



Capitol Region Watershed District

595 Aldine Street

Saint Paul, MN 55104

(651) 644-8888 • capitolregionwd.org

TEMPLATE – PROFESSIONAL SERVICES AGREEMENT

AGREEMENT BETWEEN

CAPITOL REGION WATERSHED DISTRICT and

[CONSULTANT]

[Project Title]

This agreement is entered into by Capitol Region Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (CRWD), and [CONSULTANT], a Minnesota corporation (CONSULTANT). In consideration of the terms and conditions set forth herein and the mutual exchange of consideration, the sufficiency of which hereby is acknowledged, CRWD and CONSULTANT agree as follows:

1. Scope of Work

CONSULTANT will perform the work described in the [DATE] Scope of Services attached as Exhibit A (the "Services"). Exhibit A is incorporated into this agreement and its terms and schedules are binding on CONSULTANT as a term hereof. CRWD, at its discretion, in writing may at any time suspend work or amend the Services to delete any task or portion thereof. Authorized work by CONSULTANT on a task deleted or modified by CRWD will be compensated in accordance with paragraphs 5 and 6. Time is of the essence in the performance of the Services.

2. Independent Contractor

CONSULTANT is an independent contractor under this agreement. CONSULTANT will select the means, method and manner of performing the Services, except as explicitly provided otherwise in Exhibit A. Nothing herein contained is intended or is to be construed to constitute CONSULTANT as the agent, representative or employee of CRWD in any manner. Personnel performing the Services on behalf of CONSULTANT or a subcontractor will not be considered employees of CRWD and will not be entitled to any compensation, rights or benefits of any kind from CRWD.

CONSULTANT will disclose this agreement and CRWD funding provided hereunder to any client of CONSULTANT's, when CONSULTANT's work for that client may present a conflict of interest with respect to the work under this agreement. CONSULTANT will discuss with CRWD any current or new obligation that may present a conflict with CONSULTANT's work under this agreement, as soon as it becomes aware of the potential conflict.

3. Subcontract and Assignment

With the exception of any subconsultant identified in Exhibit A, CONSULTANT will not assign, subcontract or transfer any obligation or interest in this agreement or any of the Services without the written consent of CRWD and pursuant to any conditions included in that consent. CRWD consent to any subcontracting does not relieve CONSULTANT of its responsibility to perform the Services or any part thereof, nor in any respect its duty of care, insurance obligations, or duty to hold harmless, defend and indemnify under this agreement.

4. Duty of Care; Indemnification

CONSULTANT will perform the Services with due care and in accordance with national standards of professional care. CONSULTANT will hold CRWD, its board members, employees and agents harmless from, and indemnify them for, any and all actions, costs (including reasonable attorney fees), damages and liabilities of any nature arising from CONSULTANT's or a subcontractor's lack of due professional care. CONSULTANT will defend and hold CRWD, its board members, employees and agents harmless from, and indemnify them for, any and all actions, costs, damages and liabilities of any nature arising from: (a) CONSULTANT's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty; or (b) a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by CONSULTANT to CRWD; other than the breach of the duty of due professional care. For any claim subject to this paragraph by an employee of CONSULTANT or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for CONSULTANT or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

The CONSULTANT duty of care under this agreement does not extend to any party other than CRWD or to any CRWD use of the materials other than for the purpose(s) for which CONSULTANT is compensated under this agreement.

5. Compensation

CRWD will compensate CONSULTANT for the Services on [an hourly OR a lump-sum] basis and reimburse for direct costs in accordance with Exhibit A. Invoices will be submitted monthly for work performed during the preceding month. Payment for undisputed work will be due within 30 days of receipt of invoice. Direct costs not specified in Exhibit A will not be reimbursed except with prior written approval of the CRWD administrator. Subcontractor fees and subcontractor direct costs, as incurred by CONSULTANT, will be reimbursed by CRWD at the rate specified in CRWD's written approval of the subcontract.

[The total payment for each task will not exceed the amount specified for that task in Exhibit A.] The total payment for the Services will not exceed [\$_____]. Total payment in each respect means all sums to be paid whatsoever, including but not limited to fees and reimbursement of direct costs and subcontract costs, whether specified in this agreement or subsequently authorized by the administrator.

CONSULTANT will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. CONSULTANT agrees that any authorized CRWD representative or the state auditor may have access to and the right to examine, audit and copy any such records during normal business hours.

6. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until [DATE] unless earlier terminated as set forth herein.

CRWD may terminate this agreement at its convenience, by a written termination notice stating specifically what prior authorized or additional tasks or services it requires CONSULTANT to complete. CONSULTANT will receive full compensation for all authorized work performed, except that CONSULTANT will not be compensated for any part performance of a specified task or service if termination is due to CONSULTANT's breach of this agreement.

Insurance obligations; duty of care; obligations to defend, indemnify and hold harmless; duty to cooperate in assigning intellectual property rights; and document-retention requirements will survive the completion of the Services and the term of this agreement.

7. No Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this agreement, or to exercise any option, remedy or right herein, will not waive or relinquish such party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this agreement, CRWD waives no immunity in tort. This agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party.

