

Contract No: PR00003090

## GRANT AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487, on behalf of the Hennepin County Environment and Energy Department, 701 Fourth Avenue South, Suite 700, Minneapolis, Minnesota 55415 (“COUNTY”), and Bassett Creek Watershed Management Commission, 16145 Hillcrest Lane, Eden Prairie, MN 55346 (“GRANTEE”).

The parties agree as follows:

### 1. TERM AND AMOUNT OF GRANT

GRANTEE shall complete all grant requirements (“Grant Requirements”), commencing March 23, 2021 and expiring December 31, 2023, unless cancelled or terminated earlier in accordance with the provisions herein.

Items for which reimbursement is claimed by GRANTEE on the Cost-Share Voucher & Practice Certification Form (Attachment A) are to be supported by invoices/receipts for payments and will be verified by COUNTY as practical and reasonable. COUNTY has the authority to adjust the costs submitted for reimbursement where deemed appropriate. Attachment A, with necessary supporting documentation as referenced in Attachment B, can only be submitted to COUNTY on no more than a monthly basis for reimbursement.

Reimbursable expenses are limited to activities relating to the preparation of project specifications and designs, development of a sediment disposal plan, site restoration work, and related consulting fees as referenced in the Bassett Creek Watershed Management Commission Natural Resources Opportunity Grant Application received November 30, 2020, and as referenced in Attachment B.

The total amount of this grant is seventy-four thousand seven hundred forty-three dollars (\$74,743) (“Grant Funds”).

### 2. GRANT REQUIREMENTS

GRANTEE shall complete activities specified in the Hennepin County Natural Resources Opportunity Grant Application submitted by GRANTEE and as is further described in Attachment B to this Agreement or as approved by COUNTY. GRANTEE shall also provide expenses incurred in completing these activities using Attachment A to this Agreement. Administrative costs incurred by GRANTEE are not eligible for reimbursement.

In no case shall COUNTY provide payment to GRANTEE for the reapplication of a practice that was removed by the grantee during its effective life, as defined in Attachment B, without consent of COUNTY.

Grant Requirements are more fully described in Attachment B.

3. GRANT DISBURSEMENT

COUNTY shall pay Grant Funds directly to GRANTEE after completion of the Grant Requirements, and upon the presentation of a claim as provided by law governing COUNTY's payment of claims and/or invoices. GRANTEE shall submit invoices using Attachment A (or a copy thereof) no more than monthly. Payment shall be made within thirty-five (35) days from receipt of the invoice.

Reimbursable expenses are limited to those defined in Attachment B and include fees related to design, construction/implementation, inspection, and development of operations and maintenance plans for activities as listed in Attachment B. Any reimbursable expense which exceeds seventy-four thousand seven hundred forty-three dollars (\$74,743) shall receive prior written approval from the Contract Administrator.

GRANTEE shall not provide services under this Agreement without receiving a purchase order or purchase order number supplied by COUNTY. All invoices shall display a Hennepin County purchase order number and be sent to the central invoice receiving address supplied by COUNTY.

4. INDEPENDENT CONTRACTOR

GRANTEE shall select the means, method, and manner of performing Grant Requirements. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting GRANTEE as the agent, representative, or employee of COUNTY for any purpose. GRANTEE is and shall remain an independent contractor under this Agreement. GRANTEE shall secure at its own expense all personnel required in completing Grant Requirements, under this Agreement. GRANTEE's personnel and/or subcontractors engaged to perform any work required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims related to or on behalf of any of GRANTEE's personnel, including without limitation, claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law (Minnesota Statutes Chapter 268) or the Minnesota Workers' Compensation Act (Minnesota Statutes Chapter 176) or claims of discrimination arising out of state, local or federal law, against GRANTEE, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

5. NON-DISCRIMINATION

In accordance with COUNTY's policies against discrimination, GRANTEE shall not exclude any person from full employment rights nor prohibit participation in or the benefits of any program, service, or activity on the grounds of any protected status or class including but not limited to race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status, or national origin. No person who is protected by applicable federal or state laws against discrimination shall be subjected to discrimination.

6. INDEMNIFICATION

Each party hereto shall defend, indemnify, and hold harmless the other party, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including reasonable attorney's fees, resulting directly or indirectly from any act or omission of the party, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of this Agreement, and against all loss by reason of the failure of the party to perform any obligation under this Agreement.

