

**AGREEMENT  
BETWEEN THE METROPOLITAN COUNCIL  
AND BASSETT CREEK WATERSHED MANAGEMENT COMMISSION  
FOR REIMBURSEMENT OF STAFF TIME**

This Agreement is made and entered into by and between the **Metropolitan Council** (“Council”), a public corporation and political subdivision of the State of Minnesota, and the **Bassett Creek Watershed Management Commission**, a special purpose local unit of government located in Hennepin County, Minnesota (“BCWMC”).

**WHEREAS:**

1. Minnesota Statutes Section 473.405 Subd. 4 gives the Council the authority to engineer, construct, equip, and operate transit and paratransit systems, projects, or any parts thereof, including facilities useful or related to public transit; and
2. The Council is engaged in various planning and preparation activities regarding the development of the Southwest Line Light Rail Transit (“SWLRT”) Project between downtown Minneapolis and Eden Prairie, Minnesota (the “Project”). The Council has adopted light rail transit (“LRT”) as the Locally Preferred Alternative (“LPA”) for the transitway. The Council is in the “Project Development” phase of the Federal Transit Administration (“FTA”) New Starts process and is authorized to engage in project development activities to secure the appropriate federal, state, and local approvals to advance the Project into the Engineering Phase.
3. The Project improvements could impact the Bassett Creek Watershed, which is governed by BCWMC.
4. The BCWMC is a local unit of government created by a joint powers agreement (“JPA”) between multiple municipalities for the purpose of controlling flooding, maintaining and enhancing the quality of the surface and groundwater resources in the watershed.
5. The BCWMC is authorized by its JPA and implements through its Watershed Management Plan a program to review development and improvement projects to ensure that they conform to the policies and requirements of the BCWMC and to collect established fees for such reviews.
6. BCWMC review of large and complicated improvement projects such as the Project include attendance at multiple meetings with Project, agency and city staff; consultation regarding plans for storm water management and hydraulic processes relating to the proposed storm water connection to Bassett Creek Tunnel and modeling associated with it; assistance with and review of hydrologic modeling; and completing final project review and its conformance with BCWMC Watershed Management Plan.
7. Per the BCWMC’s Application Form for Development Process, state agencies are exempt from review charges typically applied for time spent during the permit review period pursuant to various state and federal regulation. However, the review of large and complicated improvement projects, such as the SWLRT Project, does not enable BCWMC to recoup the total costs of their staff time spent on the review activities in section 6 above and as outlined in Exhibit A.

8. The City of Minneapolis has requested assistance from BCWMC with tasks associated with the Project complying with BCWMC Watershed Management Plan.
9. The Parties wish to enter an Agreement to govern the Council's reimbursement of the actual costs of BCWMC staff time spent performing work under this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

**I. SCOPE**

The purpose of this Agreement is to provide a mechanism through which the Council can reimburse BCWMC for Commission staff time spent on reviewing the Project for conformance with BCWMC requirements and other activities associated with the Project. BCWMC staff will engage in consultation regarding hydrology and hydraulics relating to the proposed storm water connection to Bassett Creek Tunnel and modeling associated with it, including attending meetings with Project staff and reviewing associated modeling and completing final project review and its conformance with BCWMC Watershed Management Plan. BCWMC agrees to perform these activities in a satisfactory and proper manner under applicable federal, state, and local law. The projected cost of these activities is shown in Exhibit A, which is incorporated by reference. The Council will reimburse BCWMC for actual costs of staff and consultant time spent on activities supporting the Project in an amount not to exceed \$20,000 pursuant to the terms of this Agreement, which includes \$9,825 for consultation services performed by BCWMC from August 2015 through January 2016.

**II. COMPENSATION, METHOD OF PAYMENT**

**2.01 Maximum Total Compensation.** The maximum total compensation to be paid to BCWMC for work performed under this Agreement must not exceed \$20,000.

