

**CONDITIONAL LICENSE AGREEMENT**

This Conditional License Agreement (“Agreement”) is entered into by and between the Bassett Creek Watershed Management Commission, a joint powers watershed management organization under the laws of the state of Minnesota (“Owner”), and the following company/agency (“Licensee”):

**The State of Minnesota, acting through  
its Dept of Transportation**  
\_\_\_\_\_  
Company/Agency Name

**MnDOT Metro District, 1500 W Co Rd B2,  
Roseville MN 55113**  
\_\_\_\_\_  
Address

**RECITALS**

- A. The Owner owns a proprietary computer model, which uses the BCWMC XP-SWMM program, (“Model”) which may be used to create modeling data for certain projects; and
- B. The Owner wishes to provide a temporary, non-exclusive, license (“License”) to the Licensee to use the Model for the purposes for which it is intended; and
- C. The Licensee wishes to utilize the Model for such purposes pursuant to the terms outlined in this Agreement.

**AGREEMENT**

In consideration of the recitals and the mutual promises set forth herein, the parties hereby agree as follows:

- 1. **License.** The Owner hereby grants the Licensee a temporary, non-exclusive, license to use the Model for only the following project/purpose: development of an Extreme Flood Vulnerability Tool. Such use shall be subject to the terms outlined in this Agreement. The Licensee shall be responsible for obtaining, at its own cost, the XP-SWMM program and related licenses in order to run the Model.
- 2. **Term.** This License shall commence upon the date of the final signature on this Agreement, below, and be in effect for a period of twelve months, unless terminated earlier by the Owner providing written notice of termination to the Licensee. This Agreement shall terminate immediately upon the delivery of such termination notice unless a different termination date is provided in the notice.
- 3. **No Support.** The parties hereby expressly acknowledge that the Licensee shall be solely responsible for use of the Model by the Licensee. The Owner is in no way required or obligated to provide any technical or other support to the Licensee in the use of the Model. The Owner may elect to answer basic questions regarding the Model, but is under no duty to assist in the use of the Model or in the production of results. In the event the Owner elects to provide any support, such support shall not create any ongoing or future obligation on behalf of the Owner to provide additional support to the Licensee.
- 4. **No Warranty.** The Owner expressly waives any and all warranties related to the use of the Model. The Owner further makes no representation regarding the accuracy, completeness, or permanence of the Model, or for its merchantability or fitness for a particular purpose. If errors are found by the Licensee or changes to the Model are

made, the Licensee shall document those errors and changes made and provide that information to the Owner.

5. Specific Purpose. The Model was developed exclusively for a specific project and Licensee acknowledges that the data and programing may not be suitable for other uses or computer applications. The use of files prepared by the Owner shall not in any way negate the Licensee's responsibility for the proper checking of model input parameters. All information in the Model constitutes an instrument of service of the Owner. Licensee has no ownership rights in the Model and has only the limited, revocable, rights granted under this Agreement. The Model shall, in all respects, remain the sole legal property of Owner. In no case shall Licensee transfer the Model to others without the prior written consent of the Owner.
6. Compatibility. The Owner hereby makes no representations related to the compatibility of the Model with any hardware or software. The Owner uses reasonable efforts to eliminate contamination, but files are not guaranteed to be free from contamination and the Licensee uses the Model at its sole risk.
7. Modifications. If the Licensee modifies the Model through its use, Licensee shall not represent to others that the modified Model or the resulting data is that of the Owner's, except with the prior written consent of the Owner.
8. Sharing. The Licensee shall not transfer or share the Model with any person, company, or entity that is not a party to this Agreement or an employee of a party to this Agreement. The Licensee shall direct any third parties inquiring about using the Model to the Owner. For the avoidance of doubt, Licensee is not authorized to transfer or share the Model with any third party unless and until said third party executes either (i) a third-party certification form or (ii) a separate conditional license agreement with the Owner, pursuant to any terms and conditions required by the Owner, in its sole discretion.
9. Liability. Licensee agrees to utilize the Model at its sole risk. Licensee agrees to be responsible for its own acts and behavior and the results thereof. Licensee's liability is governed by the Minnesota Tort Claims Act, Minn. Stat. § 3.736. The Licensee waives any and all claims against the Owner, its employees, officers, and agents to the extent that such claims arise out of or are related to the Licensee's use of the Model. Further, the Owner shall have no liability to the Licensee for any loss or damage which may be caused to Licensee's data or systems due to its use of the Model.
10. No Copyright Fees. The Owner believes that no licensing or copyright fees are due to others on account of the transfer or licensing of the Model.
11. Intellectual Property. The Licensee hereby acknowledges that the Model is the intellectual property of the Owner. As such, the Licensee hereby agrees not to take any action which may give rise to a claim of infringement or any other legal claim related to the Model. Further, the Licensee will not knowingly make any modifications to the Model which would infringe upon any other intellectual property rights of any other party.
12. Governing Law. The terms of this Agreement shall be construed under the laws of the state of Minnesota. Any dispute arising hereunder shall be heard in the courts of the state of Minnesota, Hennepin County. Both parties hereto waive any challenge to the jurisdiction of such courts.

- 13. Amendments. This Agreement represents the full and complete agreement between the parties. This Agreement replaces and supersedes any other agreements, whether oral or written, between the parties related to the subject matter herein. This Agreement may only be amended in writing signed by the parties.
  
- 14. Data Practices Act. The parties hereby acknowledge that the Owner and Licensee are entities subject to the provisions of the Minnesota Government Data Practices Act (the "Act"), Minnesota Statutes, Chapter 13. To the extent necessary to comply with those laws, the parties shall take all required actions to provide the other party with any information which may be deemed necessary to allow the party to comply with its requirements under the Act.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on behalf of the parties effective as of the latest date indicated below.

**OWNER:**

**Bassett Creek Watershed Management Commission**

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

Its: Commission Engineer

Date: \_\_\_\_\_

**LICENSEE:**

**State of Minnesota, acting through its Department of Transportation**  
(with delegated authority)

Signature: \_\_\_\_\_

By: Jeff Perkins, MnDOT Operations Division

Date: \_\_\_\_\_