



Bassett Creek Watershed Management

MEMO

To: BCWMC Commissioners and Alternate Commissioners
From: Laura Jester, Administrator
Date: March 10, 2022

RE: Administrative Services Committee Recommendations

On March 9, 2022 the BCWMC Administrative Services Committee met via Zoom to discuss several items. Commissioners Harwell, Welch, and Gwin-Lenth attended. Commissioner Harwell was appointed Committee Chairperson.

The committee has the following recommendations for the Commission's consideration:

1. Adopt Resolution 21-05 Appointing a Deputy Treasurer and Designating Account Access

The committee recommends the Commission adopt the attached resolution (**see page 3 below**) which was reviewed and revised by Attorney Anderson.

The resolution officially appoints Sue Virnig as the Commission's Deputy Treasurer. Sue has been acting in that capacity for many years. The [BCWMC bylaws](#) (Article IV) indicate that the Commission can appoint a Deputy Treasurer (Section 1) and that *"the Deputy Treasurer, if one is appointed, shall assist the Treasurer and shall perform the Treasurer's administrative duties during the absence or disability of the Treasurer, but the performance of such duties shall not make the Deputy Treasurer a Commissioner"* (Section 7).

Further, the resolution grants authority for Redpath accountants to have access to and transfer funds between the Commission's checking account and investment funds. A resolution to this effect was recommended by Sue Virnig and will help streamline financial processing.

As Deputy Treasurer, Sue will continue to recommend to the Commission the actual depositories which are annually designated by the Commission. The Deputy Treasurer will also assist the Administrator in implementing [Commission policies](#) related to financial internal controls and reporting (Section 2.9(10)) and she will review financial statements prepared by the auditor.

2. Review Staff Evaluations

Committee Chair Harwell gathered staff evaluation results earlier this year. The committee reviewed the results and recommended they be sent to commissioners and alternates for review. Evaluation results are considered non-public data and are not available in the public meeting packet.

3. Approve Updated Administrator Contract

The committee recommends updating the Administrator’s contract (**see pages 4-8 below**) to 1) reflect an increase in the Administrator’s time spent on regular Commission business, 2) include the time and activities anticipated with development of the 2025 Watershed Management Plan (WMP), and 3) increase the hourly rate starting in 2023 from \$72/hour to a requested \$75/hour. Additional background:

- a. The current contract assumes that an average of 80 hours per month spent on regular Commission business. However, over the past 14 months this work has taken an average of 87.5 hours per month or 1,050 hours per year. [This is due to implementation of multiple CIP projects at the same time, coordination of the Hennepin County Chloride Initiative, participation in multiple meetings related to the MN Association of Watershed Districts (MAWD), grant management, etc. While some tasks will be slowing down a bit this year, it’s quite possible other work will come up. This is a busy organization!]
- b. The recently approved scope and budget for 2025 WMP development includes a total of 450 hours of administrator time over the next four years with more time concentrated in 2022 and 2024. Adding 180 hours per year for WMP development is warranted. (Some years are expected to be lower than 180 hours but the contract is structured as an annual not-to-exceed amount and thus should capture the highest anticipated hours.) Administrator time for WMP development will be tracked separately from regular Commission work.
- c. The Administrator’s hourly rate has been \$72 since 2019. This year’s BCWMC Operating Budget assumes this same hourly rate for an average of 82 hours per month. Approval of the recommended contract changes for administration of regular Commission work to 87.5 hours per month would result in up to \$6,480 budget deficit for the Administrator line item in 2022. Starting with the 2023 fiscal year, the Administrator requests an increase to \$75/hour.

4. Discuss and/or Vote on Ending the Proclamation Directing Meetings to be Conducted Electronically

Although the Commission had planned to go back to in-person meetings last summer, on August 9, 2021, Chair Cesnik directed that meetings be conducted electronically as COVID’s Delta variant was starting to dramatically increase cases in Hennepin County. With the current drop in cases, the Commission should consider ending the proclamation to conduct meetings electronically and plan to return to in person meetings. Meetings would be held in a large room at Brookview, Golden Valley. Voting members (commissioners and alternates) would be required to be at the meetings in person. The ability to hold hybrid meetings for the public or guests to join remotely will be evaluated but is likely to have a significant price tag for equipment purchases.

5. Evaluate Joint Powers Agreement (JPA) for Needed or Desired Updates

The current [Joint Powers Agreement](#) expires January 1, 2025. A new JPA (with or without changes to existing language) must be signed by the governing bodies of all nine member cities before the expiration date. The committee recommends the full Commission receive a “primer” on the JPA at a future meeting from the Commission Attorney and that the Administrative Services Committee discuss possible changes to Commission policies that would require JPA revisions and bring recommendations to the full Commission.



