

**(DRAFT) REIMBURSEMENT AGREEMENT**

**THIS REIMBURSEMENT AGREEMENT** (the "Agreement"), dated this \_\_\_ day of \_\_\_\_\_, 2019, is between the Bassett Creek Watershed Management Commission, a Minnesota joint powers organization (the "Commission"), and the City of Minneapolis, a Minnesota municipal corporation (the "City"). The Commission and the City may be referred to collectively herein as the "Parties."

**RECITALS**

**WHEREAS**, the Parties each share a common interest in evaluating the options for incorporating natural resources, recreation, and redevelopment by integrating floodplain and stormwater management into a regional solution for the Bassett Creek Valley (the "Valley"), which is located within the City; and

**WHEREAS**, the City recently advocated for an engineering study related to floodplain and stormwater management within the Valley for the aforementioned purposes; and

**WHEREAS**, accordingly, by separate agreement, the Commission intends to engage Wenck Associates, Inc. ("Wenck") for the purpose of facilitating and conducting said engineering study (the "Services"); and

**WHEREAS**, separate from the Services provided by Wenck, the Commission's engineers will be actively involved in assisting with the study and reviewing and commenting on the results thereof; and

**WHEREAS**, in exchange for the Commission's procurement of the Services to be provided by Wenck and its own engineer's involvement with said Services, the City wishes to reimburse the Commission for the full cost of Wenck's Services and for a portion of the Commission's engineering expenses related thereto, all in accordance with the terms and conditions contained herein.

**NOW, THEREFORE**, in consideration of the performance by the Parties of the terms herein and for other good and valuable consideration, the Commission and the City hereby covenant and agree as follows:

**AGREEMENT**

- 1. Commission's Procurement of Services.** The Commission hereby agrees to engage Wenck to provide the Services previously described herein. Pursuant to a separate agreement, the Commission agrees to limit Wenck's fees for the Services to \$97,170.00. The Commission shall be solely responsible for making full payments to Wenck in accordance with that separate agreement between the Commission and Wenck, and said payments shall be subject to full reimbursement by the City as provided for in Section 2 of this Agreement.

2. **Reimbursement for Wenck's Services.** The City agrees to reimburse the Commission for all fees charged by Wenck to complete the Services within 30 days of reimbursement requests submitted to the City by the Commission. At the City's request, the Commission shall provide copies of paid invoices as evidence of Wenck's fees.
3. **Reimbursement for Separate Engineering Fees.** The Parties each understand and acknowledge that the Commission's engineers will also be involved in assisting Wenck with conducting the study contemplated herein, including, but not limited to, coordinating and communicating with Wenck regarding its Services, assisting Wenck with its Services, and reviewing and commenting on Wenck's deliverables. The fees associated with these separate engineering services are not expected to exceed \$9,800.

The City agrees to reimburse the Commission for one-half of the fees incurred by the Commission for these separate engineering services as they relate to the Services; provided, however, that the Commission's total responsibility for said services shall be limited to \$2,000.00. Accordingly, to the extent that the fees for said services do not exceed \$4,000.00, the Parties will split the fees 50-50, and should the fees for these separate engineering services exceed \$4,000.00, the Commission's responsibility shall cap at \$2,000.00 and the City will be responsible for the remaining balance. The City agrees to reimburse the Commission for these fees within 30 days of reimbursement requests submitted to the City by the Commission. At the City's request, the Commission shall provide copies of paid invoices as evidence of these separate engineering fees.

4. **Term of Agreement.** This Agreement shall commence on the date of execution by both Parties and it shall remain in full force and effect until the completion of the Services and all reimbursement required herein is made by the City, at which point the Agreement shall immediately terminate. The Commission may also terminate this Agreement, upon written notice to the City, if it determines that it is unable to adequately procure the Services in accordance with the fee limitation contemplated in Section 1 of this Agreement.
5. **Entire Agreement.** This Agreement contains the complete agreement between the Parties and supersedes any previous oral agreements, representations and negotiations between the Parties regarding the subject matters of this Agreement. The Parties agree that there are no representations, warranties, collateral agreements or conditions affecting this Agreement except for those that are expressly provided herein.
6. **Assignment.** Neither party shall assign this Agreement without the written consent of the other party.
7. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their permitted successors and assigns.
8. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota.

9. **Data Practices.** Any and all data created, collected, received, stored, used, maintained, or disseminated to either party pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13.
10. **Counterparts.** This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original but all of which taken together shall be deemed a single instrument.
11. **Severability.** In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, all other provisions will nevertheless continue to be valid and enforceable with the invalid or unenforceable parts severed from the remainder of this Agreement.
12. **Waiver.** The waiver by either party of a breach, default, delay or omission of any of the provisions of this Agreement by the other party will not be construed as a waiver of any subsequent breach of the same or other provisions.
13. **Incorporation of Recitals.** The Recitals set forth in the preamble to this Agreement are incorporated into this Agreement as if fully set forth herein.

**IN WITNESS WHEREOF** the Parties have duly affixed their signatures under hand and seal on this \_\_\_\_ day of \_\_\_\_\_, 2019.

**THE COMMISSION:**

By: \_\_\_\_\_  
Its Chair

By: \_\_\_\_\_  
Its Secretary

**THE CITY:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form By:

By: \_\_\_\_\_  
Assistant Minneapolis City Attorney