**2.02 Method of Payment.** BCWMC will submit to the Council a monthly, written invoice referencing this Agreement number and containing a detailed list of project labor and hours showing, for each task described in Section I above, the hours, rate, titles, and amounts actually paid for the Project work, and any supporting documentation. Upon verification and acceptance by the Council, the Council will pay BCWMC within 30 days.

**2.03 Flat Fees.** In consideration of the Council's payment of actual costs as specified in this Agreement, BCWMC shall not charge the Council its standard, flat fees which would otherwise apply for the work anticipated by this Agreement.

**III. GENERAL TERMS**

**3.01 Term and Termination.** This Agreement is effective as of January 22, 2016 and will terminate on the earlier of December 31, 2016 or the date that all obligations have been satisfactorily fulfilled. This Agreement may be terminated upon 30 days' written notice by either Party, or immediately upon mutual agreement of the Parties. Termination of this agreement will not relieve the Council from its obligation to reimburse the BCWMC for its actual costs up to the effective date of the termination.

**3.03 Audits.** As required by Minnesota Statutes, section 16C.05, the records, books, documents, and accounting procedures and practices of BCWMC relating to work performed pursuant to this contract shall be subject to audit and examination by the Council and the Legislative Auditor or State Auditor. BCWMC shall permit the Council or its designee to inspect, copy, and audit its accounts, records, and business documents at any time during regular business hours, as they may relate to the performance under this agreement. Audits conducted by the Council under this provision shall be in accordance with generally accepted auditing standards. Financial adjustments resulting from any audit by the Council shall be paid in full within 30 days of the BCWMC's receipt of audit.

**3.04 Liability.** The Parties will be responsible for their own acts and omissions and the results thereof to the extent authorized by law. The BCWMC and the Council's liability shall be governed by the Minnesota Municipal Tort Claims Act, Minnesota Statutes Chapter 466, and other applicable law. Each party will be solely responsible for its own employees for any worker compensation claims.

**3.05 Waiver.** The failure by the non-breaching party to insist in any one or more instances upon the performance of any term or condition of this agreement shall not be construed as a waiver or relinquishment of the right to such performance, or to future performance, of such term or condition by the breaching party, and the obligation of both parties for performance of that term or condition shall continue in full force and effect.

**3.06 Amendments.** The terms of this agreement may be changed by mutual agreement of the Parties. Such changes shall be effective only on the execution of written amendment(s) signed by the Council and the BCWMC.

**3.07 Assignment.** Neither party shall transfer its rights or obligations under this Agreement without the express written consent of the other Party.

**3.08 Data Practices.** The Parties will comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, as it applies to all data created, collected, received, stored, used, maintained, or disseminated in accordance with this Agreement. The civil remedies of Minnesota Statutes, section 13.08, apply to the release of the data referred to in this section by either Party.

**3.09 Notice.** Notice for purposes of this Agreement shall be sufficient if personally delivered or sent by certified mail to the other party at the following addresses:

For the Council:

Craig Lamothe  
Green Line Extension Project Office  
6465 Wayzata Boulevard, Suite 500  
St. Louis Park, MN  
[craig.lamothe@metrotransit.org](mailto:craig.lamothe@metrotransit.org)

For the BCWMC:

Laura Jester  
BCWMC Administrator  
c/o 16145 Hillcrest Lane  
Eden Prairie, MN 55346  
[lalura.jester@kestonewaters.com](mailto:lalura.jester@kestonewaters.com)

**3.10 Severability.** The provisions of this agreement shall be deemed severable. If any part of this agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and

enforceability of the remainder of this agreement unless the part(s) which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire agreement with respect to the parties.

**3.11 Federal Clauses.** The funding provided by the Council pursuant to this Agreement is composed in part of federal funds. BCWMC shall abide, and shall cause its Contractor or any other entities, employees, agents, or subcontractors performing work under this Agreement to abide by all relevant federal rules and regulations, including but not limited to those regulations identified in Exhibit B, attached hereto and incorporated herein. If there is an inconsistency between Exhibit B and the terms of this Agreement, the terms of Exhibit B will prevail.