For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of party personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of the provisions set forth herein.

7. INSURANCE

INTENTIONALLY OMITTED

8. DUTY TO NOTIFY

GRANTEE shall promptly notify COUNTY of any demand, claim, action, cause of action, or litigation brought against GRANTEE, its employees, officers, agents or subcontractors, which arises out of this Agreement. GRANTEE shall also notify COUNTY whenever GRANTEE has a reasonable basis for believing that GRANTEE and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a demand, claim, action, cause of action, administrative action, criminal arrest, criminal charge, or litigation arising out of this Agreement.

9. DATA PRIVACY AND SECURITY

- A. GRANTEE, its officers, agents, owners, partners, employees, volunteers and subcontractors shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable state and federal laws, rules, regulations and orders relating to data or the privacy, confidentiality or security of data, which may include the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (HIPAA). For clarification and not limitation, COUNTY hereby notifies GRANTEE that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. GRANTEE shall promptly notify COUNTY if GRANTEE becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA or other data, data security, privacy or confidentiality laws, and shall also comply with the other requirements of this Section.

Classification of data, including trade secret data, will be determined pursuant to applicable law and, accordingly, merely labeling data as “trade secret” by GRANTEE does not necessarily make the data protected as such under any applicable law.

- B. In addition to the foregoing MGDPA and other applicable law obligations, GRANTEE shall comply with the following duties and obligations regarding County Data and County Systems (as each term is defined herein). As used herein, “County Data” means any data or information, and any copies thereof, created by GRANTEE or acquired by GRANTEE from or through COUNTY pursuant to this Agreement, including but not limited to handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, videos, or symbols, or combinations thereof.

If GRANTEE has access to or possession/control of County Data, GRANTEE shall safeguard and protect the County Data in accordance with generally accepted industry standards, all laws, and all then applicable COUNTY policies, procedures, rules and directions provided to GRANTEE. To the extent of any inconsistency between accepted industry standards and such COUNTY policies, procedures, rules and directions, GRANTEE shall notify COUNTY of the inconsistency and follow COUNTY direction. GRANTEE shall immediately notify COUNTY of any known or suspected security breach or unauthorized access to County Data, then comply with all responsive directions provided by COUNTY. The foregoing shall not be construed as eliminating, limiting or otherwise modifying GRANTEE’s indemnification obligations herein.

- C. Upon expiration, cancellation or termination of this Agreement:
- (1) At the discretion of COUNTY and as specified in writing by the Contract Administrator, GRANTEE shall deliver to the Contract Administrator all County Data so specified by COUNTY.
  - (2) COUNTY shall have full ownership and control of all such County Data. If COUNTY permits GRANTEE to retain copies of the County Data, GRANTEE shall not, without the prior written consent of COUNTY or unless required by law, use any of the County Data for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such County Data; and shall not do anything which in the opinion of COUNTY would affect COUNTY's ownership and/or control of such County Data.
  - (3) Except to the extent required by law or as agreed to by COUNTY, GRANTEE shall not retain any County Data that are confidential, protected, privileged, not public, nonpublic, or private, as those classifications are determined pursuant to applicable law. In addition, GRANTEE shall, upon COUNTY's request, certify destruction of any County Data so specified by COUNTY unless such destruction is otherwise prohibited by law.

10. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of GRANTEE and involve transactions relating to this Agreement. GRANTEE shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its expiration, cancellation or termination.

11. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. GRANTEE binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations herein.
- B. GRANTEE shall not assign, transfer or pledge this Agreement whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by GRANTEE, the assignee and COUNTY. Permission to assign, however, shall under no

circumstances relieve GRANTEE of its liabilities and obligations under the Agreement.

- C. GRANTEE shall not subcontract this Agreement whether in whole or in part, without the prior written consent of COUNTY. Permission to subcontract, however, shall under no circumstances relieve GRANTEE of its liabilities and obligations under the Agreement. Further, GRANTEE shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of any specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between GRANTEE and each subcontractor shall require that the subcontractor's services be performed in accordance with this Agreement. GRANTEE shall make contracts between GRANTEE and subcontractors available upon request. For clarification and not limitation of the provisions herein, none of the following constitutes assent by COUNTY to a contract between GRANTEE and a subcontractor, or a waiver or release by COUNTY of GRANTEE's full compliance with the requirements of this Section: (1) COUNTY's request or lack of request for contracts between GRANTEE and subcontractors; (2) COUNTY's review, extent of review or lack of review of any such contracts; or (3) COUNTY's statements or actions or omissions regarding such contracts.
- D. As required by Minnesota Statutes section 471.425, subd. 4a, GRANTEE shall pay any subcontractor within ten (10) days of GRANTEE's receipt of payment from COUNTY for undisputed services provided by the subcontractor, and GRANTEE shall comply with all other provisions of that statute.