Bassett Creek Watershed Management Commission

Member _____ introduced the following resolution and moved its adoption:

A RESOLUTION DESIGNATING A DEPUTY TREASURER AND PROVIDING CERTAIN AUTHORITY TO ACCESS FINANCIAL ACCOUNTS TO CARRY OUT DESIGNATED RESPONSIBILITIES

WHEREAS, the Bassett Creek Watershed Management Commission (Commission) is authorized pursuant to its bylaws to appoint a non-Commissioner as Deputy Treasurer to assist the Treasurer and perform administrative duties in the absence or disability of the Treasurer; and

WHEREAS, Sue Virnig, Finance Director for member city Golden Valley, is willing to perform the duties of Deputy Treasurer for the Commission; and

WHEREAS, the Commission recently contracted with Redpath & Company for financial bookkeeping and audit services for the 2022-2023 fiscal year; and

WHEREAS, in addition to the Commission's Deputy Treasurer, accounting staff at Redpath & Company require access to the Commission's financial accounts in order to perform certain duties included in its service agreement with the Commission.

THEREFORE, BE IT RESOLVED by the Bassett Creek Watershed Management Commission that:

1. Sue Virnig is hereby appointed as the Commission's Deputy Treasurer and as such, shall have access to the Commission's investment and checking accounts for the limited purpose of carrying out any functions necessary in performing the role of Deputy Treasurer, and
2. Accounting staff at Redpath & Company that perform services for the Commission shall also have access to the Commission's investment and checking accounts for the limited purpose of carrying out any functions that are necessary in performing services contracted for with the Commission, and
3. Access to the above-referenced investment and checking accounts shall include the ability to transfer money between said accounts as needed for cash flow purposes or to maintain thresholds designated by the Commission or its officers. Such access shall also adhere to the Commission's Policy Manual, including, but not necessarily limited to, all requirements contained in section 2.9 thereof, and shall otherwise conform with all applicable laws.

Chair _____

Date _____

Attest:

Secretary _____

Date _____

The motion for the adoption of the foregoing resolution was seconded by Member _____ and upon a vote being taken thereon, the following voted in favor thereof: ____ members, and the following voted against the same: ____ members whereupon said resolution was declared duly passed and adopted.



ADMINISTRATOR AGREEMENT

THIS AGREEMENT is made effective as of the first day of February, 2022, by and between the Bassett Creek Watershed Management Commission, a Minnesota joint powers organization (the "Commission"), and Keystone Waters, LLC, a Minnesota limited liability company (the "Contractor").

1. **SCOPE OF SERVICES:** Contractor will perform the following services as prioritized and assigned by the Commission under this Agreement, together with such other administrative services as may be assigned from time to time:
 - Implement the projects and programs of the 2015 Watershed Management Plan and guide the Commission through the Plan Amendment process, as needed.
 - Provide primary leadership and guidance for development of the 2025 Watershed Management Plan including but not limited to outreach and engagement activities, Plan Steering Committee facilitation, plan writing, and guidance through the plan review and approval process.
 - Establish processes to increase the organization's efficiency and to reduce duplication of effort.
 - Serve as the primary point of contact for Commission business and coordinate activities among consultants.
 - Provide coordination with representatives of City, County, State and Federal agencies and other stakeholder groups.
 - Coordinate consultants' projects and activities; review invoices and recommend payment.
 - Identify opportunities to secure grant funding and develop partnerships to accomplish implementation of the Commission's Watershed Management Plan.
 - Track implementation of watershed-funded annual water quality projects and activities to ensure that established objectives, project budgets, and schedules are met.
 - With the assistance of the Administrative Committee and the Deputy Treasurer, develop an operation budget on an annual basis for consideration by the Commission.
 - Develop an annual work plan and reporting system in consultation with the Commission's Administrative Committee.
 - Develop agendas for meetings; attend the monthly Commission meetings, TAC meetings and others as necessary.
 - Perform other duties or activities as may be directed by the Commission.

2. **COMPENSATION.** Contractor will be paid for services at the rate of \$72 per hour February 1, 2022 – January 31, 2023 and at a rate of \$75 per hour beginning February 1, 2023.

Contractor will be reimbursed for actual, reasonable and necessary out-of-pocket expenses including postage, photocopies, audiotapes, and printing. Mileage will not be reimbursed

for travel within the Minneapolis/St. Paul seven-county metropolitan area. Contractor will be paid at the hourly rate specified above for travel time on Commission business, but will not be paid for travel time commuting to and from home for Commission meetings. Travel outside of the seven-county metropolitan area including mileage (State of Minnesota rate), meals and overnight accommodations must have the prior approval of the Commission or its designee. The Commission may specify vendors to be used by Contractor for reimbursable expenses, which vendors may include Barr Engineering, member cities, or other entities.

During fiscal year 2022 (February 1, 2022 through January 31, 2023), compensation will not exceed an average of \$7,380 per month, excluding expenses, and therefore may not exceed a total of \$88,560 for the entire fiscal year without the prior approval of the Commission. Beginning on February 1, 2023, compensation will not exceed an average of \$7,688 per month during any subsequent fiscal year, excluding expenses, and therefore may not exceed a total of \$92,250 for any such fiscal year without the prior approval of the Commission. Reimbursable expenses of the Administrator (in addition to prior approved travel) may include postage, printing, reasonable meeting refreshments, general office supplies used for Commission business, and other expenses, as approved.

3. **PAYMENT.** The Contractor will submit monthly invoices for services providing detailed time records of services provided and time spent and receipts for reimbursable expenses.

