



UNIVERSITY OF MINNESOTA PROGRAM AGREEMENT

THIS PROGRAM AGREEMENT (the “**Agreement**”) is between Regents of the University of Minnesota (the “**University**”), a Minnesota constitutional corporation, and **Bassett Creek Watershed Management Commission**, a(n) **local governmental watershed unit** (the “**Organization**”). This Agreement is entered into by University through Extension.

The parties agree as follows:

1. Description of Program. University shall deliver the following program to Organization: **Multiple NEMO related programs and workshops including two introductory NEMO workshops (spring 2014), a water-based NEMO workshop (summer 2014) and a land-based NEMO workshop (fall 2014). Additional deliverables will include the Clean Water Summit and development and distribution of additional resources that support NEMO and these programs including fact sheets, water and land workshop-related documents and guides, and curriculum resources used to support these workshops and the overall program objectives. Specifics of the programs to be delivered are designated in the education plan that is attached. on the following dates Multiple throughout 2014 at the following location(s) multiple locations in within the watershed and the west metro region (the “Program”).**

1.1 University is the owner of or has obtained the right to use, distribute, publish, copyright (if applicable) and otherwise disseminate the Program and all materials related to the Program. Organization expressly disclaims any ownership or copyright to the Program and all materials related to the program.

1.2 Reference to Program in this Agreement shall be deemed to include any deliverables provided to Organization in connection with the Program, including without limitation, curriculum, reports, results, materials, products, and information.

2. Fee. For the Program described in Section 1, Organization shall pay the University: \$500.00, plus any sales or use tax, if applicable.

2.1 The fee shall be paid (check one of the two boxes):

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in full upon the signing of this Agreement; or
in installments, payable on the following dates:

2.2 Invoices shall be sent to:

Bassett Creek Watershed Management Commission
Attn: Laura Jester
16145 Hillcrest Lane
Eden Prairie, MN 55346

Phone No.: **952-270-1990**

Facsimile No.:

Email: **laura.jester@kestonewaters.com**

2.3 Organization represents to University that no funds received under any grant or separate funding agreement will be used to pay the fee to University.

3. Term. The term of this Agreement shall commence on **2/21/2014** (“**Effective Date**”) and shall expire on **12/31/2014** unless terminated earlier as provided in Section 4.

4. Termination. Either party may terminate this Agreement if the other party (i) fails to perform any material obligation under this Agreement and (ii) does not correct such failure within 30 days after having received written notice of such failure. Additionally, either party may terminate this Agreement for its convenience upon 60 days’ prior written notice to the other party. Upon any termination under this Section 4, Organization shall promptly pay University for all components of the Program delivered and costs incurred up to and including the effective date of termination.

5. Compliance with Applicable Regulations. University shall be responsible for complying with all federal, state and local laws and regulations relating to criminal background checks for all University staff members having direct contract with minors as a result of this Agreement.

6. DISCLAIMER OF WARRANTIES. UNIVERSITY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION, THE CONDITION, ORIGINALITY OR SUITABILITY OF THE PROGRAM OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT. UNIVERSITY EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

7. LIMITATION OF LIABILITY FOR BREACH OF CONTRACT. IN NO EVENT SHALL EITHER PARTY’S LIABILITY FOR BREACH OF THIS AGREEMENT INCLUDE DAMAGES FOR WORK STOPPAGE, LOST DATA, OR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT) OF ANY KIND. EXCEPT FOR EACH PARTY’S OBLIGATIONS UNDER SECTIONS 10.1 AND 10.2, EACH PARTY’S LIABILITY TO THE OTHER FOR BREACH OF THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE MONETARY CONSIDERATION PAID TO UNIVERSITY UNDER THIS AGREEMENT.

8. Use of University Name or Logo. Organization agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with

University or the name of any representative of University in any form whatsoever without the prior written permission of University in each instance. However, Organization may use the name of University in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements. Organization agrees to provide University with a copy of any such document.

9. Export Controls. Organization shall notify University in writing if any technological information or data to be provided to University is subject to export controls under U.S. law or if technological information or data that Organization is requesting University to produce during the course of work under this Agreement is expected to be subject to such controls. Organization shall notify University of the applicable export controls (for example, Commerce Control List designations, reasons for control, and countries for which an export license is required). University shall have the right to decline export controlled information or tasks requiring production of such information. If the Services cannot reasonably be performed without University access to export controlled information or data, the Agreement may be terminated by either party for convenience in accordance with Section 4, except that such termination shall occur immediately upon written notice to the other instead of at the end of the thirty (30)-day period set forth in Section 4. Organization shall not release export controlled information or data to University until Organization has been notified in writing by University that University has implemented a technology control plan for such information.