12. MERGER, MODIFICATION AND SEVERABILITY

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

GRANTEE and/or COUNTY are each bound by its own electronic signature(s) on this Agreement, and each agrees and accepts the electronic signature of the other party.

- B. Any alterations, variations or modifications of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. Except as expressly provided, the substantive legal terms contained in this Agreement including but not limited to Indemnification, Insurance, Merger, Modification and Severability, Default and Cancellation/Termination or Minnesota Law Governs may not be altered, varied,

modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.

- C. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

13. DEFAULT AND CANCELLATION/TERMINATION

- A. If GRANTEE fails to perform any of the provisions of this Agreement, fails to administer the work so as to endanger the performance of the Agreement or otherwise breaches or fails to comply with any of the terms of this Agreement, it shall be in default. Unless GRANTEE's default is excused in writing by COUNTY, COUNTY may upon written notice immediately cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until GRANTEE's compliance. In the event of a decision to withhold payment, COUNTY shall furnish prior written notice to GRANTEE.
- B. Notwithstanding any provision of this Agreement to the contrary, GRANTEE shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by GRANTEE. Upon notice to GRANTEE of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to GRANTEE for the purpose of set-off until such time as the exact amount of damages due COUNTY from GRANTEE is determined. Following notice from COUNTY of the claimed breach and damage, GRANTEE and COUNTY shall attempt to resolve the dispute in good faith.
- C. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.
- D. COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- E. This Agreement may be canceled/terminated with or without cause by COUNTY upon thirty (30) days' written notice.
- F. If this Agreement expires or is cancelled or terminated, with or without cause, by either party, at any time, GRANTEE shall not be entitled to any payment, fees or other monies except for payments duly invoiced for then-delivered and accepted deliverables/milestones pursuant to this Agreement. In the event GRANTEE has performed work toward a deliverable that COUNTY has not accepted at the time of expiration, cancellation or termination, GRANTEE shall not be entitled to any payment for said work including but not limited to incurred costs of performance,

termination expenses, profit on the work performed, other costs founded on termination for convenience theories or any other payments, fees, costs or expenses not expressly set forth in this Agreement.

- G. GRANTEE has an affirmative obligation, upon written notice by COUNTY that this Agreement may be suspended or cancelled/terminated, to follow reasonable directions by COUNTY, or absent directions by COUNTY, to exercise a fiduciary obligation to COUNTY, before incurring or making further costs, expenses, obligations or encumbrances arising out of or related to this Agreement.

14. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement do survive such term, cancellation or termination. Such provisions include but are not limited to: SERVICES TO BE PROVIDED GRANT REQUIREMENTS; INDEPENDENT CONTRACTOR; INDEMNIFICATION; INSURANCE; DUTY TO NOTIFY; DATA PRIVACY AND SECURITY; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION/TERMINATION; MEDIA OUTREACH; and MINNESOTA LAW GOVERNS.

15. GRANT ADMINISTRATION

Ellen Sones ([ellen.sones@hennepin.us](mailto:ellen.sones@hennepin.us); 612-596-1173) (“Grant Administrator”), or successor, shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and GRANTEE.

Laura Jester ([laura.jester@keystonewaters.com](mailto:laura.jester@keystonewaters.com); 952-270-1990), or successor, shall manage the agreement on behalf of GRANTEE. GRANTEE may replace such person but shall immediately give written notice to COUNTY of the name, phone number, and email/fax number (if available) of such substitute person and of any other subsequent substitute person.

16. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. GRANTEE shall comply with all applicable federal, state and local statutes, funding sources, regulations, rules and ordinances currently in force or later enacted.
- B. GRANTEE certifies that it is not prohibited from doing business with either the federal government or the state of Minnesota as a result of debarment or suspension proceedings.
- C. If the source or partial source of funds for payment under this Agreement is from federal or state monies or from a federal, state or other grant source, GRANTEE is bound by and shall comply with applicable law, rules, regulations, applicable



documentation or other COUNTY directives relating to the source and utilization of such funds.

