

BAR17-0020

Contract No: A166790

PERSONAL/PROFESSIONAL SERVICE AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 (the "COUNTY"), on behalf of the Hennepin County Environment and Energy Department, 701 Fourth Avenue South, Suite 700, Minneapolis, MN 55415 ("DEPARTMENT") and Bassett Creek Watershed Management Commission, c/o 16145 Hillcrest Lane, Eden Prairie, MN 55346("GRANTEE").

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

The term of this contract is commencing on the date of execution of this contract and terminating December 31, 2019, unless terminated earlier in accordance with the Default and Cancellation provisions of this Agreement. Costs incurred by the grantees after the board approval date shall be eligible for reimbursement upon execution of the agreements; and that the Controller be authorized to disburse funds as directed.

GRANTEE shall be paid an amount not to exceed fifty thousand dollars (\$50,000) for reimbursable project costs.

Items of cost for which reimbursement is claimed on the Voucher and Practice Certification Summary Form (Attachment A) are to be supported by invoices/receipts for payments and will be verified by the DEPARTMENT as practical and reasonable. The DEPARTMENT has the authority to make adjustments to the costs submitted for reimbursement. Attachment A with all necessary supporting documentation can only be submitted to the DEPARTMENT on a monthly basis for reimbursement.

In no case shall the DEPARTMENT provide cost-share assistance to the GRANTEE for the reapplication of a practice that was removed by the GRANTEE during its effective life, as defined in Attachment B, without consent of the DEPARTMENT or that failed due to improper maintenance. Attachments A and B are attached and incorporated by this reference.

Reimbursable expenses are limited to activities relating to the implantation of channel stabilization, stream enhancement and restoration along 2,800 feet of stream corridor on Plymouth Creek between Fernbrook Lane and Annapolis Lane in the City of Plymouth (as identified in the Hennepin County Natural Resource "Opportunity" Grant Application for the Plymouth Creek Restoration Project received via email September 7, 2016) including the preparation of project specifications and designs and related site construction and restoration work, in kind services, operation and maintenance plans and related consulting and inspection.

2. PRACTICES TO BE IMPLEMENTED

Expenses incurred in performing activities specified in the Hennepin County Natural Resource Grant Application submitted by the GRANTEE and as is further described in Attachment B to this Agreement or as approved by the County. Administrative costs incurred by GRANTEE are not eligible for reimbursement.

The conservation practice category for which cost-share is requested is **The Plymouth Creek Restoration Project as more fully described in Attachment B.**

3. COST-SHARE PAYMENT

Cost-share payment shall be made directly to GRANTEE after completion of the practice(s) and upon the presentation of a claim as provided by law governing the COUNTY's payment of claims and/or invoices. The GRANTEE shall submit invoices for services related to the implementation of practices. Payment shall be made within 45 days from receipt of the invoice.

GRANTEE shall not provide services under this Agreement without receiving a purchase order or purchase order number supplied by the COUNTY. All invoices shall display the COUNTY purchase order number and be sent to the central invoice receiving address supplied by the COUNTY.

4. INDEPENDENT CONTRACTOR

The GRANTEE shall not be considered to be either a temporary or permanent employee of the COUNTY. The GRANTEE acts as an independent contractor and the GRANTEE'S contractor act hereunder as independent contractors and acquires no tenure rights or any rights or benefits of Workers' Compensation, Re-employment Compensation, medical and hospital care, sick and vacation leave, severance pay, retirement benefits, or any other right or benefit offered to COUNTY employees.

GRANTEE shall select the means, method, and manner of performing the services. Nothing is intended or should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting GRANTEE as the agent, representative, or employee of the COUNTY for any purpose. GRANTEE is and shall remain an independent GRANTEE for all services performed under this Agreement. GRANTEE shall secure at its own expense all personnel required in performing services under this Agreement. Any personnel of GRANTEE or other persons while engaged in the performance of any work or services required by GRANTEE will have no contractual relationship with the COUNTY and will not be considered employees of the COUNTY. The COUNTY shall not be responsible for any claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law or the Workers' Compensation Act of the State of Minnesota on behalf of any personnel, including, without limitation, claims of discrimination against GRANTEE, its officers, agents, GRANTEES, or employees. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind from the COUNTY,

including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Compensation, disability, severance pay, and retirement benefits.

5. NON-DISCRIMINATION

In accordance with the COUNTY's policies against discrimination, GRANTEE agrees that it shall not exclude any person from full employment rights nor prohibit participation in or the benefits of, any program, service or activity on the grounds of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin. No person who is protected by applicable Federal or State laws against discrimination shall be subjected to discrimination.

6. INDEMNIFICATION

GRANTEE agrees to defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of GRANTEE, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of GRANTEE to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of GRANTEE personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the Data Practices provisions set forth in Section 9 hereof.

7. ACCESS FOR INSPECTIONS

The GRANTEE agrees to acquire written consent from all cost-share grant recipients that the COUNTY, and any duly authorized representatives of the COUNTY, at a time that is mutually agreed upon by the cost-share recipient and the COUNTY, and as often as the COUNTY may reasonably deem necessary, shall have access to and the right to enter the cost-share recipient's property, for purposes of inspection of the practice identified herein.

8. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

GRANTEE shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of the COUNTY. A consent to assign shall be subject to such conditions and provisions as the COUNTY may deem necessary, accomplished by execution of a form prepared by the COUNTY and signed by GRANTEE, the assignee and the COUNTY. Permission to assign, however, shall under no circumstances relieve GRANTEE of its liabilities and obligations under the Agreement.

9. DEFAULT AND CANCELLATION/TERMINATION

Should the GRANTEE fail to maintain the practice during its effective life, the Grantee is considered to be in default and is liable to the DEPARTMENT for the full amount of financial assistance received to install and establish the practice. The GRANTEE is not liable for cost-share assistance received if the failure was caused by reasons beyond the GRANTEE's control, or if conservation practices are applied at GRANTEE's expense that provide equivalent protection of the soil and water resources.

This Agreement may be canceled with or without cause by either party upon thirty (30) day written notice.

If this Agreement expires or is cancelled or terminated, with or without cause, by either party, at any time, GRANTEE shall not be entitled to any payment, fees or other monies except for payments duly invoiced for then delivered. In the event GRANTEE has performed work toward a Deliverable that COUNTY has not Accepted at the time of cancellation or termination, GRANTEE hereby expressly acknowledges and agrees that GRANTEE shall not be entitled to any payment for said work including but not limited to incurred costs of performance, termination expenses, profit on the work performed, other costs founded on termination for convenience theories or any other payments, fees, costs or expenses not expressly set forth herein.

10. CONTRACT ADMINISTRATION

In order to coordinate the services of GRANTEE with the activities of the Hennepin County Department of Environment and Energy so as to accomplish the purposes of this Agreement, **James Kujawa, Senior Environmentalist, 612-348-7338**, or successor shall manage this Agreement on behalf of the COUNTY and serve as liaison between the COUNTY and GRANTEE.

Laura Jester, Administrator, Bassett Creek Watershed Management Commission, 952-270-1990, SHALL MANAGE THE AGREEMENT ON BEHALF OF GRANTEE. GRANTEE MAY REPLACE SUCH PERSON BUT SHALL IMMEDIATELY GIVE WRITTEN NOTICE TO THE COUNTY.

11. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. GRANTEE shall comply with all applicable federal, state and local statutes, regulations, rules and ordinances currently in force or later enacted.
- B. If the source or partial source of funds for payment of services under this Agreement is federal, state or other grant monies, GRANTEE shall comply with all applicable conditions of the specific referenced or attached grant.

- C. GRANTEE certifies that it is not prohibited from doing business with either the federal government or the State of Minnesota as a result of debarment or suspension proceedings.

12. PAPER RECYCLING

The COUNTY encourages GRANTEE to develop and implement an office paper and newsprint recycling program.

13. NOTICES

Any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to the COUNTY shall be sent to the County Administrator with a copy to the originating Department at the address given in the opening paragraph of the Agreement. Notice to GRANTEE shall be sent to the address stated in the opening paragraph of the Agreement or to the address stated in GRANTEE's Form W-9 provided to the COUNTY.

14. CONFLICT OF INTEREST

GRANTEE affirms that to the best of GRANTEE's knowledge, GRANTEE's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. GRANTEE agrees that, should any conflict or potential conflict of interest become known to GRANTEE, GRANTEE will immediately notify the COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and will advise the COUNTY whether GRANTEE will or will not resign from the other engagement or representation.

15. PROMOTIONAL LITERATURE

GRANTEE agrees, to the extent applicable, to abide by the current Hennepin County Communications Policy (available upon request). This obligation includes, but is not limited to, GRANTEE not using the term "Hennepin County" or any derivative in any promotional literature, advertisements of any type or form or client lists without the express prior written consent of a COUNTY Department Director or equivalent.

16. MINNESOTA LAWS GOVERN

The Laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, State of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the State of Minnesota. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

17. HENNEPIN COUNTY PERSONAL PROPERTY TAX AND PROPERTY TAX

Grantee affirms that it and its officers have paid all Hennepin County personal property taxes and property taxes due on all of its Hennepin County properties for taxes owed on or before the date of the execution of this contract. If the County finds that property taxes have not been paid by Grantee, Grantee's owner and Grantee's board of directors (if any), County may refuse to disburse funds or require the return of all or part of the funds already disbursed.

COUNTY ADMINISTRATOR AUTHORIZATION

Reviewed by the County Attorney's
Office

COUNTY OF HENNEPIN
STATE OF MINNESOTA

Assistant County Attorney

By: _____
David J. Hough, County Administrator

By: _____
Assistant County Administrator - Public Works

Date: _____

Recommended for Approval

By: _____
Director, Hennepin County Environment and
Energy Department

Date: _____

Grantee

The Grantee certifies that the person who
executed this Agreement is authorized to do so on
behalf of the Grantee as required by applicable
articles, bylaws, resolutions or ordinances.*

Printed Name: _____

Signed: _____

Title: _____

Date: _____

* Contractor shall submit applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. This documentation shall be submitted at the time Contractor returns the Agreement to the County. Documentation is not required for a sole proprietorship.