10. Indemnification and Insurance.

10.1 Except as provided in Section 10.2, each party shall be responsible for its own acts and omissions, including the acts of its directors, employees, agents and contractors, and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Liability of University is subject to the terms and limitations of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, as amended.

10.2 Organization shall indemnify, defend, and hold harmless University, its regents, faculty members, students, employees, agents, contractors, and authorized volunteer workers against any and all claims, costs, or liabilities, including attorneys' fees and court costs at both trial and appellate levels, for any loss, damage, injury, or loss of life (other than that attributable to willful, wanton or intentional acts or omissions of University) arising out of (i) use by Organization (or any third party acting on behalf of or under authorization from Organization) of the Program or any information, reports, deliverables, materials, products or other results of University's work under this Agreement or (ii) Organization's infringement of a third party's intellectual property rights or Organization's violation of any law, rule, or regulation in the provision of any materials to University.

10.3 Each party represents that it has and will maintain the following levels of insurance or self-insurance during the term of this Agreement: (i) Workers' Compensation in statutory compliance with Minnesota law; and (ii) general liability insurance in an amount not less than \$1,000,000 each occurrence. If requested by University, Organization's policy shall name Regents of the University of Minnesota as an additional insured. Certificates of all insurance detailed above shall be furnished to the other party upon request.

11. General Provisions.

11.1 Amendment. This Agreement shall be amended only in writing duly executed by all the parties to this Agreement.

11.2 Assignment. The parties may not assign any rights or obligations of this Agreement without the prior written consent of the other party. Any assignment attempted to be made in violation of this Agreement shall be void.

11.3 Entire Agreement. This Agreement (including all documents attached or referenced) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement, including without limitation, any non-disclosure agreements. The terms and conditions of any purchase order or similar document submitted by Organization in connection with the Program provided under this Agreement shall not be binding upon University.

11.4 Force Majeure. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this Agreement due to acts of God, strikes or other disturbances, including, without limitation, war, insurrection, embargoes, governmental restrictions, acts of governments or governmental authorities, and any other cause beyond the control of such party. During an event of force majeure the parties' duty to perform obligations shall be suspended.

11.5 Governing Law and Jurisdiction. The internal laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County, Minnesota.

11.6 Independent Contractor. In the performance of their obligations under this Agreement, the parties shall be independent contractors, and shall have no other legal relationship, including, without limitation, partners, joint ventures, or employees. Each party's employees (i) shall be regarded as the employees of such party and shall not be regarded as the employees of the other party; (ii) shall be subject to the employment policies and procedures of such party and shall not be subject to the employment practices and procedures of the other party; and (iii) shall not be entitled to any employment benefits of the other party. Neither party shall have the right nor power to bind the other party and any attempt to enter into an agreement in violation of this section 11.6 shall be void. Neither party shall take any actions to bind the other party to an agreement.

11.7 Notices. All notices and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally or by facsimile or by a recognized courier service or by United States Mail (first-class, postage pre-paid, certified return receipt

requested) to the other party at the following addresses. Such notices and other communications shall be deemed made when delivered; faxed; submitted to the courier service; or, with respect to U.S. mail, three (3) days after mailing.

If to University: University of Minnesota
 Extension
 Attn: **John Bilotta**
 173 McNeal Hall, 1420 Eckles Avenue
 St. Paul, MN 55108

 Phone No.: **612-624-7708**
 Facsimile No.: **612-625-1263**
 E-mail: **jbilotta@umn.edu**

With a copy to: University of Minnesota
 Office of the General Counsel
 Attn: Transactional Law Services Group
 360 McNamara Alumni Center
 200 Oak Street S.E.
 Minneapolis, MN 55455-2006
 Facsimile No.: (612) 626-9624
 E-mail: contracts@mail.ogc.umn.edu

With a copy to: University of Minnesota
 Extension Finance and Planning
 415 Coffey Hall
 1420 Eckles Avenue
 St. Paul, MN 55108
 E-mail:

If to Organization: **Basset Creek Watershed Management Commission**
 Attn: **Laura Jester**
 16145 Hillcrest Lane
 Eden Prairie, MN 55346

 Phone No.: **952-270-1990**
 Facsimile No.:
 E-mail: **laura.jester@keystonewaters.com**

11.8 Survival. Upon termination or expiration of this Agreement, Sections 2, 5, 6, 7, 8, 9, 10 and 11 shall survive.

IN WITNESS WHEREOF, the parties have entered into the Agreement as of the dates indicated below. Each individual signing below represents that they have the authority to bind the party on whose behalf they are signing.

Regents of the University of Minnesota

By: _____

Name:

Title:

Date: _____

By: _____

Name:

Title:

Date: _____