17. RECYCLING

COUNTY encourages GRANTEE to establish a recycling program for at least three materials, such as newsprint, office paper, glass, plastic, and metal.

18. NOTICES

Unless the parties otherwise agree in writing, any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing, and shall be sent registered or certified mail. Notices to COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to GRANTEE shall be sent to the address stated in the opening paragraph of this Agreement or to the address stated in GRANTEE's Form W-9 provided to COUNTY.

20. CONFLICT OF INTEREST

GRANTEE affirms that to the best of GRANTEE's knowledge, GRANTEE's involvement in this Agreement does not result in a conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to GRANTEE, GRANTEE shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether GRANTEE will or will not resign from the other engagement or representation. Unless waived by COUNTY, a conflict or potential conflict may, in COUNTY's discretion, be cause for cancellation or termination of this Agreement.

21. MEDIA OUTREACH

GRANTEE shall notify COUNTY, prior to publication, release or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by COUNTY, by and through the Public Relations Officer or his/her designee(s), prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing, promotions, client lists, civic/community events or opportunities and/or other forms of outreach created by, or on behalf of, GRANTEE (i) that reference or otherwise use the term "Hennepin County," or any derivative thereof; or (ii) that directly or indirectly relate to, reference or concern the County of Hennepin, this Agreement, the Grant Requirements performed hereunder or COUNTY personnel, including but not limited to COUNTY employees and elected officials.

22. MINNESOTA LAWS GOVERN

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, state of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the state of Minnesota.

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COUNTY ADMINISTRATOR APPROVAL

Reviewed for COUNTY by  
the County Attorney's Office:

COUNTY OF HENNEPIN  
STATE OF MINNESOTA

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By:

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GRANTEE

GRANTEE warrants that the person who executed this Agreement is authorized to do so on behalf of GRANTEE as required by applicable articles, bylaws, resolutions or ordinances.\*

By:

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By:

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\*GRANTEE represents and warrants that it has submitted to COUNTY all applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. Documentation is not required for a sole proprietorship.



## **Attachment B**

### **Bassett Creek Main Stem Lagoon Dredging Project**

#### **Project Summary**

This project will remove and properly dispose of 39,600 cubic yards of contaminated sediment from three man-made lagoons that lie along Bassett Creek in Theodore Wirth Regional Park in Minneapolis. The lagoons were constructed in the 1930's to improve aesthetics and recreation within the park but are acting as de facto stormwater ponds and have filled with sediment over the last 90 years. This project will increase both the water quality and flood capacity of these water features as well as downstream waters.

This Opportunity Grant will fund \$74,743 of the estimated \$3,184,600 project cost to complete the excavation of the lagoons and will be leveraged with other funding sources, including from the Bassett Creek Watershed Management Commission and the Board of Water and Soil Resources.

Because of the large, 40 square-mile drainage area to the site, this project could have annual benefits approaching 156,000 pounds of sediment and 600 pounds of phosphorus captured annually.

#### **Approved Budget Activities**

Reimbursable expenses are limited to activities outlined in the grant application (as identified in the Hennepin County Natural Resources Opportunity Grant Application, titled 'Bassett Creek Main Stem Lagoon Dredging Project', dated November 30, 2020) and supplemental information submitted to Hennepin County staff via email following the original application. Reimbursable expenses include the preparation of project specifications and designs, development of a sediment disposal plan, site restoration work, and related consulting fees.

Hennepin County Natural Resource Opportunity Grant reimbursements, with said work, shall not exceed \$74,743 for reimbursable project expenses.

The effective life of this practice, for purposes of this grant, is twenty (20) years.

#### **Reporting Requirements/Deliverables**

The following reporting items are required during or following completion of the project, as listed, to receive reimbursement of Grant Funds:

- Project Design and Specifications prior to installation of the project.
- All invoices for completed consultant and/or contractor work.
- Approval of in-kind contributions prior to work.

- Certification that the project was completed according to the approved plans and specifications following work.
- Operation and Maintenance plans covering the life of the practice.
- Final Project Report (see standard template).