ATTACHMENT A

Hennepin County – Department of Environment and Energy (HCDEE)						
COST - SHARE VOUCHER & PRACTICE CERTIFICATION FORM						
A. PAYEE INFORMATION				B. PROJECT INFORMATION		
Name:				I.D. Number:		
Address:				HCDEE Program: <input type="checkbox"/> Easement <input type="checkbox"/> Cost-Share <input type="checkbox"/> Other		
City, State, & Zip Code:				Practice Type (one only)	Practice Area(s)	Acres Completed:
C. COST INFORMATION		Basis of Request <input type="checkbox"/> Installation <input type="checkbox"/> Establishment <input type="checkbox"/> Reinstallation		Type of Request <input type="checkbox"/> Partial <input type="checkbox"/> Final	Completion Date:	
R/I	ITEM	QUANTITY	UNIT	UNIT PRICE	COST	
R - Receipted Item/Invoiced Item I - In - Kind Contribution (attach additional sheets as necessary) Total						
D. PAYMENT INFORMATION				EASEMENT PROGRAMS ((c) cannot exceed (a) - (b))		
TOTAL COST OF PRACTICE	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>	(from above)	(a) Maximum Payment Allowed	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>		
Program Cost-share Payment:	<div style="border: 1px solid black; width: 150px; height: 25px; text-align: center;">-</div>	[from box (c)]	(b)Total of Previous Payments:	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>		
OTHER FUNDING SOURCES (please identify source)	- _____ - _____ - _____ - _____ - _____		(c)Cost -Share Payment Requested	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>		
			COST-SHARE PROGRAM ((b) + (c) cannot exceed 75% of (a))			
			(a) Total Cost Approved:	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>		
			(b) Other public funds _____ %	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>		
LAND OWNER/LAND OCCUPIER COST:	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>		(c) HCDEE Share _____ %	<div style="border: 1px solid black; width: 150px; height: 25px;"></div>		
(Attach additional sheets as necessary)						
E. HCDEE CERTIFICATION						
I certify that an inspection has been performed and that the items identified in part C have been completed and are in accordance with the required practice standards and specifications.			I certify that I have reviewed this voucher and all supporting information and that to the best of my knowledge and belief, the quantities and billed costs or disbursements are accurate and are in accordance with terms of the program identified.			
_____ (HCDEE Technical Representative)			_____ (Authorized HCDEE Representative)			
_____ (Date)			_____ (Date)			

Attachment B

Plymouth Creek Restoration Project

Project Summary

This project will improve water quality in Plymouth Creek and Medicine Lake by reducing erosion and stabilizing and restoring streambanks along both sides of Plymouth Creek for a total of 2,800 feet including 1,700 feet within Plymouth Creek and 1,100 feet between Fernbrook Lane and Annapolis Lane in the City of Plymouth. The project is estimated to reduce total phosphorus and suspended sediment loading to the creek by 52.2 and 90,800 lbs per year, respectively. Plymouth Creek is tributary to Medicine Lake, a regionally significant lake impaired for nutrients with a nutrient TMDL completed in 2010.

The study identified 21 areas within three reaches where stabilization and restoration is needed. Techniques proposed to be used include re-meandering the stream channel; restoring the vegetative buffer; re-connecting the stream with its floodplain; installing a variety of stream stabilization measures, including riprap, root wads and toe wood, vegetated reinforced soil stabilization (VRSS), rock or log vanes, and stone toe protection; and removing large woody debris. Many of these techniques including vegetation establishment and log or rock vanes will also improve in-stream and near stream habitat along Plymouth Creek. Finally, educational signage in Plymouth Creek Park will inform residents and disc golf players about the project and its goals along with information on general water quality and best practices.

Approved Budget Activities

Activities relating to the implantation of channel stabilization, stream enhancement, riparian corridor improvements, habitat restoration, and stream corridor restoration practices along Plymouth Creek in Plymouth, as part of the BCWMC 2016 study for Plymouth Creek (as identified in the Hennepin County Natural Resource “Opportunity” Grant Application for the Plymouth Creek Restoration Project received via email September 7, 2016) including the preparation of project specifications and designs and related site construction and restoration work, in kind services, operation and maintenance plans and related consulting and inspection.

Hennepin County Natural Resource “Opportunity” Grant reimbursements with said work shall not exceed \$50,000 for reimbursable project expenses.

The effective life of this practice is ten (10) years.

Reporting Requirements/Deliverables

The following reporting items are required during the project:

- Project Design and Specifications
- All invoices for consultant and/or contractor work.
- Approval of in-kind contributions prior to work.
- Certification that the project was installed according to the approved plans and specifications
- Operation and Maintenance plans covering the life of the practice.
- Final Project Report (see standard template)