

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

THIS PROFESSIONAL ENGINEERING SERVICES AGREEMENT is made between the Vadnais Lake Area Water Management Organization (“**VLAWMO**”), a Minnesota joint powers organization, and the following engineering firm (“**Engineer**”):

Engineer Name/ Organization:	Federal EIN:
Mailing Address:	Telephone Number:
Contact Person:	Email:

The following person is designated the Project Manager of this Agreement for VLAWMO (“**Project Manager**”):

Name:	Email:
Mailing Address:	Telephone Number:

VLAWMO and Engineer may hereinafter be referred to individually as a “party” or collectively as the “parties.” In consideration of the mutual promises and agreements contained herein, and intending to be legally bound, VLAWMO and Engineer hereby agree as follows:

1. **Agreement Documents.** This Agreement sets out the entire understanding between the parties and it supersedes any prior written or oral discussions or agreements between the parties regarding the same subject matter. This Agreement also includes VLAWMO’s request for proposals for the Services, attached hereto as Exhibit A (“**RFP**”), and the proposal submitted by Engineer, attached hereto as Exhibit B (“**Proposal**”), both of which are incorporated herein by reference. The provisions of the documents constituting the Agreement shall be read together and reconciled in the documents to the greatest extent reasonably possible. To the extent there are any conflicting provisions that cannot be reconciled, the more specific provision shall generally be controlling. In the event that a material conflict is found between provisions of the documents, the provisions in the following rank order shall take precedence: (1) this Professional Engineering Services Agreement document; (2) the RFP in Exhibit A; and (3) the Proposal in Exhibit B.
2. **Services.** Engineer agrees to perform professional engineering services as generally described in the attached Exhibit A (collectively, the “**Services**”) and in accordance with the terms and conditions of this Agreement. Engineer shall provide the Services on an as-requested basis. VLAWMO will issue a written task order (“**Task Order**”) for a specific project or item of work. The Task Order will provide any specific tasks to be provided in addition to any general Services described in this Agreement. All work done under a Task

Order are considered part of Engineer's Services for the purposes of this Agreement. Engineer shall provide the Services in a manner consistent with industry standards for similar Services and in accordance with the standards, requirements, and timelines set out in the Task Order authorizing the specific Services.

3. **Compensation.** VLAWMO shall compensate Engineer for the Services based on the rates listed in the Proposal and as be more specifically identified in a Task Order. Costs projected for a specific task in a Task Order cannot be transferred to any other tasks without prior consent of the Project Manager. Such consent does not increase the total amount of the compensation to be paid under the Task Order. Engineer shall notify the Project Manager if it anticipates changes in the cost structure for the tasks to be completed as part of the Task Order. Unless expressly provided otherwise in the Task Order, the total amount or rate of compensation is an all-inclusive amount that includes all expenses, costs, taxes, and other amounts Engineer incurs or pays to provide the Services pursuant to the Task Order. VLAWMO shall not be responsible for paying any amounts for the completion of the Services other than those expressly provided for in the Task Order.
4. **Notices.** Any notices provided under this Agreement shall be to Engineer and Project Manager as identified above.
5. **Term.** This Agreement shall commence and terminate on the dates indicated below unless it is terminated earlier as provided herein or the parties agree in writing to an extension of this Agreement.
6. **Invoices.** Engineer shall submit itemized invoices for the Services actually provided under this Agreement no more than once a month during the term of this Agreement. If the reimbursement of expenses is expressly authorized in the Task Order, no such expenses shall be reimbursed unless they are detailed in writing and accompanied by receipts. All invoices are subject to verification by VLAWMO's Administrator or the Project Manager. VLAWMO has thirty (30) days from the receipt of invoice to pay Engineer. However, if, in VLAWMO's reasonable determination, an invoice does not contain sufficient detail to verify the delivery of the Services for which payment is being sought, VLAWMO may withhold payment on the invoice until Engineer provides the requested additional detail. Such withholding shall not constitute a breach of this Agreement. No more than 90% of the amount due under this Agreement shall be paid to Engineer until the deliverables and final deliverables to be produced by Engineer as part of the Services have been reviewed and accepted by VLAWMO.
7. **Independent Contractor.** Engineer and its employees are not employees of VLAWMO. Nothing in the Agreement is intended or should be construed in any manner as creating or establishing the relationship as employer/employee, co-partners, or a joint venture between VLAWMO and the Contractor. It is agreed that Engineer and its employees will act as an independent contractor and acquire no rights to tenure, workers' compensation benefits, unemployment compensation benefits, medical and hospital benefits, sick and vacation leave, severance pay, pension benefits or other rights or benefits offered to employees of VLAWMO. The manner in which the Services are performed shall be controlled by

Engineer; however, the nature of the Services and the results to be achieved shall be specified by VLAWMO.

8. **No Agency.** Engineer, as an independent contractor, shall not be considered an agent or servant of VLAWMO for any purpose and shall have no authority to enter into any contracts, create any obligations, or make any warranties or representations on behalf of VLAWMO. To the extent applicable and contemplated in the delivery of the Services, Engineer may apply for and obtain needed permits on behalf of VLAWMO at Engineer's own cost.
9. **Deliverables.** If Engineer is required to produce specific deliverables to VLAWMO as part of the Services to be provided under this Agreement, such deliverables shall be identified in the Task Order issued pursuant to this Agreement.
10. **Ownership and Use of Work Product.** All data notes, working papers, reports and other work products prepared or developed in connection with the provision of Services under the Agreement (collectively, the "**Work Product**") shall become upon creation, the exclusive property of VLAWMO. Engineer may not use the Work Product or any other deliverables under this Agreement for any purpose other than fulfilling its obligations under this Agreement without prior written consent of VLAWMO. VLAWMO may grant or deny Engineer's application for such consent or may condition its consent on the payment of compensation or the imposition of such other conditions as VLAWMO deems appropriate. Engineer may use the Work Product as an example of their work in their portfolio and may reuse standard portions of such Work Product in the normal course of its business. Engineer represents and warrants that the Work Product does not and will not infringe upon any intellectual property rights of other persons or entities.
11. **Naming Rights and Acknowledgements.** To ensure that appropriate credit for funding and other contributions of VLAWMO and its staff members is given for their participation in producing any deliverables as part of the Services, and to the extent applicable, VLAWMO shall have its name and logo represented in the materials that are developed and will be acknowledged in printed materials, publications, presentations and other uses and materials developed under this Agreement. VLAWMO retains and shall have the right to control the title, citations, acknowledgments, attributions, cover design, logos and credits of the deliverables produced as part of the Services.
12. **Termination.** VLAWMO may terminate this Agreement upon thirty (30) days written notice, except that if Engineer is in default and fails to cure the default within the period provided in the written notice of default as provided in this Agreement, VLAWMO has the right to terminate this Agreement immediately upon written notice of termination. VLAWMO shall pay Engineer for Services properly rendered prior to the effective date of termination. The following provisions of this Agreement shall survive expiration, termination, or cancellation of this Agreement: Indemnification; Insurance; Applicable Law; Audit; and Data Practices.
13. **Legal Compliance.** Engineer shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances in providing the Services and shall obtain all permits and

permissions that may be required. This Agreement shall be governed by and construed according to the laws of the State of Minnesota.

14. **Indemnification.** Engineer agrees to defend, indemnify and hold harmless, VLAWMO, its officials, officers, agents 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 Engineer, its offices, employers, agents, contractors or subcontractors or anyone directly or indirectly employed by them, or anyone volunteering for them, or anyone for whose acts or omissions they may be liable in the performance of the Services and against all loss by reason of the failure of Engineer to perform fully, in any respect, all obligations under this Agreement. Nothing in this Agreement shall constitute a waiver by VLAWMO of any limits on or exclusions from liability available to it under Minnesota Statutes, chapter 466 or other law.

15. **Insurance.** Engineer agrees to at all times during the term of this Agreement, have and keep or cause to have and be kept in force, and to cause all contractors and subcontractors to do likewise, the following insurance coverages with at least the following limits:

(a) Commercial General Liability on an occurrence basis with Contractual Liability Coverage:

	<u>Limits</u>
General Annual Aggregate	\$2,000,000
Products-Completed Operations	\$1,500,000
Personal and Advertising Injury	\$1,500,000
Each Occurrence –	
Combined Bodily Injury and Property Damage	\$1,500,000

(b) Commercial Automobile Liability – Combined single limit each occurrence for bodily injury and property damage covering owned, non-owned, and hired automobiles. \$1,000,000

(c) Workers’ Compensation and Employer’s Liability:

(1) Workers’ Compensation	Statutory
If Engineer is based outside the State of Minnesota, coverage must apply to Minnesota laws.	
(2) Employer’s Liability. Bodily Injury by:	
Accident – Each accident	\$500,000
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$500,000

(d) Professional Liability

Per Claim or Event	\$1,500,000
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Annual Aggregate

\$2,000,000

The required coverage limits may be achieved through an excess or umbrella policy, provided such policy provides the same scope of coverages as the underlying policy. The insurance must be maintained continuously for a period of at least one year after the termination of this Agreement. Engineer shall have VLAWMO named as an additional insured on its commercial general liability policy. Engineer shall provide VLAWMO a certificate of insurance showing the required coverages, insurance limits, and additional insured endorsement before undertaking any Services under this Agreement. Engineer will require that any subcontractors furnish certificates of insurance to Engineer of the insurance coverages listed above and shall provide updated certificates as coverages expire. It is the sole responsibility of Engineer to determine the need for and to procure additional insurance that may be needed to satisfy its indemnification obligation or other obligations in connection with this Agreement. Copies of policies will be submitted to VLAWMO upon written request.

16. **Engineer Representations.** Engineer represents and warrants, as inducement to VLAWMO to enter into the Agreement, as follows: (a) it has the legal authority to enter into this Agreement; (b) the person(s) executing this Agreement on behalf of Engineer is duly authorized to enter into this Agreement and to bind Engineer to its terms; (c) all of the documents that constitute this Agreement are valid and binding on Engineer; (d) it will comply with the terms and conditions of this Agreement; (e) it has the necessary licenses, personnel, experience, skill, tools, and equipment to complete the Services in accordance with the standards and timelines established in this Agreement; and (f) it is not involved in or aware of any action, claim, suit, or proceeding that is reasonably anticipated to interfere with Engineer's ability to provide the Services in accordance with the terms of this Agreement.
17. **Conflict of Interest.** Engineer agrees that it will not, during the term of this Agreement, enter into a contract or otherwise accept employment for the performance of any work or service with any individual, business, partnership, corporation, government, governmental unit, or any other organization that would create a conflict of interest in the performance of its obligations under this Agreement.
18. **Not Exclusive.** This Agreement does not constitute an exclusive contract between VLAWMO and Engineer. VLAWMO remains free to contract for similar services from other engineers and Engineer remains free to contract to provide similar services to others, provided that any such contracts do not interfere with the delivery of Services under this Agreement.
19. **Amendments.** No modification, amendment, deletion, or waiver in the terms of this Agreement, or any expansion in the scope of the Services, is valid unless it is in writing and signed by the parties.
20. **Notices.** Any notice or demand authorized or required under this Agreement shall be in writing and shall be sent by certified mail to, with respect to VLAWMO, the Project

Manager and, with respect to Engineer, to Engineer's contact person, each as identified at the outset of the Agreement.

21. **Substitution of Personnel.** The Services shall be provided by the person or persons identified in the Proposal or as may be authorized in a Task Order. Upon prior approval by VLAWMO, Engineer may substitute other persons to perform the Services under a Task Order. If substitution is permitted, VLAWMO may require Engineer to furnish information on the qualifications of the substituted person.

22. **Subcontracting and Assignment.** Engineer shall not enter into any subcontract for performance of any Services contemplated under this Agreement, nor assign any interest in the Agreement, without the prior written approval of VLAWMO and subject to such conditions and provisions as VLAWMO may deem necessary or desirable in its sole discretion. Engineer shall be responsible for the performance of all of its subcontractors. If VLAWMO permits the use of subcontractors, the Contract shall, pursuant to Minnesota Statutes, section 471.425, subdivision 4a, pay any subcontractors within 10 days of Engineer's receipt of payment from VLAWMO for undisputed services provided by the subcontractor. Any undisputed amounts not paid to a subcontractor within 10 days shall be subject to, and Engineer shall pay, interest of 1-1/2 percent per month. The minimum monthly interest penalty Engineer shall pay for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, Engineer shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from Engineer must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

23. **Default and Cure.**

(a) Default by Engineer. Unless excused by VLAWMO's default, the occurrence of an uncontrollable circumstance, or VLAWMO issuing a written waiver of default, each of the following shall constitute default on part of Engineer:

- (1) The written admission by Engineer that it is bankrupt; or filing by Engineer of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against Engineer unless dismissed within ninety (90) days. The Notice of Default and cure provision of this Agreement do not apply to this paragraph;
- (2) The making of any arrangement with or for the benefit of Engineer's creditors involving an assignment to a trustee, receiver or similar fiduciary. The Notice of Default and cure provisions of this Agreement do not apply to this paragraph;
- (3) Making a material misrepresentation in any of the documents submitted by Engineer or in any other provisions or conditions relied upon in the making or modification of the Agreement;

- (4) Engineer is found to persistently disregard laws, ordinances, rules, regulations or orders of any public authority having jurisdiction;
 - (5) Failure to make satisfactory progress towards completion of the Services; or
 - (6) Failure to perform any other material provision of the Agreement.
- (b) Default by VLAWMO. Unless excused by Engineer's default or the occurrence of uncontrollable circumstances or Engineer waiver of default, each of the following shall constitute a default on the part of VLAWMO:
- (1) The persistent or repeated failure or refusal by VLAWMO to pay or prevent payment of any uncontested amount to Engineer timely and properly submitted as required by this Agreement;
 - (2) Making a material misrepresentation in any of the documents provided by VLAWMO or in any other provisions or conditions relied upon in making the Agreement; or
 - (3) Persistent or repeated failure to perform any other material provision of this Agreement.
- (c) Written Notice of Default. Unless otherwise provided, no event shall constitute a default giving rise to the right to terminate unless and until written Notice of Default is given to the defaulting party, specifying the particular event, series of events, or failure constituting the default and a reasonable cure period.
- (d) Cure Period. If the party in default fails to cure the specified circumstances as described by the Notice of Default within ten (10) days or such longer period as may be provided in the Notice of Default, then this Agreement may immediately be terminated by the party not in default providing a written notice of termination to the party in default.
- (e) Withholding of Payment. Notwithstanding any other provision of the Agreement, VLAWMO may, after giving Notice of Default, withhold, without penalty or interest, any payment which becomes due after Notice of Default is given, until the default is excused, waived in writing, cured, or the Agreement is terminated. VLAWMO shall not be responsible for paying any portion of the withheld funds upon translation for Engineer's default if the Services for which payment is being sought were deficient or are not usable by Engineer hired to complete the Services.
- (f) Preservation of Other Remedies. The rights and remedies of VLAWMO provided in the Agreement shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement.
- (g) Duty to Mitigate. Both parties shall use their best efforts to mitigate any damages that might be suffered by reason of any event giving rise to a remedy hereunder.

- (h) Cost of Termination. In the event this Agreement is terminated by reason of default by Engineer, VLAWMO may recover the necessary costs of termination, including but not limited to, administrative costs, attorney's fees and legal costs, from Engineer.
- (i) Reperformance. VLAWMO may require Engineer, at Engineer's sole expense, to reperform any of the Services provided for in this Agreement that do not meet the established standards.
- (j) Set-Off. Notwithstanding any other provision of the Agreement to the contrary, upon Engineer's breach of this Agreement VLAWMO may withhold any payment due Engineer for purposes of set-off until such time as the exact amount of damages due is determined. Such withholding shall not constitute default or failure to perform on the part of VLAWMO.

24. **No Waiver**. If VLAWMO fails to enforce any provisions of this Agreement, such failure does not waive the provision or VLAWMO's right to enforce it.
25. **Data Practices**. Engineer agrees to comply with the Minnesota Government Data Practices Act (Minnesota Statutes, chapter 13), and all other applicable laws, related to data it creates or receives from VLAWMO in the performance of the Services. Engineer will immediately report to VLAWMO any data requests from third parties relating to this Agreement. VLAWMO agrees to work with Engineer to respond to the data request. Engineer agrees to hold VLAWMO, its officers, and employees harmless from any claims resulting from Engineer's unlawful disclosure, use, or failure to produce data in accordance with applicable laws.
26. **Nondiscrimination**. Engineer agrees to abide by the requirements and regulations of The Americans with Disabilities Act of 1990 (ADA), the Minnesota Human Rights Act (Minn. Stat. Chap. 363), and Title VII of the Civil Rights Act of 1964. These laws deal with discrimination based on race, gender, disability, and religion, and with sexual harassment. Violation of any of the above laws can lead to the immediate termination of this Agreement without needing to provide a cure period.
27. **Audit**. Engineer agrees that VLAWMO, the Minnesota State Auditor, and Minnesota Legislative Auditor, or any of their duly 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, and records that are relevant and involve transactions relating to this Agreement. Engineer agrees to retain such records for at least six years from the date of termination of this Agreement.
28. **Applicable Law**. The law of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under this Agreement will be in and under those courts located within the County of Hennepin,

State of Minnesota, regardless of the place of business, residence or incorporation of Engineer.

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

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement effective as of the year and date indicated below.

This Agreement shall be in effect as of _____ and shall terminate on _____ unless terminated earlier as provided herein.

FOR ENGINEER:

By _____

Its _____

Date _____

By _____

Its _____

Date _____

FOR VLAWMO:

By _____

Its _____

Date _____

By _____

Its _____

Date _____

EXHIBIT A
Request for Services

[attached hereto]

EXHIBIT B
Engineer's Proposal

[attached hereto]