

**COOPERATIVE CONSTRUCTION AGREEMENT**  
**PIKE LAKE CHANNEL STABILIZATION PROJECT PHASE III**  
**PLYMOUTH & MAPLE GROVE**

THIS AGREEMENT (hereinafter referred to as "Agreement"), made and entered into this 2nd day of June, 2022, by and between the City of Plymouth (hereinafter referred to as "Plymouth") and City of Maple Grove (hereinafter referred to as "Maple Grove"; Plymouth and Maple Grove hereinafter collectively referred to as "Cities" and sometimes individually "City").

WITNESSETH:

WHEREAS, Maple Grove and Plymouth are desirous of bringing about the improvement of a drainage way, referred to as the "Pike Lake Channel", for which improvement contemplates erosion control, bank stabilization, and restoration landscaping from Northwest Blvd. to Hemlock Lane and the Pike Creek Gabion to Pike Lake (hereinafter referred to as the "Project"); and

WHEREAS, the Project shall be hereinafter be identified in parts as Maple Grove Project No. 22-09 and Plymouth Project No. WR-22-0001; and

WHEREAS, Maple Grove Project No. 22-09 lying north of the Plymouth/Maple Grove border is within Maple Grove and Plymouth Project No. WR-22-0001 lying south of Plymouth/Maple Grove border is within Plymouth; and

WHEREAS, State Statutes require that certain rules and regulations regarding that feasibility reports and City Council actions must all be completed; and

WHEREAS, specifications and proposal must be prepared for the improvement, bids accepted, a contract awarded and construction management exercised throughout the improvement process; and

WHEREAS, it is contemplated that the public improvement project be carried out by the parties hereto under the provisions, terms and conditions set forth.

NOW, THEREFORE, IT IS HEREBY AGREED:

I

Plymouth and Maple Grove, by executing this Agreement, mutually approve Plymouth as the lead agency for the Project pursuant to the terms and conditions herein.

II

Plymouth has prepared on behalf of the Cities, the necessary feasibility report(s) for usage by each individual City for subsequent public improvements.

III

Plymouth shall: (i) prepare the plans, specifications and proposal for the Project, subject to the review and approval of Maple Grove, which approval shall not be unreasonably withheld or delayed; (ii) will advertise for and receive bids; (iii) enter into a contract for the Project with the successful bidder at the unit prices specified in the bid, according to law in such case provided for public improvements under Minnesota Statutes Chapter 429 and Minnesota Statutes Section 471.345. The contract documents shall include the plans, specifications and proposal prepared by Plymouth or its agents and approved by Maple Grove.

IV

Plymouth shall administer the contract and inspect the construction of the contract work contemplated herewith. All work on the Pike Lake Channel shall be completed in compliance with the plans, specifications and proposal. Maple Grove's City Engineers or their staff shall have the right, as the work progresses, to enter upon the Project area to make any inspections deemed necessary, but will have no responsibility for the supervision of the work.

V

The proposed schedule to complete the improvement project described herein is as follows:

- |   |                 |
|---|-----------------|
| 1. Complete the Cooperative Agreement     | June, 2022      |
| 2. Preliminary construction plan approval | June/July, 2022 |

3. Award Contract	September, 2022
4. Begin Construction	December, 2022
5. Complete Construction	June, 2023

VI

Plymouth and Maple Grove shall share in the Project costs, including construction, engineering and administrative costs, which is estimated to be \$395,500.00. Each City will pay the Project costs based upon drainage flows to the channel from each City. To that end, Maple Grove agrees to reimburse Plymouth the estimated construction costs as stated in the attached Exhibit A. Plymouth shall invoice Maple Grove for their share of actual Project costs not to exceed \$103,100 without written authorization from Maple Grove.

VII

All direct payments for Project design and administration and to the contractor for work performed on the Project will be made by Plymouth. Plymouth shall be responsible for and pay all the construction costs of the contract work for the Project as identified herein and delineated in the contract documents. The final proportionate Project costs attributed to Maple Grove, shall be paid to Plymouth within 30 days of the plan approval and 30 days of final project construction approval.

VIII

It is understood and agreed that upon completion of the improvement proposed herein, all project elements shall be part of the as-built plans prepared by Plymouth and shall become the property of the City in which these improvements are located. All maintenance, restoration, repair or replacement required thereafter shall be performed as mutually agreed upon by Plymouth and Maple Grove.

IX

For purposes of determining total liability for damages, the Cities are considered a single governmental unit and the total liability for the Cities shall not exceed the limits on governmental liability for a single governmental unit, subject to the limits of liability under Minnesota Statutes Chapter 466 and other applicable laws, rules, and regulations, including common law. Under no circumstances shall a City be

required to pay, on behalf of itself and other City, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one City. The statutory limits of liability for the Cities may not be added together or stacked to increase the maximum amount of liability for any one City pursuant to Minnesota Statutes Section 471.59, subd. 1a.

