

**AGREEMENT FOR ENGINEERING SERVICES FOR BASSETT CREEK VALLEY-
FLOODPLAIN AND STORMWATER MANAGEMENT STUDY**

THIS AGREEMENT (“Agreement”) is made and entered into this 21st day of February, 2019

Between: Bassett Creek Watershed Management Commission
4300 MarketPointe Drive, Suite 200
Minneapolis, MN 55435
(hereinafter called “CLIENT”)

And: Wenck Associates, Inc.
1800 Pioneer Creek Center
P.O. Box 249
Maple Plain, Minnesota 55359-0249
(hereinafter called “WENCK”)

(and together “the Parties”)

Witnesseth that the Parties hereto agree, each with the other, as follows:

1. PROJECT
This Agreement pertains to the provision of engineering services for the Bassett Creek Valley - Floodplain and Stormwater Management Study (the “Project”).
2. SCOPE OF SERVICES
The services to be performed by WENCK for the Project are set forth in WENCK’s proposal referred to as the “Bassett Creek Valley - Floodplain and Stormwater Management Study” (collectively, the “Services”). Said proposal is attached hereto as Exhibit A and is fully incorporated into this Agreement. The Services may be modified by a written, mutually agreeable Change Order signed by both Parties. WENCK shall provide the Services as an independent contractor.
3. COMPENSATION
Compensation shall be paid for the Services actually provided in accordance with the WENCK’s proposal but in no event shall the total compensation exceed \$97,170. The Project will be invoiced on a monthly basis for professional time completed and expenses incurred with a 0% mark-up. Invoices shall contain a detailed list of project labor and hours, rates, titles, and amounts undertaken by WENCK during the invoiced billing period. WENCK shall secure the CLIENT’s written approval before making any expenditures, purchases, or commitments on the CLIENT’s behalf beyond those that fall within the scope of Services contained herein. Invoices are to be paid within 45 days of receipt of the invoice.
4. TERM
WENCK will commence the Services beginning March 1, 2019 and provide appropriate expertise and will proceed with due diligence until completion of the project expected July 18, 2019.

5. TERMINATION

This Agreement may be terminated by CLIENT upon 5 days' notice in writing to WENCK. CLIENT shall pay to WENCK all amounts, including all expenses and other applicable charges, payable under this Agreement as of the termination date.

6. STANDARD OF CARE/INDEMNITY WENCK will provide:

- A. The standards of care, skill and diligence normally provided by a professional in the performance of the Services contemplated by this Agreement.
- B. Wenck agrees to indemnify and hold CLIENT harmless from any claim, cause of action, demand or other liability of any nature or kind (including the costs of reasonable attorney's fees and expert witness fees) arising out of any negligent act or omission of Wenck or any subcontractor of Wenck in connection with the Services performed under the terms of this Agreement. Nothing herein shall be deemed a waiver by CLIENT of any limitations or exemptions from liability available to it under Minnesota Statutes, chapter 466 or other law.
- C. WENCK shall, during the entire term of this Agreement, maintain commercial general liability insurance and professional liability insurance, each with a policy limit of at least \$1,000,000. WENCK shall have CLIENT named as an additional insured on WENCK's commercial general liability policy. WENCK shall provide CLIENT a certificate of insurance showing proof of such coverages.

7. INDEPENDENT CONTRACTOR

WENCK shall be deemed an independent contractor. WENCK's duties will be performed with the understanding that it has special expertise as to the Services which it is to perform and is customarily engaged in the independent performance of the same or similar services for others. All required equipment and personnel shall be provided or contracted for by WENCK. The manner in which the services are performed shall be controlled by WENCK; provided, however, that the nature of the Services and the results to be achieved shall be specified by the CLIENT. The Parties agree that this is not a joint venture and the Parties are not co-partners. WENCK is not to be deemed an employee or agent of the CLIENT and has no authority to make any binding commitments or obligations on behalf of the CLIENT except to the extent expressly provided herein. All services provided by WENCK pursuant to this Agreement shall be provided as an independent contractor and not as an employee of the CLIENT for any purpose, including but not limited to: income tax withholding, workers' compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.

8. DISPUTE RESOLUTION/GOVERNING LAW

If a dispute arises out of or in connection with this Agreement or the breach thereof, the Parties will attempt to settle the dispute by negotiation before commencing legal action. The governing law shall be the law of the State of Minnesota.

9. NOTICE AND OFFICIALS

WENCK will appoint a Project Manager who shall be in charge of the Project for WENCK. CLIENT shall designate in writing an official who shall be authorized to act for the CLIENT. The Project Manager appointed by WENCK shall maintain close contact with the authorized representative

of CLIENT. All notices to WENCK, including without limitation, those concerning changes in the scope of Services shall be directed in writing to the appointed Project Manager at the address shown above. Notices to CLIENT shall be directed in writing to CLIENT at the address of CLIENT shown above or to such other address as the CLIENT may designate in writing.

10. MISCELLANEOUS

This Agreement: i) constitutes the entire agreement between the Parties; ii) supersedes any previous representations or agreements between the Parties with respect to the Service; iii) may be modified or amended only in a writing signed by both Parties; and iv) shall inure to the benefit of and be binding upon the Parties, their respective permitted successors and assigns. Neither Party may assign this Agreement in whole or in part without the express written consent of the other Party. Nothing in this Agreement is to be construed to create any rights in any third party (including without limitation vendors and contractors working on the Project whether as third party beneficiaries or otherwise. WENCK shall comply with all applicable laws, rules, and regulations in providing the Services. WENCK agrees to comply with the Minnesota Data Practices Act with respect all data created, collected, received, stored, used, maintained, or disseminated by WENCK in the course of providing Services under this Agreement. This Agreement does not require data on individuals to be made available to WENCK. The books, records, documents, and accounting procedures of WENCK related to the Services are subject to examination by CLIENT and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years.

IN WITNESS WHEREOF the parties have duly executed this Agreement.

“CLIENT”
Bassett Creek Watershed
Management Commission

“WENCK”
Wenck Associates, Inc.

By: _____
Its Chair

By: _____

Its Secretary

Its:

EXHIBIT A

Project Proposal

[See Item 6Cii]