**3.12 Complete Agreement.** This agreement, including exhibits and other documents incorporated in this agreement, or made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the agreement between the BCWMC and the Council. This agreement supersedes all prior representations, understandings, and communications. The validity in whole or in part of any term or condition of the agreement shall not affect the validity of other terms or conditions.

**IN WITNESS WHEREOF**, the parties have caused this agreement to be executed by their duly authorized representatives on the dates specified below.

**METROPOLITAN COUNCIL**

**BASSETT CREEK WATERSHED MANAGEMENT COMMISSION**

\_\_\_\_\_  
Craig Lamothe  
Director, Transit Systems Development

\_\_\_\_\_  
Jim de Lambert  
Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### BCWMC COST ESTIMATE

#### Total Estimated Costs for Tasks Related to the Project

**1. Consultation/review regarding hydrology/hydraulics related to the Project proposal for storm water connection to Bassett Creek Tunnel: \$6,125.**

This covers half of the costs spent by the Commission from August – December 2015 for the following work: communications and meetings with Project staff regarding BCWMC requirements and Bassett Creek Tunnel; preliminary review of project plans, including review of Project impact to BCWMC boundary; providing requested GIS data and XP-SWMM model to Project staff; brief review of draft EIS; reviewing Project stormwater management report for the Glenwood area, including proposed direct connection to the Bassett Creek tunnel; reviewing requirements/obligations in Joint and Cooperative Agreement between BCWMC, MWMO and Minneapolis regarding connections to new tunnel; reviewing existing XP-SWMM model results for new tunnel; reviewing Twins stadium correspondence for precedence regarding connection to new tunnel; compiling maps showing watershed information from various sources including 1978 agreement, HEC-1 modeling, XP-SWMM modeling, and Twins Stadium modeling; reviewing watershed drainage divides and agreements; meetings with Project staff.

**2. Modeling impacts of proposed storm water connection to Bassett Creek Tunnel  
Estimated Costs: \$3,700.**

This covers half of the estimated costs for this work which is currently underway and anticipated to be complete in January 2016. The City of Minneapolis will pay for the other half. The XP SWMM model developed for the Twins Stadium connection evaluation will be used as the base model. This model includes the upstream watershed as a hydrograph output from the HEC-1 model. The model includes the 100-year, 24-hour storm event, based on TP-40 precipitation depths. The modeling will include four steps:

- 1) Rerun the XP-SWMM model from the Twins Stadium connection work for the TP40 100-year 24-hour design storm event to serve as the existing conditions baseline for 100-year flows in the New Tunnel. Focus will be on the three locations identified in the 2000 Joint and Cooperative Agreement for Boundary Change between the BCWMC, the City of Minneapolis, and the Mississippi WMO.
- 2) Analyze the impact of the SWLRT connection on flows in the new tunnel for the TP40 100-year 24-hour design storm event (using information provided in the SWLRT submittal document dated August 2015).

- 3) Analyze the impact of the proposed CSO connections on flows in the new tunnel for the TP40 100-year 24-hour design storm event. The proposed CSO connections were identified in the 12/3/2015 email from Jeremy Strehlo.
- 4) Analyze the combined impact of the Project and CSO connections on flows in the new tunnel for the TP40 100-year 24-hour design storm event.

In the analyses of the impacts, the relative change in the peak flows at the three locations within the new tunnel will be evaluated, comparing the peak flows under the proposed conditions (steps 2 – 4) to the peak flows under existing conditions (model results from step 1). The proposed peak flows will not be compared to the specific flow rates outlined in the 2000 agreement. The results of the modeling will be summarized in a brief memo to the City of Minneapolis, Council, and BCWMC.

**3. Future review of project designs and other potential follow-up tasks/correspondence:**

**Estimated costs: \$3,000 - \$5,000.** This covers the costs of the BCWMC to review the project designs per the BCWMC Requirements document including analyzing project for meeting MIDS and erosion/sediment control.

**4. Additional potential follow-up tasks/correspondence:**

**Estimated costs: \$3,000 - \$5,000.** This covers potential additional follow-up tasks or correspondence related to modeling, tunnel connection, or other storm water related issues and impacts.