- (17) 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.
- (18) It may accept gifts, apply for and use grants or loans of money or other property from the United States, the State of Minnesota, a unit of government or other governmental unit or organization, or any person or entity for the purposes described herein; may enter into any reasonable agreement required in connection therewith; may comply with any laws or regulations applicable thereto; and may hold, use, and dispose of such money or property in accordance with the terms of the gift, grant, loan or agreement relating thereto.

- (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 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:
  - (i) The approved budget;
  - (ii) Reporting of revenues;
  - (iii) Reporting of expenditures;
  - (iv) 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; and
  - (v) The status of all Commission projects and work within the Watershed.

Copies of said report shall be transmitted to the Clerk of 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 set forth herein and as outlined and authorized by the Act.
- (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 shall establish a procedure for establishing citizen or technical advisory committees and to provide other means for public participation.
- (27) Where the Board is authorized or requested to review and make recommendations on any matter, the Board shall act on such matter within 60 days of receipt of the matter referred. Failure of the Board to act within 60 days shall constitute approval of the matter referred, unless the Board requests and receives from the referring unit of government an extension of time to act on the matter referred. Where the Board makes recommendation of any matter to a Member, the Council of a Member not

acting in accordance with such recommendation shall submit a written statement of its reasons for doing otherwise to the Board within 10 days of its decision to act contrary to the Board's recommendation. The Board shall review the written statement and if determined insufficient by the Board, request written clarification within an additional 10 days.

- (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 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.

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 Lower Rum River, the Mississippi River, or their 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 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.
- (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 CIP Projects and Limitations.
- (a) Approval. The Board may approve and authorize the carrying out of CIP Projects to further the purposes of the Watershed Management Plan.
- (b) Cross Boundaries. No project that will channel or divert additional waters to subdistrict and subtrunks that cross municipal boundaries shall be commenced by any Member prior to approval of the Board of the design of an adequate outlet or of adequate storage facilities.
- 5.2 Process for CIP Projects. The process for undertaking a CIP Project is as follows.
- (a) 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. The Board shall not order a CIP Project, and no engineer shall be authorized by the Board to prepare plans and specifications, before the Board has adopted a resolution ordering the CIP Project.

- (b) 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 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) 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) Major Plan Amendment. If a proposed amendment does not qualify as a minor amendment, the Commission must undertake the major plan amendment process 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, 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 to request the County to levy funds for the project under Minn. Stat. § 103B.251, subds. 3 & 4, provided the requirements of both procedures can be satisfied at the single hearing.
- (d) Public Hearing. If the Board proposes to pay any portion of a CIP Project with funds to be raised through a County levy under Minn. Stat. § 103B.251, the Board must call and conduct a public hearing as provided in the statute and this paragraph. A public hearing is not required if the CIP Project is funded entirely from 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 under Minn. Stat. § 103B.251. When a public hearing is required, it shall be conducted in accordance with the following.
  - (1) 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) Notice. The Board shall provide notice of the public hearing in accordance with Minn. Stat. § 103B.251, subd. 3.
- (3) 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) 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 Anoka County Auditor for the amount to be levied by the County for the project.

5.3 Responsible Members. The Board shall work with one or more Members to facilitate the completion of specific 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 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.

5.4 Contracts for Improvements.

- (a) Letting Contracts. All contracts 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) Contract Administration. All improvement contracts will be duly supervised by the Member awarding 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.

#### 5.5 Land Acquisition.

- (a) By Members. The Commission does not have the power to acquire real property, but shall have the authority to establish land acquisition policies as part of the Watershed Management Plan. 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) 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.

#### 5.6 CIP Project Funding.

- (a) Improvement Fund. The Board may, but is not required to, create an improvement fund for each CIP Project. Funds for the particular project shall be placed in and expended from the improvement fund created for the project.
- (b) Member Contributions.
  - (i) Amounts. 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. The Board will consider the benefits of the improvements to one or more subwatersheds in determining which Members are benefited by the CIP Project.
  - (ii) Appeal. Any Member aggrieved by the determination of the allocation of Member contributions toward a CIP Project may appeal the Board's determination by filing a written appeal to the Board within 30 days of the date of the ~~resolution~~ Board's resolution. The Board shall refer a timely appeal to a board of arbitration for a decision as provided hereinbelow. Failure of a Member to file an appeal within the 30-day appeal period shall be deemed to have consented to and agreed with the cost allocation as set out in the Board's resolution.

~~(iii) 8.1 Board of Arbitration. The board of arbitration shall consist of three persons; one to be appointed by the Board, one to be appointed by the appealing Member, 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 Anoka 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 City and if appointed by the Chief Judge said person shall be a registered professional engineer. The arbitrators' expenses and fees, together with the other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be divided equally between the Commission and the appealing Member. Arbitration shall be conducted in accordance with the Uniform Arbitration Act, Minn. Stat., chap. 572B. Arbitration shall be non-binding unless the Commission and the appealing Member agree to binding arbitration. If the parties agree to binding arbitration the decision of the board of arbitration shall be final and the parties to the arbitration will be deemed to have consented to and agreed with the decision. If these parties do not agree to binding arbitration, any party that does not agree with and consent to the decision of the board of arbitration must notify the Board in writing within 30 days of receipt of the decision of the board of arbitration that it does not consent to or agree with the decision. Failure to so notify the Board shall be deemed consent to and agreement with the decision of the board of arbitration. Unless the parties agree with the decision of the board of arbitration, capital improvements can only be funded in accordance with Minn. Stat. § 103B.251, or secured from other sources.~~