Subject to the limitations, immunities and defenses in Minnesota Statutes Chapter 466, each City shall defend, indemnify and hold harmless the other City and their officers, agents and employees from and against any and all liability, loss, damages, costs and expenses which it or its officers, employees or agents may hereafter sustain, incur or be required to pay arising out of or resulting from the performance of this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent acts or omissions of the indemnifying City or its employees, agents or any other person or entity for whose actions it may be liable.

Each Member shall maintain its own insurance covering its minimum tort levels in amounts provided for in Minnesota Statutes Sections 466.02 and 466.04, as amended.

Nothing in this Agreement is intended or should be construed in any manner as a waiver of any Member's immunities or tort limits contained in Minnesota Statutes Chapter 466.

Plymouth also agrees that any contract let by Plymouth or its agents for the performance of the work on the Project as provided for herein shall include clauses that will:

- 1) Require the contractor to defend, indemnify, and save harmless Plymouth and Maple Grove, and their respective officers, agents and employees from claims, suits, demands, damages, judgments, costs, interest, expenses (including, without limitation, reasonable attorney's fees, witness fees, and disbursements incurred in the defense thereof) arising out of or by reason of the negligence of the said contractor, its officers, employees, agents or subcontractors; and
- 2) Require the contractor to provide and maintain sufficient insurance so as to ensure the performance of its hold harmless obligations, which insurance shall have coverage amounts that meet or exceed the minimum tort liability for the Cities under Minnesota Statutes Chapter 460, shall name the Cities as additional insured, and shall provide the Cities at least 30 days' notice of cancellation.

X

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The Cities may not assign their rights or obligations under this Agreement without the prior written consent of the other City, which consent shall not be unreasonably withheld or delayed.

All of the covenants, conditions and agreements in this Agreement shall extend to, be binding upon, and inure to the benefit of the Cities and their respective permitted successors and assigns. Time is of the essence in the Cities complying with the terms and obligations herein.

If any term or provision in this Agreement is deemed invalid or unenforceable by any recognized tribunal, including a certified mediator, arbitrator or court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the extent permitted by law.

This Agreement is declared to be a Minnesota contract and all of its terms shall be construed in accordance with Minnesota law. Any action to enforce rights or obligations under this Agreement shall be brought in Hennepin County.

This Agreement shall constitute the entire agreement among the Cities and any prior understandings or representations of any kind preceding the execution of this Agreement shall not be binding upon the Cities.

This Agreement may only be amended or modified by written instrument executed by all Cities.

The Cities shall each pay their own attorneys' fees in connection with the preparation and negotiation of this Agreement.

Each City affirms and acknowledges that it has fully read, appreciates, and understands the words, terms, conditions and provisions of this Agreement and is fully satisfied with the same. Each City affirms and acknowledges that it has been, or had the opportunity to be represented by legal counsel of its choice.

Plymouth and Maple Grove represent and warrant that they have the power and authority to enter into this Agreement. Plymouth and Maple Grove further represent and warrant that the person or persons executing this Agreement on its behalf has full and complete legal authority to do so, and thereby binds their respective City and, to the extent permitted by this Agreement, its successors and assigns.

***The remainder of this page intentionally left blank; signature page and exhibits follow***

IN TESTIMONY WHEREOF, the Cities have caused this Agreement to be executed by their respective duly authorized officers as of the day and year first above written.

**CITY OF PLYMOUTH**

DocuSigned by:  
BY: Jeffrey Wosje  
9C27C1387B6B457... Mayor

DATE: 6/2/2022

DocuSigned by:  
AND: Dan Callahan  
79113C87025D447 City Manager

**CITY OF MAPLE GROVE**

BY: \_\_\_\_\_  
Mayor

DATE: \_\_\_\_\_

AND: \_\_\_\_\_  
Clerk

**EXHIBIT A**  
**CITY OF PLYMOUTH**  
**PIKE LAKE CHANNEL PROJECT**  
**CITY OF PLYMOUTH PROJECT NO. WR-22-0001**  
**CITY OF MAPLE GROVE PROJECT NO. 22-09**  
**ESTIMATED PROJECT COST**

Estimated Design Cost	\$95,500.00
Estimated Construction Cost (Including contingency)	\$300,000.00
Total Estimated Project Cost	\$395,500.00
Minus Clean Water Grant	-\$150,000.00
<u>Minus Shingle Creek Watershed (25%)</u>	<u>-\$95,000.00</u>
Total	\$150,500.00
<b>Maple Grove Share (68.5%)</b>	<b>\$103,100.00</b>
<b>Schedule B costs shall be funding 100% by Maple Grove</b>	
<b>Plymouth Share (31.5%)</b>	<b>\$47,400.00</b>
<b>Schedule A costs shall be funded 100% by Plymouth</b>	