Invoices and records, together with supporting information, shall be submitted in a form acceptable to the Commission. The Commission will pay invoices within 45 days of receipt thereof. Invoices received by the first Thursday of the month will ordinarily be authorized for payment at that month's regular meeting.

4. **TERM AND TERMINATION.** This Agreement shall continue in effect indefinitely unless terminated in accordance with this Agreement. This Agreement may be terminated by either party at any time, and for any reason, on 30 days' written notice.
5. **SUBSTITUTION AND ASSIGNMENT.** Services provided by Contractor will generally be performed by Laura Jester. Upon approval by the Commission, the Contractor may substitute other persons to perform the services set forth in this Agreement. No assignment of this Agreement shall be permitted without a prior written amendment signed by the Commission and the Contractor.
6. **AMENDMENTS.** No amendments to this Agreement may be made except in writing signed by both parties.
7. **INDEPENDENT CONTRACTOR.** The Contractor (including the Contractor's employees, if any) is not an employee of the Commission. Contractor will act as independent contractor and acquire no rights to tenure, workers' compensation benefits, unemployment compensation benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension

benefits or other rights or benefits offered to employees of the Commission. Contractor shall not be considered an employee of the Commission for any purpose including, but not limited to: income tax withholding; workers' compensation; unemployment compensation; FICA taxes; liability for torts; and eligibility for benefits.

Contractor will not be provided with a place of business and will retain control over the manner and means of the services provided as an independent contractor. Contractor will provide, at Contractor's expense, necessary office space, transportation, computer capability, an internet email address and incidental office supplies.

This Agreement is non-exclusive. Contractor may take other employment or contracts that do not interfere with Contractor's duties hereunder.

8. DATA PRACTICES AND RECORDS; CONFIDENTIALITY. All records, information, materials and other work product, in written, electronic, or any other form, developed in connection with providing services under this Agreement shall be the exclusive property of the Commission. All such records shall be maintained with the records of the Commission and in accordance with the instructions of the Commission. The Contractor will comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. If Contractor receives a request for data pursuant to the Data Practices Act, Minnesota Statutes chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) Contractor possesses or has created as a result of this Agreement, it will inform the Commission immediately and transmit a copy of the request. If the request is addressed to the Commission, Contractor will not provide any information or documents, but will direct the inquiry to the Commission. If the request is addressed to Contractor, Contractor will be responsible to determine whether she is legally required to respond to the request and otherwise what her legal obligations are, but will notify and consult with the Commission and its legal counsel before replying. Nothing in the preceding sentence supersedes Contractor's obligations under this agreement with respect to protection of Commission data, property rights in data or confidentiality. Contractor further agrees to keep confidential and not disclose to any person or entity any data or information furnished by the Commission that is marked in writing as confidential. The preceding sentence shall not apply to data or information that is independently made available as a matter of right to Contractor by a third party without obligation of secrecy or that is required to be disclosed by statute, code, regulation, subpoena, or other process of law. Finally, nothing in this section constitutes a determination that Contractor is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.
9. COMPLIANCE WITH LAWS. Contractor shall comply with all applicable federal, state and local laws, regulations or ordinances in performance of Contractor's duties hereunder, such laws including but not limited to those relating to non-discrimination in hiring or labor practices.

10. **AUDIT.** The Contractor agrees that the Commission, the State Auditor, or any of their duly authorized representatives, at any time during normal business hours and as often as they may reasonably deem necessary shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, and records that are relevant to and involve transactions relating to this Agreement.
11. **HOLD HARMLESS AND INSURANCE.** Contractor shall defend, indemnify and hold harmless the Commission, its member cities and their elected officials, officers, employees, agents, and representatives, from and against any and all claims, costs, losses, expenses, demands, actions or causes of action, including reasonable attorneys' fees and other costs and expenses of litigation that may arise out of this Agreement for services provided by Contractor hereunder. Contractor's obligation to indemnify Commission shall be limited to indemnification provided by insurance. Contractor shall maintain insurance providing coverage for general and professional liability in the amounts and providing the coverage generally described in the insurance binders attached to this Agreement. Contractor can rely on work provided by the Commission's Contractors.
12. **APPLICABLE LAW.** The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those courts located within the County of Hennepin, State of Minnesota, regardless of the place of business, residence, or incorporation of Contractor.
13. **NO AGENCY.** Contractor is an independent contractor and shall not be considered to be the agent or servant of the Commission for any purpose and shall have no authority to enter into any contracts, create any obligations, or make any warranties or representations on behalf of the Commission unless specifically given such authority in writing or by separate action of the Commission, which may include, but is not necessarily limited to, Commission direction, motion, resolution, or formal policy.
14. **NOTICES.** Any notice or demand, authorized or required under this Agreement, shall be in writing and shall be sent by certified mail to the other party as follows:

To the Contractor: Laura Jester
 Keystone Waters, LLC
 16145 Hillcrest Lane
 Eden Prairie, MN 55346

To the Commission: Chair
 Bassett Creek Watershed Management Commission
 c/o City of Golden Valley
 7800 Golden Valley Rd.
 Golden Valley MN 55427