- (c) 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.
- (d) Maintenance Fund 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 Anoka County. As provided in Minn. Stat. § 103B.251, subd. 9, the Board may ~~add~~impose, with the County's consent, to the amount it certifies to the County for collection on the taxes of an ad valorem levy on all property located within the territory of the Watershed or a subwatershed unit an amount for a maintenance fund. ~~The amount levy shall be certified, levied, collected, and distributed as provided in Minn. Stat. for the maintenance fund shall be §§ 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 together with the other amounts levied for the Commission.~~ Mailed notice of any hearing required by law related to the amount levied for the maintenance fund ~~under the aforementioned statutes~~ shall be sent to the clerk of each Member municipality at least 30 days prior to the hearing. The Commission shall deposit the ~~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.~~

5.7 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 majority~~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 to 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.

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

## SECTION VI FINANCES

6.1 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.
- (c) Disbursements. 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.
- (d) 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) Depository. The Board shall designate one or more national or state bank or trust companies, authorized by 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 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 CIP Project 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 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) Funding. The Commission's annual operating budget is funded by an annual assessment placed on the Members, subject to certain caps, as provided herein.
- (c) 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) Percentage Cap. The amount to be assessed Members under the ~~operating~~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.
- (2) 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 the Member's total area located within the Watershed, unless the City Council of that Member adopts a resolution approving the increase.
- (d) Budget Certified to Members. On or before July 1<sup>st</sup>, 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 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.

- (e) 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.
- (f) Finalized. The proposed operating budget shall be considered final if no Member files an objection by August 1<sup>st</sup>. 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 are objections, the Board shall include its findings and decision regarding such objections with the final operating budget.

#### 6.4 Supplemental Budget.

- (a) Insufficient Funds. If the Board determines it will not have sufficient funds in the Commission's general fund to 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.
- (d) Cap. In no case 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 and within the Member's corporate boundaries in any one calendar year.
- (e) Additional Assessment. Members agree to pay their additional assessment to the Commission within 60 days of adoption of the supplemental budget.

- 6.5 Default. Any Member who is more than 60 days in default in contributing its share to the 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 VII TERMINATION AND DISSOLUTION

- 7.1 Termination. This Agreement may be terminated prior to January 1, 2035 by the unanimous consent of the Members. 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 Anoka County at least 90 days prior to the date of dissolution.
- 7.2 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 Anoka 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 a majority ~~three-fourths~~ of the 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 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 VIII MISCELLANEOUS PROVISIONS

- 8.1 General Appeal. Any Member aggrieved by a determination of the Board shall have 30 days after the Board's determination within which to file a written appeal to the Board. The Board shall refer a timely appeal to a board of arbitration for a decision as provided below. Failure of a Member to file an appeal within the 30-day appeal period shall be deemed to have consented to the Board's determination.
- 8.2 Board of Arbitration. Any matter appealed by a Member pursuant to this Agreement shall be decided by a board of arbitration. The board of arbitration shall consist of three persons; one to be appointed by the Board, one to be appointed by the appealing Member, 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 Anoka 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 City and if appointed by the Chief Judge said person shall be a registered professional engineer. The arbitrators' expenses and fees, together with the other expenses, not including counsel fees, incurred in the conduct of the arbitration shall be divided equally between the Commission and the appealing Member. Arbitration shall be conducted in accordance with the Uniform Arbitration Act, Minn. Stat., chap. 572B. Arbitration shall be non-binding unless the Commission and the appealing Member agree to binding arbitration. If the parties agree to binding arbitration the decision of the board of arbitration shall be final and the parties to the arbitration will be deemed to have consented to and agreed with the decision. If these parties do not agree to binding arbitration, any party that does not agree with and consent to the decision of the board of arbitration must notify the Board in writing within 30 days of receipt of the decision of the board of arbitration that it does not consent to or agree with the decision. Failure to so notify the Board shall be deemed consent to and agreement with the decision of the board of arbitration. Unless the parties agree with the decision of the board of arbitration, capital improvements can only be funded in accordance with Minn. Stat. § 103B.251, or secured from other sources.

8.18.3 Term. This Agreement shall be effective as of January 1, 2025 and shall remain in effect until January 1, 2035, 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.

8.28.4 Mediation. Except for appeals submitted to a board of arbitration as discussed above, 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.

8.38.5 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.

8.48.6 Amendments. The Board may recommend changes and amendments to this Agreement to the governing bodies of the Members. No amendment is effective unless it is ~~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.

8.58.7 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.

8.68.8 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.

8.78.9 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.

8.88.10 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.

8.98.11 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.

8.108.12 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.

8.118.13 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.

8.128.14 Notice. To the ~~extent~~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.

8.138.15 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]



**CITY OF ANDOVER**

Approved on the \_\_\_\_ day of \_\_\_\_\_ 2024  
by the City Council.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_

**CITY OF ANOKA**

Approved on the \_\_\_\_ day of \_\_\_\_\_ 2024  
by the City Council.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_

**CITY OF RAMSEY**

Approved on the \_\_\_\_ day of \_\_\_\_\_ 2024  
by the City Council.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_