

**AGREEMENT FOR USE OF THE BASSETT CREEK WATERSHED
MANAGEMENT COMMISSION CHANNEL MAINTENANCE FUNDS**

This Agreement is made this 18th day of November, 2015, by and between the Bassett Creek Watershed Management Commission, a Minnesota joint powers organization, (“BCWMC”) and the City of Crystal, a Minnesota municipal corporation (“City”);

WHEREAS, the BCWMC has established a program to work in cooperation with member cities to fund channel maintenance projects; and

WHEREAS, the City has applied to the BCWMC for funds for a channel maintenance project in the City, a description of which is attached hereto as Exhibit A and is made part of this Agreement (the “Project”); and

WHEREAS, the BCWMC is willing to provide funding for the City’s Project in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, on the basis of the premises and the mutual covenants hereinafter set forth, the parties hereto agree as follows:

1. The City agrees to undertake and complete the work of the Project as described in the attached Exhibit A, and in accordance with BCWMC’s policies regarding such grant projects. The City may request a change in the Project, which may be authorized, in writing, by the BCWMC’s Administrator or Engineer. To the extent the City uses the funds to support work being undertaken by a private party, the City shall be responsible for entering into such agreements and overseeing the work as needed to ensure the requirements of this Agreement are satisfied to the extent practicable. The City shall provide a copy of all such agreements to the BCWMC.
2. The plans for the Project shall be reviewed by the BCWMC’s Engineer, who may approve or require modifications to the Plans. Project design, construction and maintenance will conform to all conditions of approval imposed by the BCWMC.
3. The City shall require the engineers, architects and contractors it hires for the Project to have liability insurance in the amount of at least the current statutory limits specified in Minnesota Statutes, Chapter 466, and that the BCWMC and the BCWMC’s Engineer are named as additional insureds on such policies. Before commencing construction of the Project, the City shall provide to the BCWMC a Certificate of Insurance demonstrating compliance with this requirement. The Certificate shall provide that the insurance may not be cancelled without giving the certificate holder the same notice of cancellation as is given to the policyholder. The City shall require the contractor it hires to defend, indemnify, protect and hold harmless the BCWMC and the City, their agents, officers, and employees, from all claims or actions arising from performance of the work of the Project conducted by the contractor.
4. The City shall undertake, or cause to be undertaken, the Project in accordance with the approved plans. Contracts will be awarded by the City in accordance with all applicable legal requirements. The City will supervise the work of the contractor it hires; however,

the BCWMC may observe and review the work of the Project until it is completed. The City will pay the contractor it hires and all other expenses related to the construction of the Project and keep and maintain complete records of such costs incurred.

5. The City shall be responsible for securing, or causing to be secured, all necessary permits for the work of the Project.
6. Upon completion of the work of the Project, the City shall secure record drawings prepared by the design engineer or architect, with a certification by the Contractor that the work was completed according to the approved plans. A copy of the record drawings and certification shall be forwarded to the BCWMC's Engineer.
7. The City will submit invoices to the BCWMC, no more frequently than monthly, for partial reimbursement for the work of the Project. Reimbursable expenses include out-of-pocket costs incurred for construction and the costs of design, engineering, and contract administration. Reimbursement will be made subject to the following limitations:
 - a) Total reimbursement for the work of the Project will not exceed \$31,675, and no reimbursement will be made for costs paid to the City by other parties.
 - b) Reimbursements will be made from that part of the BCWMC's Creek and Streambank Trunk System Maintenance, Repair and Sediment Removal Fund (the "Channel Maintenance Fund") allocated to channel maintenance in the City. If the cost of the Project exceeds \$31,675, the City may apply to the BCWMC for additional reimbursement from funds allocated to the City in the Channel Maintenance Fund.
8. Claims by the City for reimbursement shall be accompanied by such proof of costs as may reasonably be requested by the BCWMC, and the books and records of the City shall be available for inspection by the BCWMC upon reasonable notice during normal business hours. If the City intends to seek reimbursement for design, engineering, or contract administration by City staff, it is required to maintain and provide to the BCWMC detailed time records showing daily records of time spent, description of activities, staff personnel involved, and rate of total compensation. Hourly rates charged will include pro-rated salary and fringe benefits in accordance with the schedule of rates attached to this Agreement as Exhibit B, which rates are subject to annual adjustment commensurate with changes in City costs of salary and benefits.
9. The BCWMC shall reimburse the City for eligible expenses in accordance with this Agreement within 45 days of receipt of an invoice therefor, provided the BCWMC determines the invoice contains adequate details to allow reimbursement. If the BCWMC determines an invoice is not adequate, within 10 days of receipt it shall notify the City in writing of the additional information needed to make the invoice complete.
10. This Agreement will terminate on the third anniversary of the effective date of this Agreement, unless extended by mutual agreement of the City and the BCWMC. The BCWMC will have no obligation to reimburse claims not submitted prior to the termination date, or any agreed upon extension.

11. The parties agree that the BCWMC's participation in the Project is limited to the payment of channel maintenance grant funds in accordance with this Agreement. This Agreement does not make the BCWMC a partner, agent or co-venturer in the City's Project and the BCWMC will incur no responsibility or liability for the work of the City's Project.
12. The City will defend, indemnify, protect and hold harmless the BCWMC and its officers, employees, and agents from any claims arising out of the design, construction, or maintenance of the Project, including environmental claims. Nothing herein shall be deemed a waiver of the limitations of liability in Minnesota Statutes, Chapter 466.
13. This Agreement, including the attached exhibits and BCWMC Channel Maintenance Fund policies, contains all negotiations and agreements between BCWMC and City regarding the subject of this Agreement. No other agreements or understandings regarding this Agreement may be used to bind either party.
14. City's books, records, documents and accounting procedures and practices relevant to this Agreement are subject to examination by the State of Minnesota and the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Agreement.
15. City shall comply with applicable provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date and year first written above.

BASSETT CREEK WATERSHED
MANAGEMENT COMMISSION

By: _____
Chair

And by: _____
Secretary

CITY OF _____

By: _____
Mayor

And by: _____
Manager

EXHIBIT A

Project Description

[As presented in Item 5Fii.]

EXHIBIT B

Rate Schedule

Not Applicable