8. Insurance

At all times during the term of this Agreement, CONSULTANT will have and keep in force the following insurance coverages:

- General: \$1.5 million, each occurrence and aggregate, covering CONSULTANT's ongoing operations on an occurrence basis and including contractual liability.
- Professional liability: \$1.5 million each claim and aggregate. Any deductible will be CONSULTANT's sole responsibility and may not exceed \$50,000. Coverage may be on a claims-made basis, in which case CONSULTANT must maintain the policy for, or obtain extended reporting period coverage extending, at least three (3) years from completion of the Services.
- Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis.
- Workers' compensation: in accordance with legal requirements applicable to CONSULTANT.

Coverage above \$1 million may be supplied by an excess or umbrella policy. CONSULTANT will not commence work until it has filed with CRWD a certificate of insurance documenting the required coverages and naming CRWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing coverage for CONSULTANT's ongoing operations as primary coverage on a noncontributory basis, including such coverage under any applicable excess or umbrella policy. The certificate will name CRWD as a holder and will state that CRWD will receive written notice before cancellation, nonrenewal or a decrease in the limit of any described policy under the same terms as CONSULTANT.

9. Compliance With Laws

CONSULTANT will comply with all applicable laws and requirements of federal, state, local and other governmental units in connection with performing the Services and will procure all licenses, permits and other rights necessary to perform the Services.

10. Data and Information

All data and information obtained or generated by CONSULTANT in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the data and information

are contained, documented or memorialized, are the property of CRWD. CONSULTANT hereby assigns and transfers to CRWD all right, title and interest in: (a) its copyright, if any, in the materials; any registrations and copyright applications relating to the materials; and any copyright renewals and extensions; (b) all works based on, derived from or incorporating the materials; and (c) all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and all causes of action in law or equity for past, present or future infringement based on the copyrights. CONSULTANT agrees to execute all papers and to perform such other proper acts as CRWD may deem necessary to secure for CRWD or its assignee the rights herein assigned. **[Define and exclude instruments of service, as appropriate]**

CRWD may immediately inspect, copy or take possession of any materials on written request to CONSULTANT. On termination of the agreement, CONSULTANT may maintain a copy of some or all of the materials except for any materials designated by CRWD as confidential or non-public under applicable law, a copy of which may be maintained by CONSULTANT only pursuant to written agreement with CRWD specifying terms.

11. Data Practices; Confidentiality

If CONSULTANT receives a request for data pursuant to the Data Practices Act, Minnesota Statutes chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) CONSULTANT possesses or has created as a result of this agreement, it will inform CRWD immediately and transmit a copy of the request. If the request is addressed to CRWD, CONSULTANT will not provide any information or documents, but will direct the inquiry to CRWD. If the request is addressed to CONSULTANT, CONSULTANT will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are but will notify and consult with CRWD and its legal counsel before replying. Nothing in the preceding sentence supersedes CONSULTANT's obligations under this agreement with respect to protection of CRWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that CONSULTANT is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

CONSULTANT agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by CRWD and so denominated by CRWD. CONSULTANT will not use any such materials for any purpose other than performance of the Services without CRWD written consent. This restriction does not apply to materials already lawfully possessed by CONSULTANT or that CONSULTANT lawfully received on a non-confidential basis from CRWD or another party. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, CONSULTANT retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities.

12. CRWD Property

All property furnished to or for the use of CONSULTANT or a subcontractor by CRWD and not fully used in the performance of the Services, including but not limited to equipment, materials, supplies and data, both hard copy and electronic, will remain the property of CRWD and returned to CRWD at the conclusion of the performance of the Services, or sooner if requested by CRWD. CONSULTANT further agrees that any proprietary data are the exclusive property of CRWD and will assert no right, title or interest therein. CONSULTANT will not disseminate, transfer or dispose of any proprietary data to any other person or entity unless specifically authorized in writing by CRWD.

Any property including but not limited to data supplied to CONSULTANT by CRWD or deriving from CRWD is supplied to and accepted by CONSULTANT as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, CONSULTANT's duty of professional care under paragraph 4, above, does not extend to data provided to CONSULTANT by CRWD or any portion of the Services that is inaccurate or incomplete as the result of CONSULTANT's reasonable reliance on those materials.

13. Notices

Any written communication required under this agreement to be provided in writing will be directed to the other party as follows:

To CRWD:

Project Manager
Capitol Region Watershed District
[Address]

Attention: [Project Name]

To CONSULTANT:

[Authorized Representative
Organization
Address]

Attention: [Project Name]

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

14. Choice of Law; Venue

This agreement will be construed under and governed by the laws of the State of Minnesota. Venue for any action will lie in Ramsey County.

15. Whole Agreement

The entire agreement between the two parties is contained herein and this agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this agreement is valid only when reduced to writing as an amendment to the agreement and signed by the parties hereto.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto execute and deliver this agreement.

CONSULTANT

By _____

Date: _____

Type or print name:

Type or print title:

Approved as to Form and Execution

CRWD Attorney

CAPITOL REGION WATERSHED DISTRICT

By _____

Date: _____

Type or print name:

Type or print title:

