

**STATE OF MINNESOTA GRANT CONTRACT WITH THE BASSETT CREEK  
WATERSHED MANAGEMENT COMMISSION FOR PERFORMING WATERSHED  
MODELING IN THE BASSETT CREEK WATERSHED**

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources, ("State") and the Bassett Creek Watershed Management Commission, 16145 Hillcrest Lane, Eden Prairie, Minnesota 55346 ("Grantee").

**Recitals**

1. Under Minn. Stat. Section 84.026, Subdivision 2, the State is empowered to enter into this grant agreement.
2. Minnesota Session Laws 2015, 1<sup>st</sup> Special Session, Chapter 5, Article 2, Sec 2, authorizes the Commissioner to provide funding for flood hazard mitigation in the areas included in disaster declaration DR-4182.
3. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to Minnesota Statutes §16B.98 Subdivision 1, the Grantee agrees to minimize administrative costs as a condition of this grant contract.
5. The Grantee attests it has the financial capacity to provide any required local match for the project or phase funded under the terms of this grant contract, and agrees to complete the project or phase if the costs exceeds the total funding provided by the State.

**Grant Contract**

**1 Term of Grant Contract**

- 1.1 **Effective date:** December 1, 2015 or the date the State obtains all required signatures under Minnesota Statutes §16C.05, subdivision 2, whichever is later.
- 1.2 **Expiration date:** June 30, 2017 or until all obligations have been satisfactorily fulfilled, whichever occurs first. This expiration date includes the certification period as authorized in Minn. Stat. 16A.28, subd.6.
- 1.3 **Survival of Terms.** The following clauses survive the expiration or cancellation of this grant contract:  
7. Liability; 8. State Audits; 9. Government Data Practices and Intellectual Property; 11. Publicity and Endorsement; 12. Governing Law, Jurisdiction, and Venue; and 14. Data Disclosure.

**2 Grantee's Duties**

The Grantee, who is not a state employee, will be responsible for performing detailed hydraulic and hydrologic modeling of the North Branch Bassett Creek and the Bassett Creek main stem from Medicine Lake to the confluence with North Branch, as described in the 2016 budget table included in the *Flood Damage Reduction Grant Assistance Program* application dated August 24, 2015. State shall withhold 10% of the total grant amount until Grantee provides the State with a report summarizing the results of modeling funded with this grant.

**3 Time**

The Grantee must comply with all the time requirements described in this grant contract. In the performance of this grant contract, time is of the essence.

**4 Consideration and Payment**

4.1 **Consideration.** The State will reimburse for all eligible services performed by the Grantee under this grant contract as follows:

- (a) **Compensation.** The Grantee will be reimbursed 100% for eligible project expenses, not to exceed \$93,000.00. Grantee is not required to provide a match to the State funding.

**(b) Travel Expenses.** Reimbursement for eligible project-related travel and subsistence expenses actually and necessarily incurred by the Grantee as a result of this grant contract will be reimbursed in the same manner and in no greater amount than provided in the current "Commissioner's Plan" promulgated by the Commissioner of Minnesota Management and Budget (MMB). The Grantee will not be reimbursed for travel and subsistence expenses incurred outside Minnesota unless it has received the State's prior written approval for out of state travel. Minnesota will be considered the home state for determining whether travel is out of state.

**(c) Eligible Expenses.** Eligible expenses are those costs directly incurred by the Grantee that are solely related to and necessary for producing the work products described in Provision 2 of this Agreement. Eligible costs may include the following:

advertising costs for bids and proposals; capital expenditures for facilities, equipment and other capital assets as expressly approved by the State; materials and supplies; architectural and engineering services; construction management and inspection services; surveys and soil borings; attorney fees solely related and necessary to accomplish the Project, as determined by the State and actual construction of the Project.

Certain other types of costs may be eligible provided that they are (1) directly incurred by the Grantee; (2) are solely related to, and necessary for, producing the work products described in Provision 2; and (3) have prior written approval of the State. Any cost not defined as an eligible cost or not included in the Project Plan shall not be paid from State funds committed to the Project.

**(d) Ineligible Expenses.** Non-eligible costs for reimbursement means all costs not defined as eligible costs, including but not limited to the following:

fund raising; taxes, except sales tax on goods and services; insurance, except title insurance; attorney fees not necessary to accomplish the project; loans, grants, or subsidies to persons or entities for development; bad debts or contingency funds; interest; operation and maintenance costs; options for acquisition of real estate; lobbyists; and political contributions.

#### 4.2. **Payment**

**Invoices.** To obtain reimbursement for eligible costs under this Grant, the Grantee shall provide the State with invoices and evidence that the portion of the Project for which payment is requested has been satisfactorily completed. All invoices shall be sent to the person designated in Section 5. Grantee shall submit invoices and evidence that the required contribution toward any required local match are being met. Invoices will be submitted for the amount and should differentiate, when applicable, between the Federal and Non-Federal Project costs, as well as the State and local share of the Project costs. Invoices must be received by the State within thirty (30) days after the completion of the Project or the expiration of this Grant as set forth in Section 1.2, whichever occurs first. Invoices received after that date may not be eligible for reimbursement, at the State's discretion. The State's authorized agent has final authority for acceptance of Grantee's services, determination as to whether the expenditures are eligible for reimbursement under this Grant, and verification of the total amount requested. The Grantee shall not receive payment for work found by the State to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation. At its discretion, the State may retain 10% of the total grant award until the State has determined that the Grantee has satisfactorily fulfilled all of the terms of this Grant. If requested by the State, the Grantee shall arrange for a tour of the Project area prior to release of the final ten (10) percent of the funds. Invoices must be submitted timely and according to the following schedule:

It is required that invoices be submitted, at a minimum, at the close of each state fiscal year which is July 1 – June 30. If expenses are extensive, reimbursement requests may be submitted monthly or quarterly. Please itemize the eligible expenses by the month of occurrence, not liquidation. If invoices are not received in this format, it could delay receipt of payment.

## **5 Authorized Representative**

The State's Authorized Representative is Patrick Lynch, Floodplain Hydrologist, Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota, 55155, 651-259-5691, [pat.lynch@state.mn.us](mailto:pat.lynch@state.mn.us), or his/her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept or reject the services provided under this grant contract. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Laura Jester, Administrator, Bassett Creek Watershed Management Commission, 16145 Hillcrest Lane, Eden Prairie Minnesota, 55346, 952-270-1990, [laura.jester@keystonewaters.com](mailto:laura.jester@keystonewaters.com). If the Grantee's Authorized Representative changes at any time during this grant contract, the Grantee must immediately notify the State.

## **6 Assignment, Amendments, Waiver, and Grant Contract Complete**

6.1 **Assignment.** The Grantee shall neither assign nor transfer any rights or obligations under this grant contract without the prior written consent of the State, approved by the same parties who executed and approved this grant contract, or their successors in office.

6.2 **Amendments.** Any amendments to this grant contract must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

6.3 **Waiver.** If the State fails to enforce any provision of this grant contract, that failure does not waive the provision or the State's right to enforce it.

6.4 **Grant Contract Complete.** This grant contract contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

## **7 Liability**

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract.

## **8 State Audits**

Under Minn. Stat. §16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

## **9 Government Data Practices**

The Grantee and State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this

grant contract. The civil remedies of Minn. Stat. § 13.08 apply to the release of the data referred to in this clause by either the Grantee or the State.

If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

**10 Workers' Compensation**

The Grantee certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

**11 Publicity and Endorsement**

11.1 *Acknowledgments.* The Grantee agrees to acknowledge the State's financial support for the Project. Any statement, press release, bid, solicitation, or other document issued describing the Project shall provide information reflecting that State funds were used to support the Project and will contain the following language:

*This Project is made possible in part by a grant provided by the Minnesota Department of Natural Resources, through an appropriation by the Minnesota State Legislature.*

Any site developed or improved by the Project shall display a sign, in a form approved by the State, stating the same information.

11.2 *Endorsement.* The Grantee must not claim that the State endorses its products or services.

**12 Governing Law, Jurisdiction, and Venue**

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract. Venue for all legal proceedings out of this grant contract, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

**13 Termination**

13.1 *Termination by the State.* The State may immediately terminate this grant contract with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

13.2 *Termination for Cause.* The State may immediately terminate this grant contract if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

**14 Data Disclosure**

Under Minn. Stat. § 270C.65, Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minn. Stat. §§ 16A.15 and 16C.05.*

Signed:     *Felicia Barnes*    

Date:     11/05/2015    

Contract/PO No.     102835/3000086682    

**2. GRANTEE**

The Grantee certifies that the appropriate person(s) have executed the grant on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

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

Title: \_\_\_\_\_

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

**3. STATE AGENCY**

*Individual certifies the applicable provisions of Minn. Stat. § 16C.08, subdivisions 2 and 3 are affirmed.*

By: \_\_\_\_\_  
(with delegated authority)

Title: \_\_\_\_\_

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

Distribution: Agency  
Grantee  
State's Authorized Representative - Photo Copy

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

Title: \_\_\_\_\_

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