

Item 4H.
BCWMC
2-15-18

**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”), each a “Party” or collectively referred to as the “Parties” to this Agreement.

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.
3. Council is in the “Engineering” phase of the Federal Transit Administration (“FTA”) New Starts process and is authorized to engage in activities to advance the Project to the “Construction” phase. Recent Project improvement design changes proposed during the Engineering phase require additional federal, state, and local environmental approvals.
4. The Project improvements could impact the Bassett Creek Watershed, which is governed by BCWMC.
5. 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.
6. 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.
7. 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; and assistance with and review of hydrologic modeling.
8. 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. .

9. The Parties wish to enter an Agreement to govern the Council's payment of the actual costs of BCWMC staff time spent performing work under this Agreement as outlined in Exhibit A.

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 and other activities associated with the Project as specified in this section. BCWMC staff will provide analysis and consultation regarding the modeling and its potential impact on the SWLRT Project, including by attending meetings with Project staff and reviewing associated modeling; completing Project design review; and providing information about standard BCWMC requirements. 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 pay BCWMC for actual costs of staff and consultant time spent on activities supporting the Project in an amount not to exceed \$7,000 pursuant to the terms of this Agreement.

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 \$7,000.

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 upon execution and will terminate on the earlier of December 31, 2018 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 amount specified in Section 2.01, until the effective date of the termination.

3.02 Dispute Resolution Process. A dispute resolution process shall be used for any unresolved issue, dispute, or controversy between the Parties before any legal remedies are exercised. The dispute resolution process contains a three-level dispute resolution ladder that escalates a dispute from the project management level through the executive management level. BCWMC is represented from level 1 to 3 in the following order: BCWMC Engineer, BCWMC Administrator, BCWMC Board of Commissioners. The Council is represented from level 1 to 3 in the following order: Southwest LRT Project Director, Council's Metro Transit Division's General Manager, and the Council's Regional Administrator. At each level, representatives of the Parties shall meet and continue to explore resolution until either Party determines, in good faith, that effective resolution is not possible at the current level, and notifies the other Party that the process is elevated to the next level. If either or both Parties make such a determination at any point during issue resolution at level 3, then the dispute resolution process has been exhausted.

3.03 Material Breach. If either party materially breaches this Agreement, the non-breaching Party may demand that the breaching party cure the breach. If the breaching party does not cure the breach within 90 days, the non-breaching party may terminate this agreement with 10 days written notice to the other party.

3.04 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.

3.05 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.

3.06 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.

3.07 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.

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

3.09 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.

3.10 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:

Jim Alexander, P.E. or his successor
Green Line Extension Project Office
6465 Wayzata Boulevard, Suite 500
St. Louis Park, MN
jim.alexander@metrotransit.org

For the BCWMC:

Laura Jester or her successor
BCWMC Administrator
c/o 16145 Hillcrest Lane
Eden Prairie, MN 55346
laura.jester@keystonewaters.com

3.11 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.

3.12 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.

3.13 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.

3.14 Prompt Payment of Subcontractors. Consistent with Minnesota Statutes, section 471.425, if any part of the Work is subcontracted, BCWMC shall pay any such subcontractor within ten (10) days of the BCWMC's receipt of payment from the Council for undisputed services provided by the subcontractor. BCWMC shall not, by reason of said payments, be relieved from responsibility for that portion of the Work done by the subcontractor and shall be responsible for the entire Work until the same is finally accepted by the Council.

BCWMC shall pay interest at the rate of one and one-half percent (1½%) per month or part thereof to a subcontractor on any undisputed amount not paid in accordance with the preceding paragraph. The minimum monthly interest payment for an unpaid balance of one hundred dollars (\$100) or more is ten dollars (\$10). For an unpaid balance of less than one hundred dollars (\$100), the BCWMC shall pay the actual interest due to the subcontractor.

In accordance with Minnesota Statutes, section 471.425, a subcontractor who prevails in a civil action to collect interest penalties from BCWMC must be awarded its costs and disbursements, including attorney fees, incurred in bringing the action. Execution of this Agreement constitutes the BCWMC's consent to such award in the event a subcontractor prevails in such an action.

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

By: _____

Jim Alexander

Its: Director, Transit Systems Development

Date: _____

By: _____

Jim de Lambert

Its: Chair

Date: _____

EXHIBIT A

BCWMC COST ESTIMATE

Total Estimated Costs for Tasks Related to the Project

1. Review of project designs and other potential follow-up tasks/correspondence:
Estimated costs: \$5,000 - \$7,000. This covers the costs of the BCWMC to review the project designs per the BCWMC Requirements document including analyzing project for meeting minimal impact design standard (MIDS) and erosion/sediment control. This covers potential additional follow-up tasks or correspondence related to modeling, tunnel connection, or other storm water related issues and impacts.

